of the said works from time to time as may be found necessary or expedient, subject to the provisions of this Act and the Acts herewith incorporated, the trustees are hereby authorised and empowered to carry on and complete the whole or such and as many of the said works as to them from time to time shall seem expedient"—that is the eighth and last object. What is the meaning of the phrase "in terms of the said recited Acts?" It is, no doubt, a very extraordinary way of carrying out the announced intention of the Legislature to repeal the former Acts and consolidate their provisions, to say that the powers of the trustees for deepening and widening the river shall be just the same as if the repealed Acts were still in force; but if it does not mean that, what does the phrase mean? I think it does mean that, and so thinking I come to precisely the opinion much more briefly expressed by the Lord President.

I therefore think that the judgment should be affirmed and the appeal dismissed with costs.

Interlocutors under appeal affirmed and appeal dismissed with costs.

Counsel for Appellant — Solicitor-General (Herschell) — R. T. Reid. Agents—Grahame, Wardlaw, & Currey—J. & J. Ross, W.S.

Counsel for Respondent—Benjamin, Q.C.—Asher. Agents—W. A. Loch—Webster, Will, & Ritchie, S.S.C.

Thursday, April 7.

(Before Lord Chancellor Selborne, Lord Blackburn, and Lord Watson.)

CAITHNESS FLAGSTONE QUARRYING COMPANY *v.* SIR TOLLEMACHE SINCLAIR.

(*Ante*, 9th July 1880, 7 R. 1117.)

Writ—Holograph—Agreement Written by Factor to the Dictation of his Principal.

Held (*aff.* judgment of the Court of Session) that an agreement written by the factor for one of the parties in the presence of the other party to the dictation of the factor's principal, and unsigned, is not a valid holograph writ of the principal so as to constitute, when formally accepted and acted on, a completed contract between the two parties interested therein.

This case was decided by the First Division of the Court of Session on 9th July 1880, and is reported in 7 R. 1117. The defender having appealed against the interlocutor then pronounced, the House of Lords recalled it and remitted to the Court of Session to dispose of the merits of the case in a manner favourable to the contentions of the appellant. On the question as to the validity of the alleged agreement of 28th September 1878, however, the Lords who took part in the judgment concurred with the view taken in the Court of Session, and their views were thus expressed by Lord Watson:—"I am of opinion with all the Judges of the First Division that the missive of the 28th September 1878 is not a valid holograph writ. I do not doubt that a missive written and signed by a factor or agent professing to bind his principal is a probative holograph according to the law of Scotland, and that when duly accepted it will bind the principal if he gave authority, and will subject the writer in damages if he did not. It appears to me, however, to be sufficient for the decision of this point that Mr Logan who wrote the document was not in any sense a party to the negotiations on the 28th September, which resulted in its delivery to the respondents for their consideration and acceptance. These negotiations were conducted by the appellant in person, and it does not appear from the evidence that Mr Logan ever had or supposed he had any authority from the appellant to make such an offer. Even if Mr Logan had been the sole negotiator, acting in the appellant's absence and by his instructions, I doubt whether the writing would have been thereby validated. The general rule of the law of Scotland is that a holograph writing in order to be effectual must be subscribed by the writer."

Counsel for Appellant (Defender)—Solicitor-General (Herschell)—Webster, Q.C. Agents—Simson & Wakeford and Webster, Will, & Ritchie, S.S.C.

Counsel for Respondents (Pursuers)—Benjamin, Q.C.—Asher. Agents—W. A. Loch and Mackenzie, Innes, & Logan, W.S.

Thursday, April 7.

(Before Earl Cairns, Lord Penzance, and Lord Blackburn.)

COLTNESS IRON COMPANY *v.* COMMISSIONERS OF INLAND REVENUE.

(*Ante*, 7th January 1881, *supra*, p. 221.)

Revenue—Income-Tax—5 and 6 Vict. c. 35, secs. 60 and 100, Schedule D.

Held (*aff.* judgment of Court of Session) that in determining the amount of profit for any year upon which a mine-owner is to be assessed, he is not entitled to write off and deduct from the gross earnings of his mine a sum to represent the amount of capital expended on making bores and new pits that has been exhausted during the year.

This case was by an order of the House of Lords, dated 1st August 1879 (6 R. 617), remitted to the Court of Session for amendment. The Court of Session on January 7, 1881, pronounced judgment on the case as amended (*ante*, p. 211), and the case was again taken by appeal to the House of Lords.

