Friday, February 8.

FIRST DIVISION.

(Exchequer Cause.)

[Lord Fraser, Ordinary.

LORD ADVOCATE (ON BEHALF OF INLAND REVENUE) *v.* GALLOWAY.

Revenue — Succession — Legacy-Duty — Animus donandi*—Delivery—Donation* mortis causa.

An uncle, with the desire to save legacy-duty, transferred to his nephew (whom he had made his sole executor and universal legatee) during his lifetime his whole savings, which were invested (1) in stocks and shares, and (2) in deposit-receipts. The former he conveyed by written transfer, the latter he exchanged for deposit-receipts in the name of the nephew, and thereafter the interest of these receipts continued as before to be applied by the uncle and nephew for the rent and management of the farm of which they were joint tenants. *Held* that there was thus constituted in the nephew's favour a donation *mortis causa* of the sums contained in the deposit-receipts, and therefore that legacy-duty was payable by the nephew on the amount contained in them.

This was an action at the instance of the Lord Advocate on behalf of the Board of Inland Revenue against James Galloway, sole executor and universal legatee of the late Robert Tervit, for the purpose of recovering a sum of £105 as inventory stamp-duty, and £200 as legacy-duty, in addition to what had been paid by the defender in respect of Tervit's estate. The action was brought in the following circumstances:—Robert Tervit was the tenant of the farm of Bagmoors, in the county of Lanark. His lease expired at Martinmas 1870 and Whitsunday 1871. His nephew, the defender James Galloway, had resided with him for many years, assisted him in the management of the farm, and had became joint-tenant with him in a new lease, which was granted in their favour on 13th and 19th July 1872. In April 1873 Tervit made a will disposing of his heritable and moveable property, the greater part of which he left to his nephew Galloway, leaving him his executor. About the time at which this will was executed, Tervit consulted Alexander Paterson, agent for the Royal Bank at Lanark, with whom he did a portion of his banking business, both as to the validity of the will and also as to the amount of legacy and inventory duties which his nephew would probably have to pay when the succession opened to him, and Paterson explained to him from the table of duties in an almanac what they would be, and that they might be saved by handing over the money to his nephew during his life. Tervit's mode of conducting his banking business was by means of deposit-receipts, the interest upon which he uplifted from time to time in part-payment of the rent for the farm, but the capital amount of which he periodically increased.

About the month of August 1875, Tervit, being then in perfect health, began to transfer some of the deposit-receipts standing in his name in two banks in Lanark to the name of his nephew Galloway. The first sum thus transferred was a deposit-receipt for £500, and various other sums were afterwards transferred to Galloway's name, until upon 12th August 1878 the amount standing at Galloway's credit was £3048 in the Royal Bank, and £1000 in the Commercial Bank, at their respective branches at Lanark, there being nothing left standing at that date in Tervit's name.

In November 1878 Tervit made a new will, which was similar to the original will, with this exception, that a legacy of £250 to his brother John Tervit, who had meanwhile died, was cancelled.

In April 1879 Galloway, by Tervit's desire, instructed a writer in Lanark to get certain certificates of stock and debentures transferred from Tervit to Galloway. Transfers were accordingly executed of a number of stocks in favour of Galloway. The new certificates in Galloway's name were retained by the agent. No interest or dividend on the stocks accrued during Tervit's life, but the interest on the deposit-receipts was applied as before to rent and other farm purposes.

Tervit died on 28th July 1879, aged about 74 years. By the provisions of his last settlement, with the exception of certain heritable property at Carnwath, which he conveyed to his brother James Tervit, his whole estate, heritable and moveable, passed to Galloway, whom he nominated his sole executor and universal legatee.

Galloway gave up an inventory of the personal estate, and was duly confirmed executor on 13th December 1879. The amount of inventory given up was £650, 12s., and inventory-duty to the amount of £15 was paid.

