I agree with your Lordships that there is nothing in the specialty of the employment of Mr Hoggan. It was just the same as if the Commissioners' own clerk had been employed. Mr Hoggan had more time and was more conversant with the whole matter, and if the Commissioners had been entitled to employ an official at all to be paid out of the assessments, I see no reason to doubt that they were entitled to employ him.

As to the second ground on which the Commissioners opposed the bills, viz., the contemplated imposition of certain new and important duties upon themselves and on their convener and clerk, I am quite clear that it affords them no reason for charging the expense on the funds under their administration.

I have only to add that I think *Brighton's* case is clearly distinguishable from the present. There the trustees incurred expenses in defending the trust property; for the operations in question would have directly injured the trust property. In such a case the expenditure was no doubt justifiable, but there is no such case here. The broad rule is that trustees are not entitled to lay out trust money on anything which is not sanctioned or authorised by their trust deed or deed of incorporation, or by the statute under which they act, and that rule is sufficient for the decision of this case.

The Court adhered.

Counsel for Complainer (Respondent)—M'Laren—Black. Agents—Curror & Cowper, S.S.C.

Counsel for Respondents (Reclaimers)—Lord-Advocate (Watson)—Balfour—Moncreiff. Agent—John Martin, W.S.

Friday, November 29.

FIRST DIVISION.

[Court of Exchequer.

INLAND REVENUE *v.* FARIE.

Revenue — Income-Tax — Mines and Minerals — Schedule A, Rule No. 3, and Schedule D (5 and 6 Vict. cap. 35), sec. 60; and sec. 100, 1st Case, Rule 1; Act 29 Vict. cap. 36, sec. 8.

Held that by the Act 29 and 30 Vict. cap. 36, sec. 8, Income-Tax duty on the subjects included in No. III. of Schedule A of the Income-Tax Act (5 and 6 Vict. cap. 35) is to be laid on in the manner prescribed by the said No. III., but that the rules for ascertaining the annual value are not those in Schedule A, but are to be taken from Schedule D; and therefore that the duty chargeable in the case of mines and minerals is to be determined by a three years instead of a five years' average.

Revenue—Income-Tax—Mines and Minerals—Case of Succession to a Colliery where Profits had decreased owing to "Specific Cause"—Act 5 and 6 Vict. cap. 35, sec. 100, Schedule D, I. and II., Rule 4, also sec. 133; Act 28 Vict. c. 30, sec. 6; Act 29 Vict. cap. 36, sec. 8.

Held (1) that a depression in the coal trade is a "specific cause" within the terms and meaning of the Act 5 and 6 Vict., Schedule D, Cases I. and II., Rule 4; (2) that such a "specific cause" need not necessarily have occurred to the business in question before the change of partnership or the succession, provided it be proved that the profits and gains have fallen short since the date of either event; (3) that the effect of that exception clause is to introduce the provisions of the common law, leaving the assessment to be laid upon the actual profits of the year, and not in terms of the Act 5 and 6 Vict. cap. 35, sec. 133, as amended by the Act 28 Vict. cap. 30, sec. 6.

Revenue—Income-Tax—Mines and Minerals—Deduction for Exhausted Capital; Act 5 and 6 Vict. c. 35, sec. 100, Schedule D, 1st Case, Rule 3, and sec. 159; Act 29 Vict. cap. 36, sec. 8.

Where a coalmaster, who was also owner of the pit he worked and of the estate of which it formed a part, claimed a deduction from his profits in respect of capital lost through partial exhaustion of the mine, *held* that such a deduction was contrary to the policy of the Income-Tax Acts, and could not be given effect to.

This was a Case stated by the Income Tax Commissioners for the lower ward of Lanarkshire at the instance of the Surveyor of Taxes for the 3d district of Glasgow.

James Farie of Farme, the respondent, who carried on business as a coalmaster at Farme Colliery, near Rutherglen, had appealed to the commissioners against an assessment of £3500 made upon him under Schedule D of the Act 5 and 6 Vict. cap. 35, and subsequent Income Tax Acts referring thereto. Mr Farie was proprietor of the estate of Farme and occupier of the Farme colliery, forming part of that estate, to both of which he succeeded upon the death of his father on 30th September 1876.