At delivering judgment—

Earl Cairns—My Lords, this is an appeal from the First Division of the Court of Session, in which the appellants, an Iron Company at Coltness, contend that in rating for the property and income-tax they ought not to be assessed on a sum of £9027, a portion of the gross proceeds of their mines, for the year ending the 5th April 1879. The description of this sum of £9027 upon which the appellants contend that they

should not be rated as given in the case originally, was this—"The Coltness Iron Company, carrying on business at Coltness, appealed against the assessment made on them under Schedule D of the Act 5th and 6th Vict. cap. 35, 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 a sum of £9027, being the cost incurred by them in sinking new pits, and for which they maintain they were not assessable. The Coltness Iron Company stated, and it is the fact, that for a number of years they have carried on business as coal and iron masters, and have opened up several mineral fields, sinking new pits at their own expense from time to time as the old ones have become exhausted, and they submitted that in ascertaining the profits on 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 the sums expended by them in sinking the pits."

This and the other statements in the Special Case, when the appeal first came before your Lordships, were not deemed by your Lordships to be sufficiently explicit, and you remitted the case for amendment. This amendment has now been made, and I will read the statement as to this sum of £9027 in the amended lease:—"The sum of £9027 claimed as a deduction from the assessment by the appellants does not represent the cost of pit sinking during the year, but is a sum arrived at by calculating 2s. a ton on iron made, and a penny halfpenny a ton on coal sold, during the year, it being estimated that this will properly represent the amount of capital expended on making bores and sinking pits which has been exhausted by the year's working. The cost of making bores and sinking pits is charged in the books of the company to an account called 'sunk capital account,' and is written off annually by a sum computed at the respective rates above specified on the quantities of iron made and coal sold in the year, as representing the capital expended on pit sinking exhausted by the year's working. The working charges deducted and allowed in ascertaining the profits for assessment include the whole cost of getting and raising the minerals after the pits are sunk, and of manufacturing the metal and selling the iron and coal, and the general expenses of the concern." It therefore now appears that the statement in the case as it originally stood is not sustained, and that the sum in question does not represent the cost of pit sinking during the year, of which the profits are taken. I am not prepared to say that under the words of the 5th and 6th Vict. cap. 35, a mine-owner might not in some cases be entitled to an allowance in respect of the cost of sinking a pit, by means of which pit the minerals are gotten which are the source of profit for the year in which the pit was sunk. I desire to reserve my opinion on that point until the question arises. But in the present case the question is altogether different. It is as now explained—Can a mine-owner write off and deduct from the gross earnings of his mine in a particular year a sum to represent that year's depreciation of all the pits in the mines whenever sunk? I am clearly of opinion that this cannot be done. It may be proper for a trader or for a trading company to perform in his or their books an operation of this kind every year, in order to judge of the sum that can in that year be safely taken out of the trade and spent as trade profits. But I am clearly of opinion that the owner of a mine cannot *qua* owner thus manipulate his accounts when the question is, under section 60 of the principal Act, What is the amount of profits received from the mine in each of the five years upon which the average is to be taken?

My Lords, I do not think this question is affected by the 29th Vict. cap. 36. That Act provides that mines shall be charged and assessed according to the rules prescribed by Schedule D of the principal Act, so far as such rules are consistent with No. 3 of Schedule A. But the thing to be assessed remains the same.

Your Lordships were referred by the appellants to a decision, viz., *Knowles* v. *Macadam*, in the Exchequer Division of the High Court of Justice in England (3 L.R. Excheq. Div. 23), as an authority in their favour. Your Lordships are now sitting in appeal from the Court of Session, but even supposing that case were a Scotch authority, I am bound to say that it is a decision which does not seem to me to be capable of being supported, and which I could not advise your Lordships to follow.

I therefore move your Lordships that this appeal be dismissed with costs, but this should not include any costs of or rendered necessary by the remit, the occasion for which arose out of a want of accuracy in stating the case chargeable to both parties alike.

Lord Penzance—My Lords, the argument of the appellants was based on the interpretation which they gave to the word "profit" in the Act. And it was contended that they could not be properly said to have made any profit out of their mines until a certain portion of the cost of making the bores and sinking the pits necessary to approach the mineral-bearing strata were deducted.