This action was raised to compel him to give up a further inventory of and pay duty on, first, the sum of £3048 which stood in the Royal Bank of Scotland as above mentioned, on seven deposit-receipts; second, the £1000 which stood on two deposit-receipts with the Commercial Bank; and third, the various stocks and debentures mentioned above.

The pursuer averred that the changes in the deposit-receipts and additional deposits were not made *animo donandi*, but the sums remained the deceased's property; and there was no change in the custody of the receipts, which were never delivered to the defender. As to the stocks, he averred that the transfers when executed were retained in the custody of the law-agent on behalf of the deceased, and were not delivered to the defender. They formed part of the deceased's estate, and so were liable in inventory and legacy-duty.

The defender averred that the stocks and debentures and the money in the deposit-receipts were transferred to him absolutely without condition, and that deceased had no control over or interest in them at the date of his death.

The pursuer pleaded that the deposit-receipts referred to on record not having been taken in defender's name *animo donandi*, and never having been delivered to him, formed part of the deceased's moveable estate, for which the defender was bound to pay inventory and legacy duties. "(4) If the said securities or any of them were transferred or delivered to the defender, it was *custodiæ causa* merely, and to facilitate the defender's administration of the estate as executor. (5) *Separatim* — The transfer of the securities amounted only to a donation *mortis causa*, or con-

ferred a succession within the meaning of the Succession Duty Act 1853, and legacy-duty or otherwise succession-duty is payable."

The Lord Ordinary allowed the parties a proof, the defender to lead. The material portions of the evidence are fully referred to in the Lord Ordinary's opinion.

The Lord Ordinary pronounced this interlocutor:—"Finds that the deceased Robert Tervit died on 28th July 1879, leaving a settlement whereby he nominated the defender to be his sole executor and universal legatee: Finds that at the time of his death he had right to, and was the owner of, moneys contained in the deposit-receipts specified in the fourth article of the condescendence, and to debenture bond p. £100 of the Atlantic and Great Western Railway Company, and that therefore the defender, as his executor-nominate, is bound to give up an inventory of the moneys contained in the said deposit-receipts and in said bond, and to pay to the pursuer the inventory stamp-duty payable thereon according to law, together with interest on the sum in the said deposit-receipts and bond at the rate of five per cent. from 28th January 1880: Finds that the said Robert Tervit during his life did convey over and transfer to the defender the stocks and debentures, other than said debenture bond of the Atlantic and Great Western Railway Company, specified in the said fourth article of the condescendence, absolutely, and that the said stocks and debentures, other than said bond, constituted no part of his personal estate at the time of his death, and that therefore the defender is not bound to give up an inventory thereof, and to pay inventory stamp-duty thereon," &c.

"*Opinion.*—Robert Tervit, a farmer at Bagmoors, in the parish of Pettinain, who died on 28th July 1879, aged seventy-four, had moneys belonging to him deposited in the Royal Bank of Scotland at Lanark, and in the Commercial Bank of Scotland there. The deposit-receipts containing these moneys were, during his lifetime, by himself or with his authority, changed from his name to that of the defender. He was also owner of shares in joint-stock and railway companies, and was creditor in debenture bonds of other companies. These stocks, so far as requiring transfers, were transferred by him to the defender, and the debenture bonds being payable to bearer, not requiring transfers, were delivered to the defender.

"The defender is the executor under the will of Robert Tervit, and it was his duty as such to give up an inventory upon the proper stamp of the deceased's personal estate. He did give up an inventory, but it is averred on behalf of the Crown that he did not give up a full and true inventory, in respect that he did not include therein the moneys contained in the deposit-receipts, and the value of the stocks, shares, and debentures just alluded to. The defender refuses to give up an inventory containing these sums, and the value of these shares, because he avers that he was absolute owner of them during the deceased's lifetime, and they formed no part of Robert Tervit's estate at his death. The Crown, on the other hand, maintain—1st, That the deposit-receipts were not changed into the defender's name, and the transfers of the shares and stocks and delivery of the debentures were not made *animo donandi*, but *custodiæ causa*; 2dly, That the transference of the property was a donation *mortis causa*, and being so, it is liable to duty as a legacy, as is enacted by 8 and 9 Vict. c. 76, sec. 4; 3dly, That the mode in which the defender obtained the property conferred upon him was a succession in terms of the Succession Duty Act 1853, and that if legacy-duty was not payable, succession-duty was.

