be cleared of the *debitum fundi* created by the arrears of feu-duty, cannot, it is thought, be embarrassed by any question which might arise by allowing the burden to continue." As I have already said, the *debitum fundi* would have no real existence in a question with the superior; and as to any embarrassment which might arise, I can only say that I do not understand what is here referred to. I do not see what embarrassment could arise with an assignation in the terms asked, and the counsel for the respondent were, I think, unable to suggest any embarrassment which could arise to the prejudice of their client. It therefore appears to me that the complainer Mr Guthrie, on payment of the total feu-duty, is entitled to have an assignation in the terms asked.

I am fortified in the view I take of the question in dispute by the provisions of sub-section 2 of section 4 of the Conveyancing Act of 1874. By that sub-section it is provided that if a party in right of a property held in fee conveys the property to another, the disponee by taking infeftment upon his disposition becomes liable for the feu-duty payable for the property. But there is a provision at the same time that until the original vassal gives notice of the conveyance to the superior he shall remain liable also for the feu-duty. That is substantially the position of the parties in this case. The statute provides that the superior's remedies against the former vassal shall be "without prejudice to the superior having all his remedies against the entered proprietor under the entry implied by this Act; and without prejudice also to the right of the proprietor last entered in the lands, and his foresaids, to recover from the entered proprietor of the lands all feu-duties which such proprietor last entered in the lands, or his foresaids, may have had to pay in consequence of any failure or omission to give such notice;" and for this purpose "All the remedies competent to the superior for recovery of the feu-duties shall by virtue of this Act be held to be assigned to the proprietor last entered in the lands and his foresaids, to the effect of enabling them to recover payment of any sums so paid by them as aforesaid, but that always under reservation of, and without prejudice to, the superior's rights, remedies, and securities for making effectual and recovering all other feu-duties due and to become due to him." Now, it appears to me that the statute recognises the existence of a right in equity to an assignation such as is here demanded in circumstances substantially the same. It not only recognises that right, but gives effect to it in a remarkable way, for it renders any deed of assignation by the superior unnecessary. Assuming the existence of the right to an assignation in circumstances like those which occur in this case, by the force of the statute an assignation is implied in favour of the party paying the feu-duty which will enable him to use all the superior's remedies, but that under reservation of, and without prejudice to, the superior's rights and remedies for future feu-duties, in the very terms proposed by the complainer in this case. This provision appears to me simply to give effect to the principles of common law, with this difference only, that it provides that a deed of assignation shall not be necessary now, as the statute itself operates as an assignation.

I have only to add that the case of *Gordon* v. *Graham*, and the other authorities of that class referred to, appear to me to have no application, because there the payment was offered, not by a co-obligant or surety having a right of relief giving him an equitable right to an assignation. The only object for which the assignation was asked in the case of *Gordon* v. *Graham* was to keep up the whole debt, so that it might still come into competition with the landlord's future claims and diligence, and there was no reservation offered, as in this case, which would secure the landlord against injury or prejudice.

The Court adhered.

Counsel for Suspenders (Reclaimers)—Solicitor-General (Balfour, Q.C.)—Black. Agents—Dove & Lockhart, S.S.C.

Counsel for Respondent — Kinnear — Keir. Agents—Webster, Will, & Ritchie, S.S.C.

Friday, November 19.

FIRST DIVISION.

SPECIAL CASE—RITCHIE AND OTHERS.

Succession — Legacy — Substitution — Informal Letter, whether Testamentary or not.

An old lady died leaving a trust-disposition and settlement and five holograph codicils. By a codicil of 22d March 1879 she left to "E. W., son of my cousin Mrs M. B. W., wife of Col. W., £500." By a codicil of 1st Dec. 1879 she declared:—"I, Mrs Catharine Anderson or Hutchison, before designed, do hereby evoke the legacy of fife hundred pounds to my cousin Mrs ~~Edward~~ Whish, wife of Colonel Whish, and bequeathe to her in place thereof the sum of four hundred pounds; and I bequeathe the hundred pounds to Thomas Hutchison, my late husband's nephew, the sum of one hundred pounds, residing at Kirkcaldy, and with this alteration I confirm my name at 40 Palmerston Place." Mrs Whish was E. W.'s mother. The testatrix's moveable estate, of which a holograph memorandum was found in her repositories, was almost exactly exhausted by payment of the legacies left, on the footing of paying £500 to E. W., or alternatively of paying £400 to Mrs W. and £100 to T. H. A letter written on 12th Dec. by the deceased to Mrs W. was produced by her, in which she wrote that E. W. "is still to be my chief legatee, but not for so large a sum as I intended," and then made certain specific legacies to various persons. *Held* that the above letter was of a testamentary character, and must be considered by the Court in construing the intention of the testatrix, and that that intention was to revoke the legacy of £500 to E. W. to the extent of £100, and to give a bequest of £100 to T. H.

