lease, and paid the advanced rent of £2 for 4 or 5 years. There was a change of tenure indicated by the change of rent, and it seems impossible to ascribe the possession subsequent to Martinmas 1867 to anything else than the agreement for leases of 57 years.

I am therefore of opinion that there is here sufficient writing—held in law to be the writing of the landlord—to instruct an agreement to grant a lease of 57 years at the rent of £2, and that this agreement has been followed by sufficient possession *rei interventus.* There is therefore in law a subsisting lease, and the tenants must be assoilzied from the conclusion of removing. I concur generally with the judgment and opinion expressed by the Sheriff-Substitute.

Lord Neaves concurred.

Lord Ormidale absent.

The Court pronounced the following interlocutor:—

"Sustain the appeal; Find it proved in point of fact that the respondents (defenders in the Inferior Court) are tenants of the houses possessed by them respectively under valid and ubsisting leases to them by the appellant (pursuer) for fifty-seven years from March 1867, and that they have possessed under such leases since Martinmas 1867; Find, in point of law, that the appellant is not entitled to remove the respondents from their respective possessions; Therefore, and with reference to the judgment of this date in the relative action of suspension at the instance of the respondents, recal the judgment of the Sheriff appealed against, and assoilzie the respondents from the conclusions of the action of removing, and decern; Find the respondents entitled to expenses both in this Court and in the Inferior Court, and remit to the Auditor to tax the same and to report."

Counsel for Appellant—Solicitor-General (Watson), Q.C., Asher, and Pearson. Agent—J. Auld, W.S.

Counsel for Respondent—Dean of Faculty (Clark), Q.C., and W. A. Brown. Agent—A. Morrison, S.S.C.

Saturday, January 30.

SECOND DIVISION.

[Lord Craighill, Ordinary.

OLIVER AND HUSBAND *v.* M'KNIGHT.

Bill—Assignation—Relief.

The pursuer, a married woman, being desirous of aiding her husband who had put his name to certain accommodation bills, joined with him in granting a disposition in security of the amount due on the bills to certain subjects of which they were *pro indiviso* proprietors. Thereafter the husband was sequestrated, and the heritable property sold, the price being consigned in bank; and in a multiplepoinding then raised it was held that the assignees were entitled to full payment from the fund *in medio.* The pursuer having obtained from them an assignation to the bills, excluding *jus mariti* raised this action against the drawer for payment of the amount contained in the bills, as having paid their contents out of her separate estate, and acquired a right as an onerous indorsee. *Held* that she was not entitled to recover more than to the extent of relieving her from the consequences of the disposition granted by her in security for her husband's debts.

Observed (per Lord Neaves) that the position of the pursuer here was not that of a cautioner, and could not have been so.

In this case Mrs Macfarlane or Oliver, wife of Andrew Oliver, Kelvingrove Street, Glasgow, with consent of her husband, sued John M'Knight, sometime warehouseman in Glasgow, now coalmaster at Plan, near Kilmarnock, for payment of £238, 1s. 8d. being principal and interest contained in certain bills drawn by the defender upon and accepted by the pursuer's husband, and endorsed to O'Kell, Selkirk, & Co., warehousemen, Glasgow. The pursuer alleged that her husband put his name to the bills in question to accommodate the defender, who was in pecuniary difficulties at the time. The pursuer and her husband were proprietors *pro indiviso* of certain subjects in Glasgow, and concurred in conveying said subjects to O'Kell & Co. in security of the sums due on the bills, although the conveyance granted was *ex facie* absolute. The pursuer's husband having got into difficulties, his estates were sequestrated, and she lodged a claim in the sequestration founding on the bills in question, but the trustee rejected her claim. O'Kell & Co. subsequently sold the heritable subjects, and consigned the proceeds in bank. An action of multiplepoinding was thereafter brought in the Sheriff Court of Glasgow, the fund *in medio* in which was the free proceeds of said heritable subjects, and in said action it was found that O'Kell & Co. were entitled to be paid in full out of said fund *in medio.* The pursuer thereupon obtained from them an assignation to the bills in question, excluding her husband's *jus mariti,* and raised the present action, maintaining that she, having paid out of her own separate estate the contents of the bills, and having acquired right to the same as onerous assignee, she was entitled to decree as concluded for.