In a general, and perhaps a strict and logical sense, I think this is true. But it is also and equally true, I think, that the cost of universal strata themselves, whether they have been hired or bought, should be included in any calculation which had for its object the ascertainment of the actual profit obtained by the company out of the entire adventure—so much for the prime cost of the mineral bed, so much for approaches to it in the shape of pits, so much for working it and getting the mineral to the surface, so much for getting the mineral to the market—and against all these the price obtained for the mineral sold. These would be the elements of a profit and loss account of an entire adventure of this nature. But is this the sense in which the word "profit" is used in the Act? I think not.

The intention of the Act, it is abundantly clear, was in Schedule A to tax "property." If a man had bought an estate the tax was intended to be paid by him on the annual value of that estate, without reference to where he got it or how he got it, or how much he paid for it. So, if a man built a house or bought a house he was intended to pay tax on the annual value of the house, no matter what it cost. Nor does anything turn upon the fact that the estate is a permanent and undecaying species of property,

while the house is a species of property of a less durable kind; he was intended to pay tax upon it so long as it lasted.

What, then, is the case of a mine? In the Schedule A, which is the schedule applicable to "property," a mine is in express terms included as a species of property, and is made the subject of a tax. The only question is, how shall the annual value of this species of property be ascertained? It is to this object that the rule No. 3, found in section 60 of the Act, is addressed. That rule assumes the ownership of the mine, passes by altogether the sum of money which it may have cost either in the way of purchase or rent, and proceeds to describe the method of calculating its "annual value" to the owner thereof, and this it declares shall be the average "profits over a period of five years received therefrom." The words "profits received therefrom" are here introduced to define the annual value of the thing which is to be taxed, which is the "mine;" and it could not, I think, be intended that for the purpose of calculating the "annual value" of a "mine" the original cost of the "mine" itself or any part of it should be first deducted. On the contrary, the words "profits received therefrom" in this connection mean, I think, the entire profits derived from the "mine," deducting the cost of working it, but not deducting the cost of making it.

I do not think the subject is elucidated, but rather confused, by the illustration brought forward in argument of the merchant or trader who spends a sum of money or invests capital in the purchase of goods and sells them again at an advance in price. No doubt in such a case the "profit" can only be ascertained by first deducting the original cost of the goods. If a man spends £100 in the purchase of goods and sells them for £140 his profit is not £140, but at most £40 only.

But when such a matter as that is brought under the provisions of this Act for taxation the wide difference between it and the present case is at once apparent. For the merchant or trader is taxed in such a case, not in respect of any "property" which he possesses and of which he enjoys the fruits, but only upon the profits which he realises annually in his trade, whereas the owner of a "mine" is taxed in respect of that "mine" as a fixed and realised "property" which belongs to him, and from which he reaps an annual benefit, and the words "annual value" or "profits received" from that "property" are introduced into the statute, not as the subject of taxation, but only as the measure of the taxation to which the "property" shall be subjected.

A pit sunk to appropriate the mineral underground is not unlike a road made above ground from the pit's mouth to the highway as a means of transporting the mineral to the market. If a man were possessed of such a mine and such a road, it would be true that as the mineral was gradually worked out, the road and the capital sunk in making it, equally with the pit and the capital involved in making it, would gradually be exhausted and lost, but the decaying character of the property would not make it the less subject to be taxed according to its annual value or the profit obtained by using it as long as the mineral lasted.

This, I think, is the principle that runs through the entire Act, and your Lordships could not, I think, sustain the present appeal without introducing principles which would entirely subvert the method of taxation which the Legislature intended, and according to which this statute has hitherto been administered.

I agree that the judgment of the Court below should be affirmed and this appeal dismissed with costs, subject to the exception mentioned by my noble and learned friend.

Lord Blackburn—My Lords, this case was stated in order to be able to ask your Lordships to review the decision of the Court of Session in the case of *Addie* v. *The Solicitor of Inland Revenue*, 2 R. 431, and reliance was placed on the decision of the Exchequer Division in *Knowles* v. *Macadam*, L.R. 3 Exch. Div. 23. Both of those decisions were pronounced at a time when there was no appeal against either, and as they were, I think, justly considered inconsistent with each other, it is important that both should be brought under review.

The Coltness Company appealed against the assessment for the year 1878, in so far as the assessment includes a sum of £9027, being the cost incurred by them in sinking new pits. It was thought that the statement of facts contained in the case was not sufficiently full to enable this House finally to dispose of the points of law on which its decision was asked, and it was directed that it should be amended, which was done. And the result shows that this was requisite, for the amended case, besides entering into various details as to the mode of pit-sinking and working the mines in the appellants' mineral field, contains a statement as to what the £9027 consisted of, which I think could not have been collected from the statements in the original case.