Mrs Catharine Anderson or Hutchison died on 31st Dec. 1879 leaving a trust-disposition and settlement dated 22d March 1879, by which she disponed certain lands that belonged to her, as therein mentioned, and assigned and disponed

the whole residue of her estate, heritable and moveable, to Mrs Grace Pratt Aitken or Ritchie, whom she named her sole executrix and universal legatory, and who was taken bound to pay any legacies or bequests which the testatrix might direct by any writing, however informal. Five codicils were added by the testatrix—the first dated 22d March 1879; the second, third, and fourth dated 12th August 1879; and the fifth dated 1st December 1879—all holograph of her and signed by her, and written on the same sheet of paper as the principal deed. A sixth codicil, of date 23d October 1879, holograph and signed by her, was written on a separate paper. These two papers were found in her repositories after her death in a sealed envelope, endorsed holograph as follows:—"Sole last will or testament of Mrs Catharine Anderson or Hutchison. To be opened by Mrs Grace Pratt Aitken or Ritchie, my sole executrix and residuary legatee. 1st December 1879." By the first of the above codicils Mrs Hutchison made the following among other bequests:—"To Edward Whish, son of my cousin Mrs Margaret Black Whish, wife of Colonel Whish, five hundred pounds." By the second, third, and fourth codicils she left additional legacies, and made certain modifications in her bequests; and the fifth was thus expressed:—"I, Mrs Catharine Anderson or Hutchison, before designed, do hereby evoke the legacy of fife hundred pounds to my cousin Mrs ~~Edward~~ Whish, wife of Colonel Whish, and bequeathe to her in place thereof the sum of four hundred pounds; and I bequeathe the hundred pounds to Thomas Hutchison, my late husband's nephew, the sum of one hundred pounds, residing at Kirkcaldy, and with this alteration I confirm my name at 40 Palmerston Place." Two other documents, holograph of Mrs Hutchison, were found in her repositories pinned together, but not enclosed in the foresaid envelope. The first of these was as follows:—

"This is to inform my executrix Mrs Grace Pratt Ritchie where my money is invested—

"Five hundred pounds North British Railway Mortgage, No. 6, D.

"Four hundred pounds North British Railway Mortgage, No. A. C., 188.

"Four hundred pounds, Agra Bank, Edinburgh.

"Three hundred pounds in National Bank of India; Dalmahoy and Cowen, Hill Street, Edr.

"One hundred and fifty pounds in Scottish New Zealand Investment Company, debenture No. 128.

sunk

"Eleven hundred and seventy-five pounds in an annuity unredeemable.

"Forty-five Fifty pounds

"~~Fifty~~ pounds with interest in Bank of Scotland. "I hereby sign my name,

"31*st March* 1879. CATHARINE HUTCHISON."

The other document was as follows:—

"In my will I have willed the seventeen hundred and fifty pounds away, except twenty pounds which I kept for expenses; but as the payment of the legacies are not to be due ere nine months after death, there will be two half-years' interest on deposit-receipts in banks and railway debentures to pay all expenses; therefore since I have added two codicils—the two hundred for the first one to be taken off Mrs Ritchie, and the last codicil of a hundred can be made up by fifty pounds taken off her, and that twenty pounds which was not appropriated before, and thirty pounds deposit-receipt in the bank; also there is a receipt for thirty pounds on the City of Glasgow Bank, the half of it I got in full payment, and the other half I hope will be in full too when called upon to be paid. So the additional hundred in the codicil is easily made up, and there is full money for all the legacies.

"I hereby sign my name,

"*5th September* 1879. CATHARINE HUTCHISON."

In these circumstances a Special Case was presented to the Court by Mrs Ritchie of the first part, Edward Whish of the second part, Mrs Whish, his mother, of the third part, and Thomas Hutchison of the fourth part.