The pursuer pleaded—"The pursuer having paid out of her own separate estate the contents of said bills and promissory-note, with the charges thereon, and having under the title before narrated acquired right to the same as onerous assignee, is entitled to decree in terms of the conclusions of the summons."

The defender put upon record no less than six pleas in law in answer to the pursuer's claim, but subsequently abandoned them all except the fifth, which was as follows—"In no view can the pursuer recover more than will, along with the sums received by her in the multiplepoinding, constitute full payment of her half of the proceeds of the property condescended on."

Lord Craighill (Ordinary) pronounced the following interlocutor:—

"*Edinburgh,* 31*st October* 1874.—The Lord Ordinary having heard parties' procurators, &c.: Finds that all the pleas stated for the defender, except the fifth, were given up in the course of the proof; and

therefore repels the pleas thus abandoned: Further, as regards the said fifth plea, upon which the defender still insists, finds, in point of law, that according to the true reading of the assignation, which is the title upon which the pursuers sue the present action, the pursuers are entitled to recover and discharge the contents of the two bills and the promissory-note sued for, amounting in all to £238, 1s. 8d., only to the extent required for relieving the pursuer Mrs Oliver of the consequences of the disposition granted by her to O'Kell, Selkirk & Company as a security for the debts and obligations of her husband, the pursuer Mr Oliver: Finds, in point of fact, that the sum required by the pursuer Mrs Oliver to relieve her of said consequences is £180, 6s. 4d., and therefore, to this extent, sustains the present action, and decerns in favour of the pursuer Mrs Oliver against the defender for payment of said sum of £180, 6s. 4d. (one hundred and eighty pounds six shillings and fourpence sterling), with interest as concluded for, from 16th January 1874, at the rate of five per cent. per annum till paid: Reserving to O'Kell, Selkirk & Company, the granters of said assignation, or to the trustee in the pursuer Mr Oliver's sequestration, or to any other person or persons having interest and title, to sue the defender for the balance of the contents of the said two bills and promissory-note, with interest, and to the defender his defences to such action: Finds the pursuers entitled to expenses, subject to modification, &c.

"*Note.*—The primary defence to the present action was that the bills and notes sued for were obligations made for the accommodation of the pursuer Mr Oliver; but that was given up in the course of the proof, the defender, when examined as a witness for the pursuers, having admitted that both bills and note were made for his accommodation.

"The defence which remained was, that decree could not be given for the full sum sued for, but only for as much as was required to make up to the pursuer Mrs Oliver the loss suffered by her through the disposition granted by her to O'Kell, Selkirk, & Company in security of the debts due to them by the other pursuer, her husband. Thus the question on which parties joined issue came to be as to the import of the assignation constituting the pursuer's title. After considering that deed, the Lord Ordinary is of opinion that the view of its terms maintained by the defender is the true interpretation. There are three passages by which particularly he has been influenced in coming to this conclusion. The first is that in which it is set forth that the pursuer had required O'Kell, Selkirk, & Company to grant the assignation for the purpose of enabling her, if competent, to operate her relief as cautioner foresaid; the second is the clause of assignation which bears that O'Kell, Selkirk, & Company conveyed and made over the bills and note, but that 'to the effect only of enabling her, as cautioner foresaid, to operate her relief, if competent, against the said John M'Knight;' and the third is the clause by which Mrs Oliver was surrogated and substituted 'to the extent foresaid,' in the full 'right and place of the premises for ever, with power to said extent to uplift, receive, assign, and discharge the said sums of money.' Clauses so expressed appear to the Lord Ordinary to be inconsistent with a right to sue for the full contents of the bills and promissory-note libelled to an extent not required for the pursuers' indemnification.

