key of the safe, but he has no legal right to intromit with them. The only person who has a right to take these things which the dead man has left behind him and turn them into money is the executor after he has got probate. One can quite understand, therefore, the principle upon which it was right that the executor should, so to speak, pay for what he gets.

I need not go into the history of how probate duty originally came to be levied, and its strictly ecclesiastical origin. It is enough to come to the modern development of it, viz., that probate duty in one sense is a return for giving somebody an active title which he would not otherwise get. That is quite a different state of things from what you have to do with in the case of income tax. Although the bearer bonds are marketable securities, that is surely neither here nor there, because in one sense everything is a marketable security at a price. The fact that a bearer bond is a marketable security and easily marketable, and therefore a negotiable instrument, does not seem to me to touch the question whether it is an ordinary form of remittance. Nobody ever heard of remitting money by means of a bearer bond, for the very good reason that you could not know exactly what you were doing, because the price of bearer bonds fluctuates in the market every day, and a bond might start from New York at one price and arrive in London at a different one. It is not at all in the same category as the way which modern arrangements have perfected, by which you may send money from one country to another in the form of hard cash consigned in a package or box or by means of a bank draft, which is of course simply a transaction of debtor and creditor between different persons on different sides of the Atlantic. Those are well-known methods of remitting money. The furthest that the Court has gone was in the case of *Scottish Mortgage, &c., Company of New Mexico, Limited* v. *Inland Revenue* (1886, 14 R. 98, 24 S.L.R. 87), decided in this Court, where it was held that money was actually received in this country, although money had not come in hard cash, and had not been remitted by bank draft, where it had really been got in this country by a company performing its remittance for itself. That is to say, money which on this side was not available for dividend they had made available for dividend and paid away here, making a cross entry upon the other side of the Atlantic, and there putting the money available for dividend into a form which made it not available for dividend. That case was a good deal discussed in the House of Lords in the *Gresham* case. One of the noble Lords had doubts about it, but the general result was that the case was approved. It was pointed out what a very special case it was, and Lord Lindley, who was one of those who approved of it, said the exchange was effected by a book entry, but that entry was a good business mode of carrying out cross remittances which it would have been unbusinesslike and really childish to have effected in any other way. On the whole matter I am clearly of opinion that this money has not been received in the United Kingdom. It is perfectly easy for the Legislature, if they so wish, to make money in this condition fall within the net of the tax gatherer. At present I do not think they have done so, and accordingly I think the determination of the Commissioners ought to be reversed. In the case of the mortgage interest I do not need to say anything separately, because the considerations are precisely the same.

LORD KINNEAR—I concur for the reasons your Lordship has given.

LORD PEARSON—I also concur with your Lordship.

Counsel for appellants asked for expenses and for an order for repayment of the tax with interest. He founded on the *Standard* case, where the Court allowed four per cent. In the *Gresham* case, however, the House of Lords had only allowed three per cent.

LORD PRESIDENT—Four per cent is really about the rate on an average of investments in such a company, and I do not see why they should not get four per cent.

LORD M'LAREN was absent at advising.

The Court reversed the determination of the Commissioners in regard to £84,414 of the assessment on £101,607; affirmed their determination in regard to the balance of the assessment, viz., £17,193; and ordered repayment of the income-tax paid on said sum of £84,414, with interest thereon at the rate of four per cent per annum from the dates of payment thereof until repaid.

Counsel for the Society—Blackburn, K.C. —Macmillan. Agent — Sir Henry Cook, W.S.

Counsel for Surveyor of Taxes—Lorimer, K.C.—Umpherston. Agent—Solicitor of Inland Revenue (Philip J. Hamilton Grierson).

Saturday, June 19.

FIRST DIVISION.

(SINGLE BILLS.)

HERRIOT *v.* JACOBSEN AND ANOTHER.

(*Ante sub nom. Paxton and Others* v. *Brown*, 45 S.L.R. 323, 1908 S.C. 406.)

Expenses—Husband and Wife—Joint and Several Decree for Expenses—Motion on Auditor's Report.

During the dependence of an action against an unmarried woman she married, and intimation having been made to the husband, he lodged a minute of sist and was sisted "as administrator-in-law for the defender, his wife, for any interest he might

have." The Lord Ordinary decerned against the defenders for a certain sum and found them "as aforesaid" liable in expenses. On a reclaiming note the Division adhered and found "the pursuer entitled to additional expenses." When the Auditor's report came up for approval the pursuer moved for a joint and several decree against the defenders for his expenses not only in the Inner House but also in the Outer House.