The following excerpt from a letter by the testatrix to Mrs Whish, of date 12th Dec. 1879, was produced by her, and was printed as part of the Case:—

"dear Maggie—dear Teddy is still to be my chief legatee, but not for so large a sum as I intended. I have been obliged to sink some of my money, as the expense of boarding and keeping a nurse has been a heavy tax on me. Also I leave him my gold watch; To Dear Mae her Grand-Papa's locket with his hair, which I hope she will wear and prize, for he was an upright man, seldom to be met with on earth. Yr mama's old cup and saucer is at Mrs Black's, Darnaway Street, keeping for you. The vase I got at yr mama's death you can get from Mrs Ritchie, who is to have charge, when required. I am able to write no more; farewell. Many happy days we spent together. I got dear Teddy's likeness. I like the one you sent Mrs Thomson best. It was kind of the Clayton Blacks to a lone stranger. God will reward. They have been like sisters to me; the Smiths of late have been very kind, and got my old Minister to come and see me. Give my best love to dear Mae and darling Teddy, and trusting that you will have a happy meeting with yr husband, I am yr affectt Cousin

"CATHARINE HUTCHISON."

The questions of law were as follows:—"(1) Whether the legacy of £500 bequeathed to the party of the second part by the codicil of 22d March subsists unrevoked by the codicil of 1st December? (2) Whether if the said legacy of £500 is revoked, it is revoked only to the extent of £100? (3) Whether the bequests of £400 in favour of the party of the third part, and of £100 in favour of the party of the fourth part, are effectual to any, and if so to what extent?"

The party of the first part maintained that the sum of £500 only had been effectually bequeathed to the parties of the second, third, and fourth parts between them, and that the legacy to Edward Whish had been revoked, or, alternatively, that the revocation thereof was a condition of the legacies of £400 to Mrs Whish and £100 to Mr Hutchison being effectual, and that if it should be held not to have been revoked, these latter legacies must be held to have failed; and further, that if all the said legacies should be held effectually bequeathed, they must suffer an abatement along with the other legacies corresponding to the deficiency of the personal estate.

The party of the second part maintained that the legacy bequeathed to him by the first codicil,

dated 22d March 1879, had not been revoked by the codicil dated 1st December, and fell to be paid to him; or otherwise, if revoked, had been revoked only to the extent of £100.

The party of the third part maintained that she was entitled to a bequest of £400 under the codicil of 1st December.

The party of the fourth part maintained that he was entitled to a legacy of £100 under the same codicil.

At advising—

LORD PRESIDENT—The testatrix Mrs Catharine Hutchison executed a general disposition and settlement, dated 22d March 1879, by which she constituted the first party Mrs Ritchie her executrix and residuary legatee; but she added a number of codicils which had the effect very much of annulling the residuary bequest to Mrs Ritchie and disposing of the whole estate of the testatrix. The codicils are five in number, as far as they are printed for us, and there was another which was mentioned in the discussion, with which we are not concerned; and these codicils, together with the trust-disposition, were all written on one sheet of paper, which was found in the testatrix's repositories with an endorsement in her writing in these terms—"Sole last will or testament of Mrs Catharine Anderson or Hutchison. To be opened by Mrs Grace Pratt Aitken or Ritchie, my sole executrix and residuary legatee. 1st December 1879." That date is the date of the last codicil.

But although no other papers were put up along with the disposition, there is another paper which it is impossible not to regard as in some measure a testamentary document, because it conveys certain instructions to the executrix. That is a paper in which Mrs Hutchison estimates her means and estate, and gives directions as to the way in which she expects them to be administered by her executrix; therefore it is necessary to go beyond the other paper which she herself had endorsed and described as her "sole last will or testament;" because these memoranda as to the constituent parts of her estate, and the way she expected them to be realised and apportioned, are documents which may be legitimately taken into account in ascertaining the purpose of the testatrix in the case of any ambiguities arising as to the construction of the codicils. It is undoubtedly an important fact that she estimates the amount of her estate very correctly, and by the codicils disposes of the whole of it, and apparently takes pains to avoid exceeding the amount of her estate in the total of the legacies to be bequeathed by her.