"Parties are agreed as to the sum for which, upon this view of Mrs Oliver's right, she is entitled to decree. What she disponed for security of the debts due by her husband was the *pro indiviso* half of the property afterwards sold; and the half of the price, with interest to 16th January 1874, was £397 13 5

Of this she received .	£237 7 1	
But parties have agreed that this payment shall for the purposes of this action be subject to deduction of £20, on account of her expenses in making the recovery; therefore deduct .	20 0 0	
		217 7 1
Leaving		£180 6 4

of loss to be made up out of the contents of the bills and note sued for; and this is the sum for which decree has been given."

The pursuer reclaimed.

At advising—

LORD JUSTICE-CLERK—My Lords, this case is one not entirely without difficulty, but I have come to be clearly of opinion that the Lord Ordinary is right. It is quite plain that beyond the extent of Mrs Oliver's own money O'Kell Selkirk, & Co. had no right to assign, as all beyond that was part of the bankrupt estate, and had the assignation been thus limited there could have been no doubt. On the main matter the question is, whether the assignation carried more than the amount of Mrs Oliver's means. I am of opinion that it did not.

LORD NEAVES—I am of the same opinion. I do not say that there is not some awkwardness in the transactions, but O'Kell, Selkirk & Co. were creditors in the bills which they drew on M'Knight, these bills were accepted by M'Knight, and are now acknowledged to be his property.

Mrs Oliver is not in the position of a cautioner, she did not become one, indeed, she could not, being a married woman, but she could convey her property, and she did convey along with her husband these sums. It was an assignation demanded by the lady as a right, and conceded to her as a right. Accordingly, by the assignation she obtained a right to her own relief. But when she comes and says, 'I am not only to be relieved but I demand the whole of this debt,' I do not think her position is tenable.

LORD ORMIDALE—I entirely concur with your Lordships and with the decision of the Lord Ordinary, who has very clearly stated the relative position of parties. There is a distinct indication that the right which Mrs Oliver got here was a limited one. That is fully narrated in the beginning of the assignation. She is termed a cautioner, that is incorrect, but the meaning is obvious. The right to anything beyond was in her husband, or rather in his creditors.

LORD GIFFORD—I concur in the result arrived at. I have felt some difficulty however, and do not think I have quite got over it yet. With the argument submitted to us, that the pursuer here is to be regarded as the endorsee of the bills, I cannot agree. The question is entirely based upon the extent to which the sum contained in the bills is assigned to the assignee. Certainly the assignation is ambiguous, but that alone is enough for the

Court here, for the debtor cannot be required to pay more than that amount, as to which there is no doubt whatever. The trustee for the creditors may come down on M'Knight for the balance.

The Court pronounced the following interlocutor:—

"The Lords having heard counsel on the reclaiming note for Mrs Oliver and husband against Lord Craighill's interlocutor of 21st October 1874, Adhere to the said interlocutor on the merits, with expenses since the date of the Lord Ordinary's interlocutor; and remit to the Auditor to tax the same and to report; and before answer as to the question of modification of the pursuers' expenses, reserve consideration till the account thereof is lodged."

Counsel for Reclaimer and Pursuer—M'Laren and Brand. Agents—J. & A. Hastie, S.S.C.

Counsel for Reclaimer and Defender—Balfour and Lorimer. Agents—Ronald, Ritchie, & Ellis, W.S.

Saturday, January 30.

FIRST DIVISION.

[Court of Exchequer.

ADDIE & SONS *v.* SOLICITOR OF INLAND REVENUE.

Income-Tax—Profits—Act 5 *and* 6 *Vict., c.* 55, § 100, *case* 1, *rule* 3.