"The last ground of claim by the Crown may at once be dismissed. There is nothing in the facts of this case to bring it within the Succession Duty Act.

"But if the allegation of the Crown be true that the transaction was not an absolute irrevocable donation, or if it be true that it was a donation *mortis causa*, then duty can be demanded.

"The defender was the nephew of Robert Tervit, and had gone with his mother to live with his uncle at at early age, and had helped him to cultivate his farm, while his mother managed the house. This the defender, as he expressed it, did during the greater part of his life, and never received any money from his uncle in the shape of wages. He got his food in the house, and money for his clothing and pocket-money, but that was all. The uncle and he lived upon very affectionate terms, and nothing could be more natural than that the uncle should bequeath his means to the defender. The lease of Robert Tervit's farm expired at Whitsunday 1871, and a new lease was then obtained in the joint names of Tervit and the defender, the object being to get the defender made tenant of the farm, which the landlord would only allow if Tervit (who was a man of means) became a joint-tenant. Tervit, while he left the active management of the farm to the defender, continued to attend to his own banking business down to a period of eighteen months prior to his death. He had been informed that there was a means of giving to his nephew his estate in such a way as to escape the payment of inventory and legacy-duty. He did his chief business at the branch of the Royal Bank of Scotland at Lanark, and he asked advice upon the subject of escaping payment of the duty from Mr Paterson, the agent of the bank there, who exhibited to him the table of stamp-duties contained in Oliver & Boyd's Almanac, and who informed him that if he handed over during his lifetime his personal estate to his nephew, it would no longer be treated as his estate at his death, and consequently would escape duty. This was as early as the year 1875. He informed Mr Paterson that he intended to adopt the course pointed out to him. It was with this view that the deposit-receipts were changed into the name of the defender, and the transfers of the stocks and shares were made.

"There can be no doubt that Robert Tervit had the *animus donandi*, and he thought that he carried out his intention sufficiently by the change into the name of his nephew. Now, in regard to the deposit-receipts. Taking it to be proved that he did intend to give the money represented by them to the defender, there was something more necessary to be done than the changing the name; and this not having been done, there was no effectual donation *inter vivos*. In the first place, there is no proof that Tervit ever delivered the new receipts to the defender, except the evidence of the defender himself; and this, according to the recent decisions of the Court, is

not sufficient to prove that important fact. It is said by the defender that they were delivered to him and kept in a drawer which was also the repository for the papers of Tervit; that the latter's papers were at the left end of the drawer, and the defender's at the other end; and at the defender's end were the new deposit-receipts. Now, no one confirms this evidence, and no person is brought forward who can say that Tervit had ever said he had made delivery. After the proof was closed the Lord Ordinary was asked to allow the defender's wife to be examined, and this was granted; but her examination did not advance the defender's case. Some observations of the deceased were reported by her as to more consideration being due to his wishes by the defender and his wife in consequence of his having given them all he had,—observations which might be referable to the fact that he had made a will in the defender's favour. In short, there is upon this point a failure of evidence which disentitles the defender to the position which he takes up of having obtained a donation *inter vivos*.

"And, in the second place, this is confirmed by what was done with the interest upon the deposit-receipts, which was regularly drawn at Candlemas and Lammas, sometimes by the deceased and sometimes by the defender. It was applied, not to the defender's own uses, but to the payment of the rent for which they were jointly liable. In short, Tervit, down to the day of his death, by drawing the interest or by allowing the defender to draw it, and applying it in payment of the rent, indicated that he had not divested himself of the right to the money.