The codicil which has principally to be considered is the last—that of 1st December 1879—and as it professes to deal with a legacy left by a previous codicil, we must look back to that legacy, which was given in these terms—"To Edward Whish, son of my cousin Mrs Margaret Black Whish, wife of Colonel Whish, five hundred pounds." Now, the legacy thus given to her cousin's son is the largest legacy bequeathed to anyone by her, and therefore at the time that codicil was executed—in March 1879—this Edward Whish was certainly *persona predilecta*. The other codicil which subsequently deals with the same legacy is thus expressed:—"I, Mrs Catharine Anderson or Hutchison, before designed, do hereby evoke the legacy of fife hundred pounds to my cousin Mrs ~~Edward~~ Whish, wife of Colonel Whish, and bequeathe to her in place thereof the sum of four hundred pounds; and I bequeathe the hundred pounds to Thomas Hutchison, my late husband's nephew, the sum of one hundred pounds, residing at Kirkcaldy, and with this alteration I confirm my name at 40 Palmerston Place;" and then she signs her name. Now, no doubt this codicil causes a good deal of embarrassment. That she intended to deal in some way or another with the legacy of £500 to Edward Whish it seems difficult to dispute, for there is no other legacy of £500 in the whole of her will; and she distinctly revokes, or professes to revoke, the legacy of £500. But then it is plain that she did not completely understand what this legacy was, or else she has written what she did not intend—one or other of these conclusions is inevitable. Either she mistook what was the legacy in the previous codicil, or else she did not express herself in the later codicil as she intended to do. The original legacy was left to Edward Whish, who was a boy at the time, and then she says she revokes the legacy to her cousin Mrs Whish, and in place thereof bequeaths £400 to her. The effect of this codicil, if it is to receive effect as a revocation of the legacy to Edward Whish and a bestowal of £400 on his mother, is this—Edward Whish, her favourite in March preceding, is left without a shilling, and £400 goes to his mother, that is, in fact, to his father *jure mariti*. Now, the husband was no relation to the testatrix at all, and there is no word of him in her settlements; and it is difficult to believe that such could possibly have been her intention. If she had expressed herself unambiguously to that effect, of course her intention would have been given effect to; but I think we should hesitate to do so here, as it seems extremely unlikely that such was the intention, when she expressed herself in terms which denote confusion of mind in writing the codicil of 1st December. She was an old woman, and did not long survive the date of that codicil; and therefore, so far as its terms are founded on for the purpose of transferring £400 from Edward Whish to his father, I hesitate to give effect to that construction. I am persuaded that she did not intend to do anything of the kind. But as to the odd £100, she has made use of terms so distinct that I think we cannot refuse to give it to Thomas Hutchison. She says distinctly that she reduces the £500 to £400, and that for the purpose of giving him the £100. On that matter I feel no doubt; but on the other point, as to the legacy, I think it would be a strange result if we were bound to give effect to the contention of Mrs Whish and her husband, and therefore one turns with considerable anxiety to a piece of evidence founded on by Edward Whish as showing that he was not intended to be deprived of the £400.

That piece of evidence is the letter of 12th December 1879. If that letter is to be looked on as extrinsic evidence, and not as a testamentary document, I think we can give no effect to it at all; we cannot look at it, for the ambiguity here is unquestionably a patent ambiguity, and therefore to be solved only by looking at the will or other testamentary papers. Now, is it a testamentary document or not? It is not addressed to her executrix, and was not put up along with her will. That goes against the view

that it is a testamentary document, unless there is in the paper itself sufficient internal evidence that it is testamentary in whole or in part. It is so in part, undoubtedly, for it is addressed to Mrs Whish, telling her she is to have a specific legacy, and to that extent it is an effectual testamentary deed, and sufficient to convey to her the legacy in question. But it may be so far testamentary, and not so *quoad ultra*. The important question is, Whether it is testamentary to any effect as regards Edward Whish, the "Teddy" of the letter? It is testamentary as regards him to a certain extent, for it contains these words—"Also I leave him my gold watch." But I think it may also be viewed as testamentary as regards the words preceding these, for it seems to me the gold watch was left to him because of something she says just before. The words are these—"dear Teddy is still to be my chief legatee, but not for so large a sum as I intended. I have been obliged to sink some of my money, as the expense of boarding and keeping a nurse has been a heavy tax on me. Also I leave him my gold watch." Now, that means—"I am obliged to reduce my legacy to dear Teddy," and explains why; and then to make up to him she leaves the watch. If that is so, this letter is testamentary throughout as regards Teddy, for the important words at the beginning are expressive of the inductive cause or motive of leaving him the watch. If this letter can be received as testamentary, and as explanatory of the intention of the testatrix, I come to the same conclusion as to the probable meaning of the codicil of 1st December. The statement that "dear Teddy is still to be my chief legatee, but not for so large a sum as I intended," seems consistent with the construction of the codicil as leaving £400 to Teddy and the odd £100 to Thomas Hutchison. That conclusion I have accordingly adopted.