I think it is not necessary to inquire what other points might possibly have been raised on the other facts, still less to decide them, if that statement shows that the sum of £9027 is not properly to be deducted from the assessment. I will read that statement:—"The sum of £9027 claimed as a deduction from the assessment by the appellants does not represent the cost of pit-sinking during the year, but is a sum arrived at by calculating two shillings a ton on iron made, and a penny half-penny a ton on coal sold, during the year, it being estimated that this will properly represent the amount of capital expended on making bores and sinking pits which has been exhausted by the year's working. The cost of making bores and sinking pits is charged in the books of the company to an account called 'sunk capital account,' and is written off annually by a sum computed at the respective rates above specified on the quantities of iron made and coal sold in the year, as representing the capital expended on pit-sinking exhausted by the year's working. The working charges deducted and allowed in ascertaining the profits for assessment include the whole cost of getting and raising the minerals after the pits are sunk, and of manufacturing and selling the iron and coal, and the general expenses of the concern."

The phrase "capital exhausted" does not occur anywhere in the Income Tax Acts. It is taken from a passage in Mr M'Culloch on Political Economy, where he says "Profits must not be confounded with the produce of industry

primarily received by the capitalist. They really consist of the produce or its value remaining to those who employ their capital in an industrial undertaking after all their necessary payments have been deducted, and after the capital wasted and used in the undertaking has been replaced. If the produce derived from an undertaking after defraying the necessary outlay be insufficient to replace the capital exhausted, a loss has been incurred; if the produce is merely sufficient to replace the capital exhausted, there is no surplus; there is no loss, but there is no annual profit, and the greater the surplus the greater is the profit."

I do not feel at all inclined to dispute the sufficiency of this definition. I think that if a building society had taken a building lease, and it became necessary at any time to ascertain what profit or loss had been made by it from that lease, all the moneys expended in building houses would be placed on one side of the account, and on the other all that had been received for houses let or sold and the value during the residue of the building lease of the houses then remaining in the society's hands, and that value would of course be less and less as the lease drew nearer to an end, and if in the first year of the building lease a house was built at a cost of say £10,000, and the profit or loss on the lease had to be estimated when the residue of the building lease was reduced to say five years, and the lease of the house for those five years would sell for only £5000 pounds, I do not think it inaccurate to say that in computing the profit or loss on the building lease £5000 would be allowed as capital invested in building that house and now exhausted. But that is certainly not the scheme of the income-tax as far as regards building leases and other properties comprised in Schedule A, No. 1. The tax is imposed on the annual value of the block of buildings, which is to be taken at the rack rent at which the same are worth to let for the year.

By no process of reasoning could that rack rent be made to depend on the sum which had been expended in building the house, or to be greater or less according as the building lease was longer or shorter. Mines are not comprised in Schedule A, No. 1, but in Schedule A, No. 3, and the tax is imposed on them by a different set of words certainly, and if the decision in *Knowles* v. *Macadam* is correct, it is imposed on a radically different principle. I have felt myself construed to advise your Lordships to say that the case of *Knowles* v. *Macadam* was wrongly decided.

I think the question thus raised can hardly be decided without examining at some, I fear tedious, length the enactments on the construction of which it depends. No tax can be imposed on the subject without words in an Act of Parliament clearly showing an intention to lay a burden on him. But when that intention is sufficiently shown, it is, I think, vain to speculate on what would be the fairest and most equitable mode of levying that tax. The object of those framing a taxing Act is to grant to Her Majesty a revenue. No doubt they would prefer, if it were possible, to raise that revenue equally from all, and as that cannot be done, to raise it from those on whom the tax falls with as little trouble and annoyance and as equally as can be contrived, and when any enactments for the purpose can bear two interpretations it is reasonable to put that construction on them which will produce these effects. But the object is to grant a revenue at all events, even though a possibly nearer approximation to equality may be sacrificed in order more easily and certainly to raise that revenue, and I think the only safe rule is to look at the words of the enactments and see what is the intention expressed by those words.