"But as regards the stocks and shares, a different conclusion may be reached, consistently with holding the defender bound to prove, in a manner the most unmistakeable, that there was delivery. The transfers were formally executed by Tervit with reference to those shares that required a transfer in writing. The documents were sent to him for execution, and duly returned signed by him. They were then sent to the companies for registration; and here comes the important fact, which tells so materially in the defender's favour. The secretaries of the companies wrote to Tervit intimating that these transfers had been lodged for registration, and that if he did not object thereto the defender would be registered as the owner of them. Now, he returned no answer to these letters, and therefore he had no objection to the registration being carried out. This was an equipollent to actual handing over the deeds to the transferee, and equipollents to actual delivery have been recognised in this class of cases. See per Lord Deas in *Gibson* v. *Hutchison*, 10 Macph. 923; *Crosbie's Trustees* v. *Wright*, 7 R. 823.

"The transfers, after being registered, were received back by Mr Tennent, writer, Lanark, agent for the defender, and retained by him for behoof of the defender, and they were in Mr Tennent's possession at the time of Tervit's death. There were, however, two debentures in regard to which there were no written transfers, viz., £100 debenture bond of the River Plate and Brazil Telegraph Company, and £100 debenture bond of the Atlantic Great-Western Railway Company. These bonds were payable to bearer, and did not need to be transferred by writing. The first was delivered and in possession of Mr Tennent, for behoof of the defender, at Tervit's death. The second was not delivered, and duty must be paid on the sum contained in it."

Thereafter the Lord Ordinary, having resumed consideration of the case, pronounced an interlocutor ordaining the defender to pay to the pursuer £65 of inventory-duty, and £119, 6s. 8d. of legacy-duty.

The defender reclaimed, and argued—As the deposit-receipts had been duly transferred during Tervit's lifetime, defender must be held to have been duly vested in these funds. The best evidence of donation was the possession by defender of these deposit-receipts, the interest of which might have been used by him in payment of his uncle's debts, but the capital of which was never touched for that purpose. This was not a case of endorsing a deposit-receipt, but actually of renewing it. The *animus donandi* was proved, and there could be no doubt that it existed to the end. The *animus donandi*, and delivery of the document being proved, it lay upon the Crown to prove that the delivery was in trust only—*Morris* v. *Riddick*, July 16, 1867, 5 Macph. 1036, and *M'Farquhar* v. *Mackay*, May 18, 1869, 7 Macph. 766, in which cases was to be found a definition of a *mortis causa* donation—*Muir* v. *Ross's Executors*, June 15, 1866, 4 Macph. 820, and *Crosbie's Trustees* v. *Wright*, May 28, 1880, 7 R. 823; *Thomson* v. *Thomson*, June 8, 1882, 9 R. 911. There could not be a *mortis causa* donation in the present case, because the *animus donandi* was not qualified by being subject to revocation. It was an absolute divestiture to save legacy duties—*Henderson*, June 12, 1839, 1 D. 927; *Fife* v. *Kedslie*, March, 1847, 9 D. 853; *British Linen Company* v. *Martin*, March 8, 1849, 11 D. 1004; *Sharp* v. *Paton*, June 21, 1883, 10 R. 1000; *Lord Advocate* v. *M'Neill*, February 6, 1864, 2 Macph 626, and 4 Macph. (H. of L.) 10.

Argued for pursuer—Though Tervit intended to make defender his heir, there was no proof that he intended to divest himself of all control of his money. What he wanted was to leave his money by will to his nephew, and at the same time to save the Government duties. The fact of delivery rested virtually upon the testimony of the donee. It was a question if this was even a *mortis causa* donation; if not, then both inventory and succession-duty were exigible. If it was, then legacy-duty was payable. The interest of this capital was used to defray the farm expenses, for which both uncle and nephew were jointly liable.