Lord Deas—I have come entirely to the same result. I confess I have had no difficulty as to the result of the letter of 12th December 1879. There is no doubt that the letter is on its face a testamentary letter to some effects, and in favour of "Teddy" himself; and I know no rule of law or of common sense which should prevent a testator in giving certain legacies from taking the opportunity at the same time of saying what he or she meant by a former testamentary writing. That is what the testatrix was doing here. It is all very well to say, We must hold the explanation itself to be testamentary, else we cannot look at it; that, to my mind, is no great matter of importance. I think it is enough that the explanation is made in a letter which is unquestionably testamentary to some effects. I have not therefore felt the same difficulty on this point as your Lordship, and on the whole case I have come without hesitation to precisely the same conclusion.

Lord Mure—I think there is considerable difficulty in this case owing to the contradictory nature of the testatrix's writings as to this legacy of £500 which is left by the codicil of March 1879 and is again dealt with by the codicil of 6th December. There seems to be a confusion of names in the matter. Nothing could be more distinct than the codicil of March 1879 in regard to the bequest. She makes over £500 to her cousin's son as a *persona predelicta*. On 1st December she revokes this legacy, describing it as having been left to Mrs Whish, and leaves instead £400 to Mrs Whish and £100 to Hutchison. Now, dealing with the two codicils by themselves, I think it is difficult to make up one's mind as to the intention of the testatrix. But looking to the fact that Edward Whish was the *persona predilecta* in the previous codicil, the interpretation I should put upon these writings is, that the discrepancy should be ascribed to the old lady having become confused about the name of the person to whom she had left £500. I think this is a safer construction than the other, which would leave Edward Whish without any legacy at all. What she meant, in my opinion, to do was to restrict the £500 legacy to £400, and leave £400 to the same person to whom the £500 had been left, the £100 of difference to be given to Thomas Hutchison.

That is the construction which I should have put upon these two documents taken by themselves. But the letter of 12th December, if we can hold it to be a testamentary document, seems to remove any possible difficulty in the case, for it explains what she had done. Now, it is testamentary in its nature as regards these bequests undoubtedly, and seeing it is so far of a testamentary character, although it was not put up with the will, I think it may fairly be read with it as explanatory of the intention of the testatrix. I therefore agree with the conclusion at which your Lordships have arrived.

Lord Shand—I have come to the same conclusion. On one point, which was the subject of argument, I am very clear, viz., that on no reasonable construction of the settlement can it be maintained that there is a legacy of £500 to Edward Whish, and, in addition to that, a legacy of £400 to his mother, and another of £100 to Thomas Hutchison. It was explained that if you substitute £500 as left by the later codicil for the £500 left by the earlier one you precisely exhaust the estate of the testatrix; and if any additional legacies were to be paid an abatement of all the legacies would be necessary. The testatrix has, I think, herself made it clear that she did not intend the legacies I have referred to to be double, or in her settlement to exceed the amount of the estate—for with reference to the state of her affairs she says expressly that the sums she has willed away will exhaust the amount of her estate, and her account of her estate, under her own hand, which is correct, corresponds with this.

As to the other question, whether the legacy of £500 to Edward Whish stands good on the first codicil, or whether, in lieu of this, £400 is left to him or his mother and £100 to Thomas Hutchison, I think there is some difficulty. If we came to the conclusion that the final letter could not be taken into account, I should have great difficulty in holding that any legacy was finally given to Edward Whish. My impression would rather have been that there was a good revocation of the original legacy given to him, and a substitution of £400 as a legacy to his mother by the words of the codicil of 1st December. The legacy revoked is, I think, sufficiently identified, and the new words of bequest seem, if taken alone, to give the legacy of £400 to Mrs Whish. But the confusion is cleared away when we look at her

latest testamentary writing—if testamentary it can be held to be—for there she reverts to Edward Whish as her chief legatee; and I am of opinion that the document is testamentary. If the words "dear Teddy is still to be my chief legatee" had occurred in a letter by the testatrix addressed to a third party, merely in the course of an ordinary correspondence, they could not have been regarded in the present question. But looking at the document as a whole, and to the direct bequests it contains, I think it must be accepted as a testamentary paper. It contains a specific bequest of a gold watch to Edward Whish; and I think the preceding part of the letter referring to him must also be taken as testamentary. In this view I concur in the judgment to be pronounced.