The Act 29 Vict. c. 36, sec. 8, enacted—"The several and respective concerns described in No. III. of Schedule A of the Act 5 and 6 Vict. c. 35, shall be charged and assessed to be duties hereby granted in the manner in the said No. III. mentioned, according to the rules prescribed by Schedule D of the said Act, so far as such rules are consistent with the said No. III," &c.

No. III. of Schedule A of 5 and 6 Vict. c. 35, sec. 60, contained "Rules for estimating the lands, tenements, hereditaments or heritages hereinafter mentioned which are not to be charged according to the preceding general rule.

"The annual value of all properties hereinafter described shall be understood to be the full amount for one year, or the average amount for one year of the profits received therefrom within the respective times herein limited. . . .

"2d Of mines of coal . . . . on average of the five preceding years, subject to the provisions concerning mines contained in this Act."

Schedule D of 5 and 6 Vict. c. 35, sec. 100, contained the following enactments:—"First case—Duties to be charged in respect of any trade, manufacture, adventure, or concern in the nature of trade not contained in any other schedule of this Act.

"RULES.

"1st, The duty to be charged in respect thereof shall be computed on a sum not less than the full amount of the balance of the profits or gains of such trade upon a fair and just average of three years. . . .

"3d, In estimating the balance of profits and gains chargeable under Schedule D, or for the purpose of assessing the duty thereon, no sum shall be set against or deducted from . . . such profits

or gains on account of . . . any capital withdrawn therefrom (*i.e.*, from 'such trade'); nor for any sum employed or intended to be employed as capital in such trade, manufacture, adventure, or concern." . . .

The 4th of the "rules applying to both the preceding cases" (*i.e.*, Cases I. and II.) under Schedule D was—"If amongst any persons engaged in any trade, manufacture, adventure, or concern, or in any profession in partnership together, any change shall take place in any such partnership, either by death or dissolution of partnership, as to all or any of the partners, or by admitting any other partner therein before the time of making the assessment or within the period for which the assessment ought to be made under this Act, or if any person shall have succeeded to any trade, manufacture, adventure, or concern, or any profession within such respective periods as aforesaid, the duty payable in respect of such partner or any of such partners or any person succeeding to such profession, trade, manufacture, adventure, or concern, shall be computed and ascertained according to the profits and gains of such business derived during the respective periods herein mentioned, notwithstanding such change therein or succession to such business as aforesaid, unless such partner or such person succeeding to such business as aforesaid shall prove to the satisfaction of the respective commissioners that the profits and gains of such business have fallen short or will fall short from some specific cause to be alleged to them since such change or succession took place or by reason thereof."

Section 133 of 5 and 6 Vict. c. 35, enacted—"That if within or at the end of the year current at the time of making any assessment under this Act, or at the end of any year when such assessment ought to have been made, any person charged to the duties contained in Schedule D, whether he shall have computed his profits or gains arising as last aforesaid on the amount thereof in the preceding or current year or on an average of years, shall find and shall prove to the satisfaction of the Commissioners by whom the assessment was made that his profits and gains during such year for which the computation was made fell short of the sum so computed in respect of the same source of profit on which the computation was made, it shall be lawful for the said Commissioners to cause the assessment made for the current year to be amended in respect of such source of profit as the case shall require, and in case the sum assessed shall have been paid, to certify," &c. This enactment was amended by section 6 of 28 Vict. c. 30.

Section 159 of 5 and 6 Vict. c. 35, enacted—"That in the computation of the duty to be made under this Act in any of the cases before-mentioned, either by the party making or delivering any list or statement required as aforesaid or by the respective assessors or commissioners, it shall not be lawful to make any other deductions therefrom than such as are expressly enumerated in this Act, nor to make any deduction . . . on account of diminution of capital employed or of loss sustained in any trade, manufacture, adventure, or concern, or in any profession, employment, or vocation."

