

of profit, and I think to deduct it would be contrary to the prohibitions laid down in Schedule D and in the 159th section of the same Act.

LORD ADAM—I confess I cannot see upon this case, and I do not think the case tells us, when the various sums of capital were repaid by the Copper Company to the Mortgage Company, and when the 10 per cent. bonus accreted and became due. I rather gather that the matter is one of adjustment in the Copper Company's books. But however that may be, I think the most favourable way to take the question for the Copper Company is to assume, as was assumed in the discussion, that this whole sum of £31,379, 11s. 9d. was paid within the year in which it is proposed to be assessed, although, I confess, I do not see that that appears upon the face of the case.

Now if that be so, my opinion is with your Lordship, that this sum of £31,379, 11s. 9d. is simply a debt due by the Copper Company to the Mortgage Company. So far as I can see, it is not a loss incurred in carrying on the business of the Copper Company in any way. If it were, it might or it might not be a proper sum to deduct before striking the balance of profit and gains even in a question with the Crown. But it is not a loss; it is merely a debt incurred in carrying on the business of the company. I do not see, if we were to allow a deduction of this debt on the ground that it was paid out of profits, where we should be able to stop. I find no authority in any of the Taxing Statutes for allowing such a deduction.

Now, if the amount of this bonus be not—as I think it very clearly is not—a sum which ought to be deducted before striking the balance of profits and gains on which this company falls to be assessed, I think there is no question in this case, because if it is not to be deducted in order to ascertain the balance of profits and gains, then to be deducted it must fall under some of the clauses of the statute which allow deductions to be made. But there is no clause allowing such a deduction as this. Therefore I agree with your Lordship.

LORD M'LAREN—I agree with your Lordship in the chair, and the only remark I would make is, that if this is not profit, then the amount of profit earned in a particular year must depend on the resolution of the company to pay off debt or not to pay off debt. Now, that seems to me to reduce the case contended against the Crown to the absurd proposition that the company should be entitled to fix what they consider profit, and be assessed upon that sum.

LORD KINNEAR concurred.

The Court affirmed the determination of the Commissioners.

Counsel for the Copper Company—Asher, Q.C.—Ure. Agents—Davidson & Syme, W.S.

Counsel for the Surveyor of Taxes—Lord Adv. Pearson—A. J. Young. Agent—David Crole, Solicitor of Inland Revenue.

Tuesday, November 17.

FIRST DIVISION.

SMITH & TURNBULL (LIQUIDATORS OF THE BENHAR COAL COMPANY, LIMITED).

Process—Authority to Correct Error in Note and Extract Decree.

The liquidators of the Benhar Coal Company presented a note to the Court setting forth that they had in 1882 sold the superiority of certain ground feued by the company to a Mr Renton under the authority of the Court; that after the sale was completed, it had been discovered by the purchaser's agents that in the note craving authority to sell, and in the extract-decree thereafter obtained, the date of the feu-contract, under which the ground was held by Mr Renton, had been wrongly stated as 24th and 29th September 1878 instead of 24th and 27th September 1878. The liquidators therefore prayed the Lord President "to move the Court to authorise the correction of the foresaid error in said note, and also to grant warrant to the Principal Extractor of Court to make the corresponding alteration on the extract of the decree thereafter pronounced, and to the Deputy Keeper of the Records to make the corresponding alteration in the record copy of the said decree, by substituting the date 24th and 27th September as the proper date of said feu-contract in place of 24th and 29th September. Reference was made to the following authorities:—*Hope v. Hamilton*, July 1, 1851, 13 D. 1268; *Small's Trustees*, July 5, 1856, 18 D. 1210. The Court granted the prayer of the note.

Counsel for the Liquidators—Pitman. Agents—J. & F. Anderson, W.S.

Saturday, November 21.

SECOND DIVISION.

[Lord Stormonth Darling, Ordinary.]

WEIR *v.* THE INVERNESS COUNTY COUNCIL.

Process—Reparation—Damages—Proof or Jury Trial.

While a heap of stones on the side of a road were being broken for road-metal, a splinter of stone struck and injured a passer-by. He sued the road contractor for damages, and averred that the site of the heap was ill-chosen, that there was special danger from the kind of stone used, and from the proximity of a wall, which affected the flight of the splinters.

The Lord Ordinary having appointed