At advising—

Lord President — This action about the amount of inventory and legacy-duty payable upon the succession of the late Mr Tervit raises several questions, but only one of them is now in dispute. Mr Tervit was a tenant-farmer in Lanarkshire, and died on the 28th July 1879, and he left a settlement by which substantially his whole estate went to the reclaimer Mr Galloway. The lease of his farm, which had expired at Martinmas 1870 and Whitsunday 1871 was renewed in favour of himself and Mr Galloway jointly, and they were joint-tenants of the farm from that time down to Mr Tervit's death. Mr Galloway was the only near relative of Mr Tervit, with the exception of a brother who is mentioned in the settlement, and to whom some small heritable property is conveyed. But, at all events, Mr

Galloway was certainly the favoured relative of the deceased, and the person to whom he intended to leave the great part, if not the whole, of his possessions. But he conceived a purpose of transferring, if possible, the different subjects of which his estate consisted to this favoured nephew, in such a way as to evade the inventory and legacy duties, and after taking some advice about it he proceeded to do what he thought was necessary and what would be effectual for that purpose. He was a man who had obviously made a good deal of money for his condition in life, and a portion of it had been invested in stocks and shares of joint-stock companies, and also in debenture bonds, and another portion, not inconsiderable, was lodged in bank on deposit-receipts. Now, with regard to the stocks and shares he certainly accomplished his purpose completely, because he transferred by written transfers the property of these stocks and shares to his nephew, and the transfers were duly recorded in the registers of the companies, and thereby there was an effectual denuding of Mr Tervit himself, and an effectual investing of his nephew in the property of these stocks and shares. There were also two debenture bonds which passed *e manu in manum* without the necessity of any written transfer at all. The holder is the proprietor of these, and of course the property of them can be transferred by mere delivery. It is proved that one of these was delivered by Mr Tervit to his nephew, but it is also proved that the other was not delivered; and so as regards one of them duty is not payable, and as regards the other duty is payable. That leaves for consideration only the money that was invested in deposit-receipts in two banks. Now, what was done about that money may be very easily described. The original deposit-receipts, which were in name of Mr Tervit himself, were paid up, and new deposit-receipts were taken in name of the nephew, and it is contended that this constitutes a *donatio inter vivos* just to the same effect as was done with the transfers of the stocks and shares. Now, to that proposition I am not able to give my assent. So far I agree with the Lord Ordinary. I think the mere taking of a deposit-receipt in name of a person who is not the owner of the money deposited does not operate the transference or donation—or at least absolute donation of that money. There must be something more. The Lord Ordinary says there was an *animus donandi* on the part of Mr Tervit, and I think there was, but then we are bound to inquire what was the precise state of his mind upon the subject of his intention as regards this money. Did he mean to make a present, absolute, and irrevocable gift of it, or did he intend only to make a gift *mortis causa?* I think he intended the latter; and I think all the circumstances of the case point in one direction. Mr Tervit was still in the management of his farm, although his nephew was joint-tenant with him. They managed the farm together, and it is proved that the produce of the money in deposit-receipt was used regularly for the purposes of the farm. It was used to pay the rent, and it was used for making expenditure upon the farm, and I suppose it was used also along with the profits derived from the farm in maintaining the household establishment for the uncle and nephew, who lived together, the nephew being married, and the uncle being an old man who never was married or had any children. The question therefore that at once occurs to one is to inquire whether, after the change was made in the deposit-receipts—taking them in the name of the nephew instead of the uncle—any change was made in the application of the income arising from these deposit-receipts, and the evidence is, I think, that there was no such change. If an absolute donation out-and-out had been intended, a donation by which the property should absolutely pass at once from the uncle to the nephew, then the interest arising on the deposit-receipts would of course belong to the nephew alone, and he would be entitled to use it for his own purposes, or to accumulate it for his own behoof. But that certainly was not done. Now, that introduces at once one of the essential characteristics of a donation *mortis causa*, because in a donation *mortis causa*, although the property passes at the time of the donation from the donor to the donee, it is a qualified right of property. It depends upon certain conditions. In the first place, the donee is to hold the property for the benefit of the donor so long as he lives, and we have the best possible evidence that that was the case here. The property gifted was held in the name of the donee, but for the benefit of the donor. Of course a donation *mortis causa* is also revocable during the lifetime of the donor, and is revoked *ipso facto* if the donee predeceases the donor. Now, as regards that last characteristic of a donation *mortis causa*, it falls naturally to inquire whether it was at all likely that Mr Tervit should desire that this money should be the absolute property of the donee, his nephew, even although he should predecease the donor. I think that it is in the highest degree improbable. He had given away to him in an absolute gift a great deal of the money that he had made, in the shape of these stocks and shares that I have mentioned, but if he had transferred to him also all the money that he had in bank in the same absolute way, the effect would have been this, that in the possible case of his nephew predeceasing him Mr Tervit would have been left a pauper in the world. He would have had no money at all. The money would have passed upon the death of the donee to the donee's executors. Now, that is, I think, in the highest degree an improbable intention upon the part of Mr Tervit, and the evidence of the *animus donandi*, of which the Lord Ordinary speaks, certainly does not go that length. He had a very distinct purpose of making such a gift as would in his opinion enable his nephew to escape from the payment of the Government duties. That was his whole object; but to say that he was to divest himself of what may be called his floating capital lying in bank absolutely from the moment that he made the transfer, and in such a way that he never could go back on it, in such a way that he could not use the income arising from it, and in such a way that if his nephew predeceased him it would not come back to him (Mr Tervit), but go the nephew's executors—is a thing of which I can find no evidence whatever in this case. And therefore I am of opinion that what has been proved here is a donation *mortis causa* and nothing else.