The following questions were raised on the construction of these enactments:—(1) To what extent did 29 and 30 Vict. cap. 36, sec. 8, bring mines, originally under Schedule A, within the rules of Schedule D? In particular, was the rule of a five years' average in Schedule A superseded by that of a three years' average in Schedule D? The surveyor of taxes contended for the five years' average—Mr Farie for that of three years. (2) Was Mr Farie's case within the exception mentioned in the fourth of the "rules applying to both the preceding cases" of Schedule D? Fairie maintained that it was on the ground of an extensive depression in the coal trade, which was, he averred, a "specific cause" within the meaning of the Act. The surveyor denied that this was such a specific cause. (3) Admitting that there was a "specific cause," What was the effect of the exception? Did it leave the actual profits of the year to be the rule, or did it, as the surveyor maintained, bring the case under sec. 133, as amended by sec. 6 of 28 and 29 Vict. cap. 30? (4) Was Mr Farie in computing the profits of the year entitled to deduct a sum in respect of loss of capital by reason of the partial exhaustion of his mines?

The case stated—"The appellant was allowed by the Commissioners to prove his averments, and he accordingly proved by witnesses that there was a great depression in the coal trade, and that the profits and gains of the said colliery for the year 1877–8 had thereby fallen short of the average yielded during the three years ending 5th April 1878; that the net return yielded by the said colliery on said average was £1289, 16s. 11d. after deducting working expenses, and that the net return for 1877–8, after deducting working expenses, was £843, 8s. 11¼d. But these sums were arrived at without making a deduction, which he claimed, corresponding to the partial exhaustion of the mine, or diminution of the capital value thereof, by reason of the output of coal therefrom; and he proved by witnesses that the extent and rate of exhaustion and diminution amounted to 5½d. per cart of 13 cwts. of coals taken from said mine, while he established that the average output for said three years was 60,718 carts per annum, and the output for 1877–8 57,725 carts. The Commissioners gave effect to the appellant's contentions—1st, That he was entitled to the ease or benefit to successors conferred by the said fourth rule of Rules applying to both First and Second cases, Schedule D, of 5 and 6 Vict. cap. 35, sec. 100; and 2d, allowed said deduction of 5½d. per cart, and as that deduction more than exhausted said net returns, whether taken for 1877–8 alone or upon said average of three years, therefore granted the appellant relief from said assessment."

A case was thereupon, at the request of the surveyor, stated for the opinion of the Court of Exchequer, and the Lord Ordinary on Exchequer (CURRIEHILL) appointed the cause to be heard before the Judges of the First Division.

Argued for the Surveyor—(1) 29 and 30 Vict. cap. 36, sec. 8, did undoubtedly transfer mines from Schedule A to Schedule D, but only to certain intents and purposes. Section 8 distinguished "the manner in the said No. III." of Schedule A from "rules prescribed by Schedule D." The question was, What fell under the head of "the manner in the said No. III," for whatever did so fall was not supplanted by "the rules prescribed by Schedule D?" No. III. was from the general structure of the Act and of the various schedules plainly to be taken as a whole,