The Court pronounced the following interlocutor:—

In answer to the three questions . . . "Find and declare that the legacy of £500 bequeathed to the party of the second part by codicil of 22d March is revoked to the extent of £100, but subsists unrevoked in favour of the party of the second part to the extent of £400: Find and declare that the legacy of £100 in favour of the party of the fourth part is effectual: Appoint the expenses of the parties to the Special Case to be paid . . . out of the executry estate, and decern."

Counsel for First Party — Gloag. Agents — Ronald & Ritchie, S.S.C.

Counsel for Second Party—Wallace. Agent—George B. Smith, S.S.C.

Counsel for Third Party — Thoms. Agent — George B. Smith, S.S.C.

Counsel for Fourth Party—J. A. Reid. Agents —Ronald & Ritchie, S.S.C.

Thursday, November 18.

SECOND DIVISION.

[Court of Exchequer.

THE CALEDONIAN RAILWAY COMPANY *v.* COMMISSIONERS OF INLAND REVENUE.

Revenue—Income-Tax Act 1842 (5 *and* 6 *Vict. c.* 35), *sec.* 100—*Customs and Inland Revenue Act* 1878 (41 *Vict. c.* 15), *sec.* 12.

A railway company stated in their annual accounts that a sum of £253,389 had been expended in repairs or renewals of rolling-stock, and that that sum had been sufficient to keep their rolling-stock in good working condition and repair. In assessing the company under the Income-Tax Acts the Special Commissioners allowed a deduction from assessable income of that sum as having been expended by the company in order to make their profits. The company claimed a further deduction under section 12 of the Customs and Inland Revenue Act 1878 for wear and tear of newly added stock which had not required any repair or renewal. *Held* that the deduction for wear and tear to be made under that section is deduction for diminished value as a means of earning income, and not as a saleable subject, and that inasmuch as the stock in question was undiminished in value for the purpose of earning income, no further deduction could be allowed.

Customs and Inland Revenue Act 1878 (41 *Vict. c.* 15), *sec.* 12—*Review—Jurisdiction.*

This section provides that the Commissioners for general or special purposes may in assessing the profits of any trade, &c., for the purposes of income-tax, "allow such deduction as they may think just and reasonable as representing the diminished value by reason of wear and tear during the year of any machinery or plant used for the purposes of the concern." The Commissioners having refused a claim for deduction on the ground of wear and tear, the company assessed appealed to the Court of Exchequer.

Question—Whether the words "as they may think just and reasonable" do not exclude review?

Act 37 *Vict. c.* 16 (*Customs and Inland Revenue Act* 1874), *sec.* 9.

Case stated by Commissioners for Court of Exchequer. *Remarks* (*per* Lords Justice-Clerk and Gifford) on the mode of stating such Cases.

The Act 5 and 6 Vict. c. 35 (Income-Tax Act 1842), amended by the Act 29 Vict. c. 36 (Customs and Inland Revenue Act 1866), provided by section 100 that the duties contained in Schedule D thereto annexed, which applied to "any trade, manufacture, adventure, or concern in the nature of trade not contained in any other schedule of the Act," should be assessed under the following among other rules:—"*Third*—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, or allowed to be set against or deducted from, such profits or gains on account of any sum expended for repairs of premises occupied for the purpose of such trade, manufacture, adventure, or concern, nor for any sum expended for the supply or repairs or alterations of any implements, utensils, or articles employed for the purpose of such trade, manufacture, adventure, or concern, beyond the sum usually expended for such purposes, according to an average of three years preceding the year in which such assessment shall be made, nor on account of loss not connected with or arising out of such trade, manufacture, adventure, or concern, nor on account of any capital withdrawn therefrom, nor for any sum employed, or intended to be employed, as capital in such trade, manufacture, adventure, or concern, nor for any capital employed in improvement of premises occupied for the purposes of such trade, manufacture, adventure, or concern, nor on account or under pretence of any interest which might have been made on such sums if laid out at interest, nor for any debts except bad debts, proved to be such to the satisfaction of the Commissioners respectively, nor for any average loss beyond the actual amount of loss after adjustment, nor for any sum recoverable under an assurance or contract of indemnity."

By sec. 12 of the Act 41 Vict. c. 15 (Customs