That will make some variation on the Lord Ordinary's second interlocutor of the 20th December 1883, and perhaps in the findings of the former interlocutor also, but that is a matter that

will be very easily adjusted between the parties with reference to the duties that are payable and those that are not payable for a donation *mortis causa*.

LORD MURE—On the evidence in this case I do not think that there was anything done between the parties sufficient to transfer irrevocably the money that was placed in bank on deposit-receipts through the defender during the lifetime of Mr Tervit. But I concur with your Lordship in thinking that there is evidence to instruct donation *mortis causa*, and I think the case is substantially ruled by what was done by this Division of the Court in the case of *Crosbie's Trustees*, to which the Lord Ordinary refers in his opinion. No doubt the terms of the deposit there were somewhat different, because the deposit was to the party himself and his sister and her husband, while here the terms of the deposit are to the defender alone. In that respect there is a difference, but that only affects the kind of evidence which is required to eke out the proof of donation, which is always required to be made orally or by facts and circumstances in addition to the mere fact that the donee's name is included in the deposit-receipt. Now, here, I think, there is distinct evidence that, for what reason we do not know, but after this old gentleman had made his settlement, either by the advice of others or upon some idea that occurred to himself, he wanted to do something more than merely leave his nephew this money in a will. He expressly stated that he wished to give it to him, and the object of giving it to him was to save him trouble after the death of the donor. Now that, I think, was what he had principally in view by gifting it to him in the way he did. He had been getting advice that there would be less duty payable at his death to the Government than there would be if it was left under the will. That being the case, the question is, whether the manner in which these deposit-receipts were transferred, or some of them, to the name of the defender, coupled with the fact that this is proved to have been done with the intention of giving it to him in a different way than had been done by the will, and so as to save him expense at his death—whether that is not sufficient to constitute donation *mortis causa?* Now, I think it is. The deposit-receipts were handed over to him, and he places them in a drawer to which the defender had access. The same thing was done in the case of *Crosbie's Trustees*. There the deposit-receipts were put into a drawer in the house of the donee, but a drawer to which the donor had access when occasion required. Here the receipts seem to have been placed in a drawer to which both parties had access, and I think in the circumstances of the case, coupled with the evidence of the intention of the donor disclosed to various persons during his life, the result to which your Lordship has come is a sound construction of the transaction.