and to be distinguished on the one hand from heads No. I. and No. II. of the same schedule, which applied to other classes of property, and on the other hand from No. IV., which applied to the three preceding heads alike. That being so, the intention of the Legislature in enacting 29 and 30 Vict. cap. 36, sec. 8, was to save No. III. itself, *i.e.* all the rules and regulations which were peculiar to and constituted that head of the schedule, but as regarded the rules in No. IV., which were common to Nos. I. II. and III. alike, it was intended to substitute for these, in respect to No. III., the rules of Schedule D. That had been the practice of the Income-Tax Office, and was the only reasonable construction. The three numbered rules in No. III. were essential to the "manner of assessing" under that head. (2) Depression of trade was not a "specific cause" in the sense of the fourth of the rules applying to both the first cases of Schedule D. "Specific" means a cause which affected the successor *qua* successor, not one which would have affected his ancestor. Besides, it must be a cause which had arisen since the succession, and that this was the fact in the present instance had not been proved. (3) Even if there was a specific cause, it did not follow that the actual profits of the year were to be taken. That matter was regulated by sec. 133 of 5 and 6 Vict. cap. 35, as amended by sec. 6 of 28 and 29 Vict. cap. 30. (4) But the most important question for the Crown was that in reference to the deduction in respect of the loss of capital which Mr Farie alleged he had suffered from the partial exhaustion of his mine. The case of *Knowles* was not a binding authority here; but it was not necessary to impugn it. It was the case of a simple commercial transaction—of buying and selling—and it was held that for income-tax purposes a proportion of the price, corresponding to the output of coal for the year, was to be deducted before the profit could be ascertained. That was very different, and was expressly distinguished from a case like the present. Mr Farie was neither seller nor purchaser, and no purchase money had passed in the matter. It did not appear on what basis the calculation of the rate of exhaustion had proceeded. And however reached, there was this strange result, that a landlord who undoubtedly would pay tax on his lordship was to pay nothing at all when he worked his own mine, unless he made more than what he would have made by letting his mine at a lordship in the usual way. But though the question was one on the Income-Tax Acts, the common law was clearly in the same direction. *Ferguson's Trustees* appeared contrary, but that was a very special case, depending on a testator's intention. As a general rule, liferenters, even by constitution, were entitled to work mines already opened at the rate at which they had been previously worked. Minerals were therefore treated as *fructus soli*.

Authorities referred to—*Knowles* v. *M'Adam*, 5th December 1877, Law Reports, 3 Excheq. Div. 23; *Ferguson's Trustees*, 23d February 1877, 4 R. 532; *Addie & Sons* v. *Inland Revenue*, 30th January 1875, 2 R. 431.

Argued for Mr Farie—(1) Within No. III. itself the "manner" was to be distinguished from the "rules." The latter were the three numbered rules at the commencement, and the manner made up the remainder of the head. And as sec. 8 of 29 and 30 Vict. c. 36, did not say "so far as such rules are consistent with the *rules* in the said No. III.," these rules were repealed and those of Schedule D substituted. The case of *Knowles* was absolutely clear upon this point. The three years' average must therefore be adopted. (2) But in any view, the second question still remained, because in regard to it there was no repugnancy between the two schedules. Mr Farie came within the exception, because he was making less profit—was making no profit at all—through an extensive depression in the trade, and this was a specific cause within the meaning of the Act. The word "specific" meant "assignable." It was not necessary to show that the cause was owing to the succession—that was covered by the words "or by reason thereof." Nor was it necessary that the cause should have occurred since the change of business. The considerations of equity which gave rise to the exception applied equally whether the cause occurred before or after the change. (3) The effect of the exception was that the profits were to be assessed as they were actually found to be. This was the common law which must be held to prevail in all casesunder rule 4; the excepting clause did not introduce any test applicable to the cases under it, and therefore the common law was preserved as regards these cases. Section 133 referred to a totally different matter —the rectification of erroneous assessments. (4) *Knowles* would be a direct authority if it had been the case of an owner working his own mine. It was, however, similar in principle. The principle was, that when working a coal mine you were in selling coal parting with capital as well as, in most instances, making a profit; but before you could settle what the profit was, you must deduct a certain sum in respect of capital lost. [LORD PRESIDENT—That is quite true in theory—the question is whether that is the meaning of the Income Tax Acts.] It was held in *Knowles* it was, in reference to a lessee. But could it make any difference that Mr Farie inherited and did not purchase his coal. Some one of his ancestors must have made the purchase. In *Ferguson's Trustees* it was held that a widow who was liferentrix was not entitled to the profits, but only to the interest on the profits, of certain coal mines, on the ground that there was really an exhaustion of capital in working a mine. But no doubt that case went partly on the testator's intention. There was nothing either in sec. 100, rule 3, or in sec. 159, to lead to the conclusion the Crown contended for. That was the reasonable and just construction. The policy of the Income Tax Act was to tax the balance of profits; and if in certain respects it extended what on the usual principles of political economy was regarded as profits, that extension ought not to be made wider than the expressions of the statute required.