The Court *granted* (1) a joint and several decree for the Inner House expenses, but (2) only a decree against the wife and the husband "as administrator-in-law for his wife and for any interest he might have" for the Outer House expenses.

Reference is made to the preceding report, *ante ut supra.*

In this action James Herriot, solicitor, Duns, sued Miss Isabella Annie Brown (afterwards Jacobsen), 173 Colinton Road, Edinburgh, for repayment of (1) £245, 15s. alleged to have been advanced to her prior to her majority, and (2) £204, 4s. 7d. alleged to have been advanced to her subsequent to her majority. During the dependence of the action the defender married Richard Francis Jacobsen. On 6th May 1908 intimation of the action to Mr Jacobsen was appointed to be made, and on 2nd June the Lord Ordinary, in respect of a minute of sist for him, sisted him "as administrator-in-law for the defender, his wife, for any interest he might have."

On 28th October 1908 the Lord Ordinary decerned against the defenders Mrs Isabella Annie Brown or Jacobsen and her husband Richard Francis Jacobsen, "as administrator-in-law for his wife and for any interest he might have," for payment to the pursuer of the sum of £326, 0s. 11d. with interest thereon, and found "the defenders as aforesaid liable in expenses" to the pursuer. The question as to the husband's liability for pursuer's expenses was not raised.

The defenders reclaimed, and on 27th May 1909 the First Division adhered to the Lord Ordinary's interlocutor, refused the reclaiming note, and found the pursuer "entitled to additional expenses since the date of said interlocutor."

At the motion in Single Bills for approval of the Auditor's report the pursuer moved the Court to grant decree for expenses against the defenders jointly and severally, not only in respect of the Inner House expenses but also in respect of the expenses in the Outer House.

The pursuer argued—The husband had rendered himself personally liable by voluntarily sisting himself as a party to the action when there was no obligation on him to do so. He had taken an active interest in the action, and the Lord Ordinary in his note expressly ascribed to him responsibility for the litigation having continued. In addition he had been present at a commission for the recovery of documents and had personally intervened. These circumstances took the case out of the category of formal concurrence and made the husband liable—*Lindsay* v. *Kerr*, January 15, 1891, 28 S.L.R. 267; *Fraser* v. *Cameron*, March 8, 1892, 19 R. 564, 29 S.L.R. 446; *Macgown* v. *Cramb*, February 19, 1898, 25 R. 634, 35 S.L.R. 494; *Maxwell* v. *Young*, March 7, 1901, 3 F. 638, 38 S.L.R. 443; *Picken* v. *Caledonian Railway Company*, March 10, 1903, 5 F. 648, 40 S.L.R. 460; *Kerr* v. *Malcolm*, 1906, 14 S.L.T. 358.

Argued for the defenders—(1) In all the cases where the husband was found liable he did something active in the conduct of the case. His mere concurrence was not enough—*Whitehead* v. *Blaik*, July 20, 1893, 20 R. 1045, 30 S.L.R. 916. Here the action was raised while Mrs Jacobsen was unmarried in respect of her own estate and the husband really came in quite passively. If pursuer had wished he might have sisted him by minute. (2) In any event it was too late to ask for joint and several decree on approval of the Auditor's report—*Warrand* v. *Watson*, 1907 S.C. 432, 44 S.L.R. 311.

The Court pronounced this interlocutor—

"The Lords having heard counsel for the pursuer on the Auditor's report on the pursuer's account of expenses, No. 331 of process, Approve of said report and decern (1) against the defenders Mrs Isabella Annie Brown or Jacobsen and her husband Richard Francis Jacobsen, as administrator-in-law for his wife and for any interest he might have, for payment to the pursuer of the sum of £230, 9s. 11d., sterling, being the amount of the expenses incurred by him in the Outer House, and (2) against the defenders jointly and severally for payment to the pursuer of the balance of said account, viz., £42, 13s. 9d., being the amount of expenses incurred by him in the Inner House, said two sums amounting together to the sum of £273, 3s. 8d., the taxed amount of said account."

Counsel for Pursuer—Maitland. Agent—J. Gordon Mason, S.S.C.

Counsel for Defenders—J. H. Henderson. Agents—Kelly, Paterson, & Co., S.S.C.

Friday, July 16.

SECOND DIVISION.

[Lord Mackenzie, Ordinary.

ROSIE *v.* MACKAY.

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *Sched. I* (1) (*b*)—*Compensation—Bar—Acquiescence—Suspension of Charge upon a Recorded Agreement—Discontinuance of Weekly Payment—Actings Incompatible with Existence of an Agreement.*

A workman who sustained injury by an accident arising out of and in the course of his employment received a weekly payment of compensation under the Workmen's Compensation Act 1897