LORD SHAND—I am of the same opinion as your Lordships. The best definition, I think, we have of *donatio mortis causa* has been given by your Lordship in the case of *Morris* v. *Riddick*, which has been referred to, and it appears to me that, applying the definition of *donatio mortis causa* there given, the facts of the present case bring the deposit-receipts in question within that character. In the first place, I agree with the Lord Ordinary in thinking that the *animus donandi* has been proved. I think Mr Galloway's evidence is corroborated by the evidence of two officials connected with the bank, one of whom, at least, proves very clearly that the intention was to give this donation for the purpose, no doubt, of evading legacy-duty, but still to give it. In the second place, the funds were not only put in the name of Mr Galloway by the receipts being taken in his name; but it rather appears to me, taking the evidence as a whole, that these receipts were delivered, and I think so, not only because Mr Galloway has said so, and explained that they lay in the drawer to which he had access, and because that is corroborated, but mainly because I find that for a period of nearly two years before Mr Tervit died these receipts being in Mr Galloway's name were treated as having been given over to him by his going to the bank each half-year and uplifting the interest, and taking new receipts again in his name. So that the delivery of the money in that way, in the form of these deposit-receipts, was really acted upon. And therefore I think there is material corroboration of Mr Galloway as to that. The question remains, whether we can say that it was a donation absolute—given without the power of subsequent recall—or whether it was a donation *mortis causa*. Now, upon that point I am clearly of opinion that it was not an absolute donation. There are two elements that seem to make that sufficiently clear. In the first place, there is the great improbability to which your Lordship has alluded of Mr Tervit divesting himself of everything he had in the world, and leaving himself without any means whatever in the event of his nephew predeceasing him. That, certainly, is not to be presumed. There is every presumption against it. But, in the next place, there is the circumstance that the interest which was drawn upon these receipts half-yearly was applied in payment of the rent of the farm for which Mr Tervit was responsible. These two things seem to me to negative the view of absolute donation, but the other facts of the case establish donation *mortis causa*, and therefore I agree with your Lordship in the opinions that have been delivered. The result seems to be that this property does not require to be included in any inventory for the payment of any inventory-duty, but that it is liable to legacy-duty as a donation *mortis causa;* and so far I assume there will be a variation of the interlocutor of the Lord Ordinary.

The Court found that at the time of the death of the deceased he was owner of a debenture bond for £100 of the Atlantic and Great Western Railway Company, but that the value of it did not increase the amount of inventory stamp-duty already paid on the estate: "That at various dates between 16th August 1875 and 12th August 1878, inclusive, the said deceased Robert Tervit transferred into the name of the defender James Galloway various sums of money on deposit-receipt with the Royal Bank of Scotland and the Commercial Bank of Scotland, both at Lanark, amounting said sums to £4048 in all: Find that the transfer of the said sums amounted to a donation *mortis causa* in

favour of the defender, and therefore that the defender is bound to pay legacy-duty on the said sum of £4048," and also on the value of the debenture bond, and ordained him to pay legacy-duty accordingly: "Find that the said Robert Tervit during his life did convey over and transfer to the defender the stocks and debentures, other than said debenture bond of the Atlantic and Great Western Railway Company, specified in the fourth article of the condescendence absolutely, and that the said stocks and debentures, other than said bond, constituted no part of his personal estate at the time of his death, and that therefore the defender is not bound to give up an inventory thereof or to pay inventory stamp-duty, legacy-duty, or succession-duty thereon: *Quoad ultra* assoilzie the defender from the conclusions of the summons: Find neither party entitled to expenses, and decern."

Counsel for Inland Revenue — Trayner — Lorimer. Agent—David Crole, Solicitor of Inland Revenue.