At advising—

LORD PRESIDENT—Mr Farie of Farme, who was the appellant before the Commissioners, complained of an assessment which had been made upon him by the surveyor in respect of the income which he derives from his estate of Farme, including a certain going colliery; and he stated that he was proprietor of the estate of Farme, embracing this colliery, which colliery he himself occupied and worked. He stated further that he had succeeded to the estate and the colliery upon

the death of his father on the 30th September 1876. The assessment was laid on apparently with reference to Schedule A of the Income-Tax Act (5 and 6 Vict. cap. 35), and the amount of the annual value of the subject was ascertained by the surveyor upon an average of the five previous years, in terms of rulet hird of Schedule A. Now Mr Farie maintained, and maintained successfully before the Commissioners, that that was not in the circumstances the rule applicable to his case, but that the annual value fell to be ascertained under certain rules contained in Schedule D of the statute.

This certainly raises a question of some practical importance, and which has an appearance of complexity about it at first sight that upon more attentive examination of the statute seems that to me to disappear altogether. It is very true one of the rules in No. III. of Schedule A—that applicable to mines—is, that the annual value is to be ascertained to be the full amount for one year, or the average amount for one year, of the profits received from the mines within the respective times hereinafter mentioned; and the time hereinafter mentioned applicable particularly to mines of coal, tin, lead, copper, &c., is an average of the five preceding years, "subject to the provisions concerning mines contained in this Act." Now, if there had been no further legislation on the subject, it seems to me that that rule would have clearly applied. But then there was a statute passed in the 29th of Her Majesty's reign, cap. 36, by sec. 8 of which this novelty was introduced—"The several and respective concerns described in number 3 of Schedule A of the said Act passed in the 5th and 6th years of Her Majesty's reign, cap. 35, shall be charged and assessed to the duties hereby granted in the manner in the said No. 3 mentioned, according to the rules prescribed by Schedule D of the said Act, so far as such rules are consistent with the said No. 3; provided,"&c. Now, we are thus directed in a case like the present to attend to the rules prescribed by Schedule D, because the duty is to be charged according to these rules, but according to these rules only so far as such rules are consistent with the said No. 3. It appears to me impossible to read that as meaning that we are to proceed according to the rules prescribed by Schedule D so far as such rules are consistent with the rules in No. 3 of Schedule A, because they are not consistent. They are quite different; and the meaning of the Legislature must therefore be that the duty is to be laid on in the manner prescribed by No. 3 of Schedule A, but that the rules for ascertaining the annual value are to be taken from Schedule D, and it is so I construe this statute of the 29th of Victoria, cap. 36.

Now, that being so, we turn to the rules contained in Schedule D, and which as originally framed were intended to apply to the profits of trade as distinguished from profits arising from estates like mines or quarries, or things of that kind which have been thrown into Schedule A. In short, in so far as ascertaining the annual value is concerned, it appears to me that mines, quarries, and other subjects of that kind are transferred from the one schedule to the other.

Now, the rules in Schedule D to which the appellant Mr Farie appeals, are, in the first place, the fourth rule, applying to the first and second cases of Schedule D under section 100 of the statute, and the fourth rule is this—[*His Lordship read this rule quoted supra*]. Now, there are two things to be observed here. In the ordinary case, on either a change of partnership or a succession, the profits and gains are to be computed according to the amount of profits and gains of such business derived during the respective periods herein mentioned, and that is under Schedule D an average of three years instead of five years as in Schedule A. So that, unless Mr Farie is within the exception contained in this rule, he would fall to be charged under Schedule D, or rather according to the rule of Schedule D, upon an average of three years on the profits and gains derived from his mine. But he claims to be within the exception to this rule, and that exception is that he shall be able to prove to the satisfaction of the Commissioners "that the profits and gains of such business have fallen short or will fall short from some specific cause to be alleged to them since such change or succession took place or by reason thereof." Now, there are two ways in which this exception may be construed. It may mean that the specific cause to be proved is a cause which has occurred since the change of partnership or since the succession, or it may mean that a specific cause may be proved to the satisfaction of the Commissioners, whether occurring before or after that change, if it be proved that the profits and gains have fallen short since the change took place; and it appears to me that that latter interpretation is clearly the sound one. The question therefore will come to be, whether Mr Farie having succeeded within a year of the time that the assessment is made, has proved that during the year for which the assessment is made the profits and gains of this colliery have fallen short of what they were in the previous three years from some specific cause affecting these profits.