Certain coal and iron masters held mineral fields under leases of thirty-one years, and sunk from time to time the pits from which the minerals were raised, and also furnished the buildings and machinery necessary for working the pits at their own expense. *Held* that in estimating their annual profits for the purposes of the Income-Tax Acts they were not entitled to deduct a percentage for pit sinking and for depreciation of buildings and machinery, the money expended on pit sinking and providing buildings and machinery being a "sum employed as capital" within the meaning of the Property Tax Act.

This was an appeal by Messrs Robert Addie & Sons, coal and iron masters, Lanarkshire, against the judgment of the Commissioners for General Purposes acting under the Property and Income-Tax Acts for the Middle Ward of the county of Lanark.

The following case was stated by the Commissioners:—"Messrs Robert Addie & Sons, coal and iron masters, carrying on business at Langloan and elsewhere in the parish of Old Monkland and county of Lanark, appealed against the assessment made on them under schedule D of the Act 5 and 6 Vict., chapter 35, entituled, 'An Act for granting Her Majesty duties on profits arising from Property, Professions, Trades, and Offices,' and subsequent Income-Tax Acts referring thereto in respect of the profits arising from their business for the year preceding, in so far as the said assessment includes two sums of £5525, 19s. 9d. and £4435, being a percentage which they claimed to deduct for pit sinking and for depreciation of buildings and machinery respectively, and for which they maintained they were not assessable.

"Messrs Addie & Sons stated that they carry on, and have for a number of years past carried on, business as coal and iron masters. They manufacture pig-iron at their works at Langloan, and they hold a number of mineral fields under leases of thirty-one years, which leases are in various periods of their currency. The minerals wrought under these leases are coal, ironstone, and fireclay. As such lessees Messrs Addie have sunk, at there own expense, the pits from which the minerals are raised. They also require to erect, and do erect at their own expense, machinery and buildings of various kinds, including winding and pumping engines, pithead buildings, and the like.

"The appellants submitted that in ascertaining the profits upon which they are liable to be assessed under the said Act there ought to be deducted from the gross annual receipts derived from their business—(1) A sum in respect of the cost of sinking the pits; and (2) a sum in respect of the cost of buildings and machinery.

"(1) With respect to their pits, they explained that most of them are sunk and used for working ironstone, and are wrought only for comparatively short periods, as the ironstone seams are wrought out more speedily than seams of coal usually are, and that when a pit has ceased to be wrought they do not receive any payment from the landlord or any one else in respect of it, and that they are not recouped in the cost of sinking their pits in any other way than out of the gross annual returns derived from the minerals raised from them. There is scarcely any year in which the appellants are not engaged in sinking one or more pits. In these circumstances, they contended that the share of the gross annual receipts corresponding to the proportion of the cost of sinking the pits affeiring to the current year (regard being had to the number of years during which the several pits have been and will still continue to be wrought) was in no sense a profit, and that therefore it ought to be deducted from the gross annual receipts in arriving at the assessable profit.

"(2) With respect to machinery and buildings, the appellants explained that where a pit is wrought out the price or value obtainable for the machinery and buildings thereat is very small as compared with the original cost, being what is generally known as breaking up value, and that they are not recouped in the difference between the original cost of the machinery and buildings and the price or value obtainable therefor when the pits are exhausted otherwise than out of the gross annual receipts derived from working the minerals.

"They therefore contended that this difference is in no sense a profit, and that consequently in arriving at the profits upon which they are assessable there ought to be deducted from the gross receipts of each year a sum corresponding to the share of that difference effeiring to such year."

Argued for the appellants—Under the statutes every person must pay tax upon what he received during the year of profits and gains. But how could there be profit without deducting what was expended to produce that profit? Thus, in this case there was no profit until the outlay made to reach the minerals had been deducted. The appellants were just as much entitled to make deductions claimed as to deduct miners' wages.

Argued for the respondent—The object of the Act was to impose a tax upon income—upon profits as destinguished from capital. But the expendi-