Before, however, proceeding to examine the words of the Income-Tax Acts, on which, in my opinion, everything depends, I wish to point out that long before any income or property tax was imposed for general revenue the parochial authorities in England raised a revenue for parochial purposes which was very much in the nature of an income and property tax. And the language used in the Income-Tax Acts is such as to convince me that the Legislature had in their contemplation what had been done in this branch of the law, which if not exactly *in pari materia*, is at least an analogous subject. I think it more convenient to state briefly what was the state of the law as to rating real property in general, and (though by a very narrow construction the specific mention of coal mines was held to exclude all other mines) coal mines, quarries, &c., in particular. By the statute 43 Elizabeth, cap. 2, the churchwardens and overseers of the parish were empowered to raise by taxation of every inhabitant, parson, vicar, and others, and of every occupier of lands, houses, tithes, impropriate or propriators of tithes, coal mines, or saleable underwoods in the said parish, a sufficient sum. The power to rate the inhabitants as such was put an end to by a temporary Act of 3 and 4 Vict. cap. 89, continued from year to year, and finally made perpetual by 37 and 38 Vict. cap. 96. The power to tax the occupiers of the species of property named in the Act of Elizabeth remained.

In 1827 (*King* v. *Attwood*, 6 Barnewall and Cresswell, 277) a case was stated for the Court of King's Bench as to the principle of rating of coal mines; Chief-Justice Abbott delivered a judgment which is so germane to the subject we are now considering that I will read the whole of it as it is not long. "We are all of opinion that the owner and occupier of a coal mine should be rated at such sum as it would let for, and no more. As to the other points, the first was that the rate should not be imposed upon the coal produced, because that was part of a realty. It is the first time that such a proposition has ever been submitted, although many coal mines in various parts of the country have constantly been rated, and the argument in support of it is wholly untenable. The Legislature has expressly made coal mines rateable, and they must be rated, for what they produce, viz., the coals, slate quarries, and brick earth, are also exhausted in a few years, but nevertheless the rate is always imposed on that which is produced. The other argument was that the rate could not be imposed until the expense of planting the mine had been recouped. But I cannot discover any distinction between expenses incurred in bringing a mine to a productive state, and in building a house. The attempt to distinguish them is perfectly novel, and if a house is to be rated as soon as it is built and occupied, it must follow that a coal mine is rateable as soon as it is set to work and produces coal, although it may happen that the expense of

sinking it may never be recovered. If the tenant of a mine expends money in making it more productive, that is the same as expending money in improving a farm or a house, in which cases the tenant is rateable for improved value."

I do not say that what Lord Tenterden here lays down as to the taxation of a coal mine is necessarily either just or expedient, but though this case was decided after the earlier Income Tax Acts, it was an authoritative declaration of what had been law before, and must have been well known to that large proportion of the legislators who habitually acted at Quarter Sessions.

The Legislature in 1836, by 6 and 7 Will. IV. c. 96, enacted that all poor-rates shall be made "upon an estimate of the net annual value of the several hereditaments rate thereunto—that is to say, of the rent at which the same might reasonably be expected to let from year to year, free of all usual tenant's rates and taxes and tithe commutation, rent tax if any, and deducting therefrom the probable average annual cost of the repairs, assurances, and other expenses, if any, necessary to maintain them in a state to command such rent." And in the form of the rate prescribed there is to be in one column a statement of the gross estimated rental, and in another of the rateable value.

The Act 5 and 6 Vict. c. 35, adopts without any variations which affect this question the language of the former Income Tax Act (46 Geo. III. c. 65). Before that there had been an earlier Income Tax Act (43 Geo. III. c. 122) from which there are changes, and I think some of those changes throw light on what was the intention of the Legislature in the substituted enactments. The first Income Tax Act (43 Geo. III. c. 122, section 13) comprised in Schedule A all lands, tenements, hereditaments, or heritages, and enacted that for them there "shall be charged throughout Great Britain, in respect of the property thereof, for every twenty shillings of the annual value thereof, the sum of one shilling, and enacted that the said duty shall be construed to extend to all manors and messuages, to all quarries of stone, slate, limestone, or chalk, mines of coal, tin, lead, copper, mundic, iron, and other mines, to all iron mills, furnaces, and other iron works, and other mills and engines of the like nature, to all salt springs or salt works," and many more things.