Now, the Commissioners have told us, and we take this of course as matter of fact established in evidence before them, "that Mr Farie proved by witnesses that there was a great depression in the coal trade, and that the profits and gains of the said colliery for the year 1877-78 had thereby fallen short of the average yielded during the three years ending the 5th of April 1878; that the nett return yielded by the said colliery on the said average was £1289, after deducting working expenses, and that the return for 1877-78, after deducting working expenses, was £843." We have thus before us the means of settling this assessment either upon the footing that Mr Farie is to be charged upon an average of three years preceding the assessment or upon the actual profits of the year; and it appears to me that Mr Farie has made out a case to bring himself within the exception of this fourth rule to which I have referred. I think the depression in the coal trade is a "specific cause" very clearly bringing about the effect of a reduction of his profits and gains—bringing about that effect very directly—and consequently that he is entitled to the relief he asks under this branch of his case. To that extent therefore I am for confirming the deliverance of the Commissioners. I think it is quite in accordance with the true construction of the statute as altered by section 8 of the Act of 29th of Victoria, cap. 36.

But, then, there is another question raised, and it is a little more difficult to apprehend what is exactly the ground of Mr Farie's claim there. He claims a deduction corresponding to the partial

exhaustion of the mine or diminution of the capital value thereof by reason of the output of coal therefrom, and the Commissioners say that the sum of £843, which they affirm to be the actual profits of the year of assessment, are arrived at without making a deduction corresponding to the partial exhaustion of the mine or diminution of the capital value thereof by reason of the output of coal therefrom, and he (*i.e.*, Mr Farie) "proved by witnesses that the extent and rate of exhaustion and diminution amounted to 5½d. per cart of 13 cwt. of coals taken from said mine, while he established that the average output for said three years was 60,718 carts per annum, and the output for 1877-78 was 57,725 carts." The Commissioners gave effect to Mr Farie's contention, and allowed the deduction which he claimed, and the effect of that deduction is to leave no assessable value at all. Now, that is certainly a very startling conclusion. This is a mine worked by Mr Farie, being at the same time his own property, and according to the finding of the Commissioners themselves he derives an income therefrom—did derive an income therefrom in the year of assessment of £843—and yet he is not to be assessed for income-tax at all. It appears to me that this conclusion proceeds upon an entire misunderstanding of the principle of the Income-tax Act. Mr Farie is a proprietor of a landed estate, one part of which is a coal-mine, and supposing that he did not himself work that coal-mine or occupy it, his income derived from it would be in the form of lordship, and I never heard it contended, and I should be very much surprised to hear it contended, that the owner of a landed estate, part of whose rental is derived from mines in the shape of lordships, is not to be assessable in income-tax upon these lordships; and yet that seems to be the principle upon which the Commissioners here proceeded, the ground being that this is a terminable lease, that as soon as the mine is exhausted the income will cease, and that therefore it is not to be treated as income, or at least it must be treated as income in such a fashion as in any case very much to reduce the actual amount of income for assessment purposes, and in some views to sweep it away altogether.

Now, I think the principle of the Income-tax Act is to assess income-tax no matter from what derived, and no matter how precarious or how temporary that income may be. That runs through the whole schedules of the Income-tax Act. An assessment upon profits of trade is an assessment upon the most precarious of all incomes, and an assessment upon professional income would be liable to a much more serious objection, I think, than an assessment upon the lordships derived from a mine, because a professional income is one that has no capital to represent it at all, and if one proceeded upon equitable views in regulating the assessment for the income-tax, I am afraid we should find one class of incomes after another slipping through the fingers of the surveyor until there was nothing left to assess. The broad principle of the Income-tax Act is that income—what comes in periodically into the pocket of the party—is to be assessed.