Counsel for Defender—H. Johnston. Agents—Mackenzie, Innes, & Logan, W.S.

LANDS VALUATION COURT.

Saturday, February 2.

(Before Lord Lee and Lord Fraser.)

THE COLTNESS IRON COMPANY (LIMITED).

Valuation—Lease—Rent—Exhausted Minerals—Valuation of Lands (Scotland) Act (17 *and* 18 *Vict. cap.* 91), *sec.* 1 *and sec.* 6.

Mineral tenants who had power in their lease to terminate it on giving notice to the landlord, exercised this power by terminating it (after due notice) at Martinmas 1883, when they took down their machinery and removed from the subjects, which remained unlet. *Held* that the sum at which they fell to be assessed for the year 1883 to 1884 was the half-year's rent payable at Martinmas 1883.

At a meeting of the County Valuation Committee of Commissioners of Supply for the Upper Ward of the county of Lanark, to hear appeals under the Valuation Acts for the year ending Whitsunday 1884, the Coltness Iron Company (Limited) appealed against an entry of £719, 12s., in respect of "minerals, land, and wayleave" in the parish of Carluke, of which they were tenants and occupiers. The appellants were tenants of the minerals, which were the property of Sir Simon M'Donald Lockhart, Bart., under a lease for nineteen years, with permission to break the lease at certain periods on giving six months' notice; they had the usual powers for working the minerals. The fixed rent under the lease was £750 per annum. The appellants had worked the minerals since 1871, the commencement of the lease, but on 9th November 1882 they intimated to the landlord that they would avail themselves of the powers in the lease and terminate the same as at the term of Martinmas 1883. It was admitted that their machinery and works had been taken down, that the ironstone had not been let to any other tenant, and that there was no probability of the same being worked during the year ending Whitsunday 1884. In these circumstances the appellants maintained that the only sum for which they should be assessed for the year 1883-4 was the half-year's rent payable under the lease at Martinmas 1883, viz., £359, 16s. 4d. The assessor maintained that under the Valuation Acts he could not enter as annual value the rent payable for six months. He referred to section 1 of "the Valuation of Lands (Scotland) Act 1854, which directs that a valuation roll shall be made up annually, showing the yearly rent or value for the time of the whole lands and heritages within each county and burgh, together with the names of the proprietors, and, where there are tenants or occupiers, of the tenants and occupiers."

The Committee dismissed the appeal, and sustained the assessor's valuation.

The appellants took a Case.

At advising—

Lord Lee—In the case presented to us the assessor does not state that the minerals which the Coltness Iron Company held under a lease had been exhausted; but I think that upon a fair reading of the case we must take that to be the fact. The facts stated show that the lease ended at Martinmas 1883; that the machinery has been removed; that the minerals have not since been let; "and that there is no probability of the same being worked during the year ending Whitsunday next." The rule of the statute is plain. The assessor is bound to take the rent conditioned in the lease as the basis of his valuation if there is a *bona fide* lease. In this case the lease came to an end at Martinmas 1883, and the assessor is not entitled to take the full rent conditioned in the lease as current rent, nor to enter that amount as the annual value, unless it can be stated as matter of fact that the subjects might reasonably be expected to let for so much in their actual state. If the assessor wished to add anything to the valuation roll after Martinmas, he ought to have proceeded under the other branch of the 6th section. But he has not said that the subjects mentioned in the lease could have been let at Martinmas for the amount entered by him, or for any sum. I am therefore of opinion that the determination of the Commissioners is wrong, and that the sum to be entered is £359, 16s. 4d.

Lord Fraser—I concur. We must proceed upon the footing that the minerals here are exhausted and had no value after Martinmas 1883.

The Court were of opinion that the determination of the Committee was wrong.

Counsel for Appellants—J. A. Reid. Agents—Murray, Beith, & Murray, W.S.

No appearance was made for the Assessor.