The Legislature here classed together in one schedule properties such as agricultural land, which from their nature will continue permanently to exist, and properties such as quarries, which will certainly come to an end within a period longer or shorter, but the duration of which can be generally calculated, and properties such as iron works, which are real property deriving their annual value from being ancillary to a trade. It imposed one tax at one rate upon them all, and gave one general rule that the annual value should be understood to be the rack rent, and it directed that the tax should be paid by the occupier, who might deduct a proportionate part from his rent; and by No. 3 there is allowed a deduction for repairs not exceeding 5 per cent. on the annual value of a dwelling-house, or two per cent. on the annual value of a farm, but there is not, expressly at least, any allowance made for repairs in respect of other kinds of real property; and by Schedule B there is imposed in addition a tax on the occupier of all such properties, with some exceptions not material to be noticed; and the first of the rules for estimating the annual value of properties before described in Schedules A and B in England is that no such property shall be charged at less than the last poor-rate, which shows that those who framed that Act were thinking of the analogous case of the parochial taxation for the relief of the poor.

The statute 43 Geo. III. c. 122, also, by section 84, imposes a duty by Schedule D upon the annual profits, *inter alia*, of every trade, and by the rules therein the duty shall be computed upon a sum not less than the full amount of the profits upon a fair and just average of three years, without any other deduction than is hereafter allowed; and the third rule is, no deductions shall be made on account of any sums expended on repairs of premises occupied for the purposes of such trade, nor for any sum expended for the supply or repairs or alteration of any utensils or articles employed for the purpose of such trade beyond the sum usually expended for such purpose according to the average of three years. I conjecture that during the three years that elapsed between the passing of the 43 Geo. III. c. 122 and the passing of the 46 Geo. III. c. 65, experience had shown that there were difficulties in working this scheme, and that claims for deductions had been made, for whilst most of the provisions of the first Act were re-enacted, those to which I have above referred were all materially altered. It is not necessary to go through the 46 Geo. III. c. 65, for the provisions of that Act are re-enacted in the 5 and 6 Vict. c. 35 without any alteration which seems to me material to notice.

The third rule as to Schedule D which I have above quoted still continued to be negative in its form, that no deductions should be made under several enumerated pretences, but the number of these was considerably increased, and why I do not know; instead of saying that the duty should be imposed on a fair and just average of the amount of the profits for three years, it is imposed "on the balance" of such profits. I have not been able to discover any difference in the meaning of the two phrases.

The several rates and duties granted by the 5th & 6th Vict. c. 35, are imposed by section 1, Schedule A, for all lands, tenements, hereditaments, or heritages in Great Britain shall be charged yearly "for every twenty shillings of the annual value thereof the sum of sevenpence." Then by section 60 the properties chargeable under Schedule A, instead of being, as in statute 43d Geo. III. c. 122, treated together in one Schedule, are treated of under numbers. By No. 1—which gives the general rule, which is the same as that which in 43d Geo. III. c. 122, was applied to all in Schedule A—the annual value shall be "understood to be the rent by the year at which the same are let at rack-rent, if they have been let at rack-rent within seven years before the assessment; but if the same are not so let at rack-rent, then at the rack-rent at which the same are worth to be let by the year." And by section 63, in addition to the duties to be charged under Schedule A, there shall be levied the duty under Schedule B on all properties to be charged according to the general rule in No. 1, with some exceptions not material to this case.

The rules which expressly gave a power to allow for repairs a sum not exceeding a certain percentage on the annual value of houses and farms, are not re-enacted, nor are the rules above quoted, which refer to the poor-rate in England as being the test of annual value. It is not material in this case to inquire whether the rack-rent mentioned is to be measured by what in Statute 6 and 7 William IV., Chap. 96, is called the gross estimated rental without making any allowance for those annual repairs which the tenant would certainly take into consideration when bidding that rent. It could not have been intended that the rack-rent should be less than the rateable value.

No. 2 and No. 3 comprise properties which are comprised in the general description in Schedule A, but which it was not thought expedient to include in Schedule B, though in the first Income-Tax Act they had been so included. One would anticipate that the duty imposed on those would be on the rack-rent which they would have been worth to let by the year and something more in lieu of the duty imposed by Schedule B. And as the duty imposed by the Poor-Law and the duty imposed by the first Income-Tax Act were precisely the same on properties like quarries, which are terminable, and properties which are permanent, one would expect that no distinction would now be made. Whether that is so or not must depend on the true construction of the words used, which with reference to No. 3 are these—"The annual value of all the properties hereinafter described shall be understood to be the full amount for one year, or the average amount for one year, of the profits therefrom within the respective times herein limited"—that is, of quarries, &c., and what may be called miscellaneous properties, one year, of mines, &c., five years. No definition is given of profits for one year. That is left to be ascertained as a matter on the construction of the Act. The rules which are contained in sections 60, 61, 62, and 64 relate to many things—as to the place where the duties shall be assessed, and the persons by whom they are to be assessed, and also as to many allowances to be made—but I can find nothing in them to throw any light on the construction of the words "the full amount for one year, or the average amount for one year, of the profits received therefrom within the respective times herein limited"—that is, in some cases one year and in some five.