Is it to be said for one moment that annuities are not to be assessed because they are terminable? That never was propounded that ever I heard of. Suppose a man buys an annuity to endure for ten years, he pays a capital sum for it; according to the argument of this appellant the holder of that annuity would not be assessable upon the amount of the annuity. He must make a deduction for the constant exhaustion of his capital which is going on. That is a case precisely parallel to the present; but could it be maintained that an annuity of that kind was not assessable like any other income? And it is the same with all terminable interests, by which I mean interests terminable at a fixed date, and also all interests of a temporary character which are terminable, not at a fixed date, but at an uncertain period. And such is just the case that is now before us. I am therefore very clearly of opinion upon the second branch of this case that the Commissioners have gone wrong, and that the assessment must be made upon the £843 of profits.

Lord Deas—I am of the same opinion with your Lordship upon both points.

Upon the first point, I agree in thinking that this case falls within the exception of Schedule D, Cases I. and II., rule 4, and that it is proved that the profits and gains have fallen short from a specific cause for the year since Mr Farie's succession, and that he therefore falls to be assessed upon the actual profits of that year.

Upon the second point I likewise agree with your Lordship. There can be no doubt that the income-tax presses very unequally upon different kinds of income. There could not be a better instance of that than the case of professional incomes. If a professional man is ever to make any capital, his professional income must be that out of which that capital is to come; and yet according to the principle of the income-tax he must pay upon that income at the same rate as if it were permanent capital. If it had been practicable to make a difference with respect to terminable incomes it might have been fair to do so, but I suppose that in framing the statute this was found impracticable. But be that as it may, and however hard it may be, I can have no doubt that that is the principle of the income-tax, and that there is no difference with reference to income from mines and any other kind of income. It would certainly be very agreeable to those deriving their income from minerals, whether by working them themselves or in the shape of a lordship, to have an allowance made for exhaustion or diminution; but however favourably inclined to that, I am not able to find any principle for it.

Lord Mure—I am of the same opinion on both points. On the first I have no difficulty whatever; on the second I had a little difficulty at first, but I am now perfectly satisfied that the view taken by your Lordship is the sound one. I shall only add that in the 3d rule of Case I. section 100, there are expressions which show that it was in the contemplation of the Legislature that deductions of this sort should not be allowed, because this case comes substantially, in my opinion, within the meaning of the words in that section "nor on account of any capital withdrawn therefrom." The diminution from working out the subject is just a kind of withdrawing of capital; and it is so stated in the case, for it is said to be a deduction for the partial exhaustion of the mine or diminution of the capital, and in section 159 of the statute the same expression is used, that deduc-

tion shall not be allowed "on account of diminution of capital." Now, having these provisions in the statute, and it being stated in the case that what is here claimed is in reality a diminution of the capital, I think that is an additional reason to those stated by your Lordship for holding that this claim ought not to be sustained.

LORD SHAND was absent.

The Court therefore pronounced a deliverance affirming the decision of the Commissioners on the first point, and reversing it on the second.

Counsel for Inland Revenue—Lord Advocate (Watson) — Solicitor-General (Macdonald) — Rutherfurd. Agent—Solicitor of Inland Revenue.

Counsel for Farie (Respondent) — Balfour. Agents—Hamilton, Kinnear, & Beatson, W.S.

Friday, November 29.

SECOND DIVISION.

[Sheriff of Renfrewshire.

DEMPSTER (INSPECTOR OF POOR OF CITY OF GLASGOW PARISH) *v.* LEMON (INSPECTOR OF EASTWOOD PARISH).

Poor—Liability for Relief—Admission—Mora.