It may be convenient here to notice two arguments, not, I think, relied on by the Solicitor General in his argument at your Lordships' bar, though he had used them before the Exchequer Division in *Knowles* v. *Macadam*. It was said by Lord Cairns in *Gowans* v. *Christie* (Law Reports, 2 Scotch Appeals, 284, and 11 Macph. H. of L. 61) that "a lease of mines is not in reality a lease at all in the sense in which we speak of an agricultural lease. There is no fruit—that is to say, there is no sowing and reaping in the ordinary sense of the term, and there are no periodical harvests. What we call a mineral lease is really, when properly considered, a sale out and out of a portion of the land." I think this is a perfectly accurate statement, but the argument that no income-tax should be imposed on what is perhaps not quite accurately called rent reserved on a mineral lease, because it is a payment by instalments of the price of minerals forming part of the land any more than on the price paid down in one sum for the out and out purchase of the minerals forming part of the land, is, I think, untenable. Even if it had not been, as decided in *The King* v. *Attwood* (6 Barnewall and Cresswell, 277), the constant course from the statute of Elizabeth downwards to construe an annual tax imposed on coal mines, quarries, and the like, as being imposed on that which is produced from them, I should say that no other construction could be placed on the 60th section of the 5th and 6th Victoria, chapter 35, especially after seeing in what manner the Legislature in 43 Geo. III. chapter 122, had dealt with them, though I think that the judgment of the Exchequer Division in *Knowles* v. *Macadam* (Law Reports, 3 Exchequer Division, 23) seems an authority to the contrary. From that judgment, however, to which I shall afterwards return, I must ask your Lordships to dissent.

It has also been sometimes argued that it is very unjust to tax at the same rate a terminable interest such as that in a mine, which must at some time be worked out, and a fee-simple interest, which will endure so long as this world continues in its present state. I will not inquire whether this is just or not. There is much force in the argument on the other side that if the interest is terminable, so is the tax, and will cease when the interest ceases. But whether just or not, there can be no doubt that the same annual charge is imposed upon a terminable annuity and on one in perpetuity, and what seems harder, that the same annual charge is imposed on a professional income earned by hard labour, often extending over many years before any return is got, and when earned precariously as depending on the health of the earner.

In the 5th and 6th Victoria, chapter 35, the different schedules were kept apart and complete in themselves, but I think wherever there is any provision in any one of the schedules that throws light on what is meant by annual value or annual profit or capital, it may be very material in construing the meaning of those words used in other parts of the Act. Thus, I think that the provision under the fifth head of No. 2, that an allowance may be made from the amount to be taxed on fines "if it be proved that such fines or any part thereof have been applied as productive capital on which a profit has arisen or will arise otherwise chargeable under this Act for the year in which the assessment shall be made, and the provision in Schedule D that "no deduction shall be made on account of any sum employed or intended to be employed as capital," neither of which was in the 43 Geo. III. chapter 122, throw some light on each other and may fairly be referred to in inquiring what is meant by "the average amount for one year of the profits received within the time limited." But Schedules A and B were complete in themselves, and Schedule D, which was regulated by section 100, was complete in itself. The duties were however assessed by different Commissioners and in different places. By the 29 Vict. cap. 36, section 8, "The several and respective concerns described in No. III. of Schedule A of 5 and 6 Vict. cap. 35, shall be charged and assessed to the duties hereby granted, in the manner in the said No. III. mentioned, according to the rules pre-

scribed by Schedule D of the said Act, so far a such rules are consistent with the said No. III.: Provided that the annual value or profits and gains arising from any railway shall be charged and assessed by the Commissioners for special purposes."