The parish of G claimed relief for the support of a pauper from the parish of E. In reply E said—"I have to admit she was born in this parish. Please let me know if she is still chargeable." It was answered that the pauper was no longer chargeable, but previously to the date when E paid the sum then due she had again become chargeable, and a second intimation was sent by G. That was in 1870, and no reply was sent. But there was a correspondence from 1873 onwards, without, however, a further admission of liability. After seven years G brought an action of relief. *Held* that the orginal admission of liability on the part of E must be held to operate, and decree given accordingly.

This was an appeal from the Sheriff Court of Renfrewshire in an action at the instance of Archibald Dempster, inspector of poor for the city of Glasgow, against Alexander Lemon, inspector of poor for Eastwood parish, asking payment of past expenses incurred in the relief of a pauper named Mary Jane Smith, and freedom from future liability.

The pauper, who was about twenty years of age, was born in Eastwood parish, of Irish parents, and had always been weak mentally, and unable to work for her own support. She had resided with her parents in various places in and around Glasgow, and in virtue of that residence application was made on 31st May 1870 on her behalf to the city parish of Glasgow for parochial relief, and she was on that date admitted into the ordinary wards of Glasgow Poorhouse. She remained there till 18th June 1870, when she was removed under order of the Sheriff to Gartnavel Asylum, where she continued till 6th July 1870.

On 17th June 1870 statutory notice of the chargeability was sent to the inspector of Eastwood, and relief claimed from that parish "as the parish of settlement," which was followed next day by the particulars upon which that claim rested. On 12th July 1870 the City parish by letter reminded the parish of Eastwood of the notice that had been sent, and requested an early answer to the claim, to which the defender as representing Eastwood, on 10th August 1870, replied —"In answer to your claim of 20th June in this case I have to admit she was born in this parish. Please let me know if she is still chargeable." The city parish sent the following answer—"I have yours of 10th instant. She ceased to be chargeable 6th July, having been removed from roll by her mother."

Shortly after the pauper had been so removed she was incarcerated in Glasgow Prison on a criminal charge for assaulting her mother, and on 17th September 1870 the authorities of that prison made application to the inspector of the City parish to take charge of her on the ground of insanity. She was accordingly removed to the ordinary wards of the poorhouse, where she remained till 28th September 1870, when she was again sent to Gartnavel Asylum under warrant from the Sheriff. She remained there till 26th March 1875, when she was removed to the Glasgow Parochial Asylum, where she remained until 26th May 1877, when she was transferred to Woodilee Asylum, in which she still remained as a lunatic pauper. On 17th September 1870 the statutory notice of chargeability was duly sent to the inspector of Eastwood, followed by the usual statement of facts. On 10th November 1870 Eastwood parish paid the City parish £3, 1s. 9d., the amount of the advance made on the pauper's behalf prior to her ceasing for the first time to be chargeable. Subsequently, on 8th December 1870, in answer to the second claim, the defender questioned his liability, on the ground that the pauper never having left her father and not being self-supporting was not *forisfamiliated*. Correspondence took place at intervals between the parties during the following years regarding the question of liability until the raising of this action in January 1878.

The Sheriff-Substitute (COWAN), and afterwards the Sheriff (FRASER), on appeal assoilzied the defender, holding, on the authority of the case of *Greig* v. *Young*, June 21, 1878, 15 Scot. Law Rep. 645, that the parish of birth could not be made liable. In a note the Sheriff stated that he concurred with the Sheriff-Substitute "in thinking that there was no such admission of liability in this case by Eastwood as to preclude the statement of the plea for that parish which has now been sustained."

The pursuer appealed, and argued—That though the question of settlement was undoubtedly settled by *Greig* v. *Young*, this was really not a point of that kind, but all turned on the letter of August 10, 1870, which was an admission of liability—*Beattie* v. *Arbuckle*, January 15, 1875, 2 R. 330.

The defender argued that the admission of birth in that letter was no admission of liability.

At advising—

LORD JUSTICE-CLERK—At first sight in this case it would strike one that the delay on the part of Glasgow parish might have a material bearing on the issue, but a full consideration of the whole facts cannot leave a doubt as to the true position of the parties.