In *Knowles* v. *Macadam* Kelly, C.B., says—"It is quite clear that section 8 of 29 Vict. cap. 36, transfers the present case" (that of a coal mine) "from Schedule A to Schedule D," and the judgments of the Barons in that case seem to me to depend a good deal on this, as it seems to me an erroneous assumption. I think that the duties are to be assessed according to the rules in Schedule D, and consequently all the anxiously devised provisions for keeping the returns under Schedule D secret and confidential—to be found from section 100 to section 131—are made in future to apply to returns for the concerns described in No. III of Schedule A, and any rule expressed as to the mode of computing the balance of the profits and gains during the period of three years given in Schedule D, which is not inconsistent with No. III., may perhaps be made in future to apply to the mode of computing the annual profits of properties chargeable under No. III.; and I see that in *Addie* v. *Solicitor of Inland Revenue* (2 R. 431) reliance is placed on the judgment of the Lord President on the third rule as to concerns under the first case of Schedule D, that no deduction is to be made "for any sum employed or intended to be employed as capital." But I do not think reliance can be placed on this. If from the nature of the concerns in No. III. an allowance ought to be made for capital, then this rule should be rejected as inconsistent with No. III. If no such allowance should be made, the rule is not required.

In *Forder* v. *Handyside* (L.R. 1 Ex. Div. 233) the Exchequer Division came to a decision as to repairs estimated but not actually incurred, which, whether it was right or wrong, is no longer, since the 41 Vict. cap. 15, sec. 12, to apply, and as there is no question in the case at the bar as to repairs, it is unnecessary to inquire whether it was right or wrong.

If the effect of section 8 of 29 Vict. was to transfer cases in Schedule A No. III. to Schedule D, it would change the respective times on an average for which the profits were to be assessed. Mines would be reduced from a five year period to a three-year period; quarries and things of that sort would be raised from a single year to three. I cannot think this was either intended or expressed. But on the assumption that it had this effect, the Exchequer Division came in *Knowles* v. *Macadam* to a very startling decision. In that case a company had bought for a very large sum the minerals in beneficial leaseholds of coal mines having an average of thirty-two years to run, and in freeholds. The decision of the Exchequer Division was that the effect of transferring the mines as they thought from Schedule A to Schedule D was to cause the company to be assessed as persons carrying on the trade of vendors of coal who had bought wholesale a large quantity of coal, not stored in warehouses but in the earth, and which they were going to sell in the course of their trade, and that they ought to assessed on the principle of valuing the stock-in-trade—that is, the coals thus stored in the earth at the beginning of the three years, and again valuing the stock at the end of the three years, and taking the difference between them as being to be added to or deducted from the net receipts during that period in estimating the profits for the three years. The effect of this would be that though the mines were worked so as to produce a large profit above the working expenses, yet if they were worked by a purchaser who had over estimated the value of the minerals, and paid such a price for them that he was a loser, no income-tax was to be paid in respect of those mines. That is a result which could never have been intended by the Legislature, and if it follows by legitimate reasoning from the interpretation put upon the 29 Vict. cap. 36, sec. 8, it seems to me a *reductio ad absurdum* showing that the interpretation was wrong.

I therefore advise your Lordships to hold that the decision in *Knowles* v. *Macadam* was erroneous. I do not wish to lay down any general proposition either that money expended in sinking pits can never be in the nature of expenses incurred within the five years in working the coal so as to be properly taken into account in estimating the profits made in that period, or to say what, if any, the circumstances are under which it may be done. That I think had better be left to be determined when the case arises. I think it enough to say that this sum of £9027 described in the case is not such as ought to be deducted.

The result is that in my opinion the interlocutor below should be affirmed and the appeal dismissed with costs, with the modification proposed by the noble and learned Earl.

Interlocutor affirmed and appeal dismissed with costs, except the costs incurred by reason of the remit.

Counsel for Appellants — Solicitor-General (Herschell)—Asher. Agents—W. A. Loch, and Murray, Beith, & Murray, W.S.

Counsel for Respondents—H. M. Advocate (M'Laren)—Solicitor-General (Balfour)—Crawford. Agent—The Solicitor for Inland Revenue.

COURT OF SESSION.

Friday, March 11.

OUTER HOUSE.

[Lord Rutherfurd-Clark. Ordinary.

SANDILANDS *v.* JOHNSON'S TRUSTEES.

Obligation—Provision by Father for his Daughter in her Marriage-Contract, to which he was a Party, how far Affected by Provision in his Subsequent Testamentary Settlement—Conditional Obligation or Gift.

A father, who was a party to his daughter's marriage-contract, bound and obliged himself thereby to pay the marriage-contract trustees £5000 to be held by them for his said daughter in liferent, and after her decease for