defenders or that the Company's reply of 13th December amounted to an acceptance of the pursuer's letter. As the defenders demanded a written discharge of the policy the surrender was not in his view completed until that discharge was given.

On a reclaiming note the First Division of the Court (the Lord President, Lord Kinnear, and Lord Guthrie) reversed this judgment and assoilzied the defenders. The Court were of opinion that there was a concluded contract between the parties, the pursuer's letter of 12th December being an acceptance of a standing offer on the part of the Company to pay the surrender value. It was of no consequence that the documents acknowledging receipt of the money and acknowledging that the policy was no longer in force had not been sent. Lord Kinnear said: "The whole argument for the pursuer seemed to me to be founded on a confusion between the completion and the execution of a contract. It does not affect the completion of a bargain that something remains to be done in order to carry it out: and all that remained to be done after this letter of 12th December had been received was to carry out the contract then made by delivering or discharging the policy on the one part and paying over the surrender value on the other. It seems to me clear on the facts stated that either party could have enforced the execution of the bargain against the other and nothing that followed can make any difference. No doubt the pursuer changed his mind, but then it was too late, for he had made his bargain."

I am,

Yours, etc.,

JOHN L. WARK.

EDINBURGH, 29*th October* 1909.

DEAR SIR,—I beg to bring under the notice of the Faculty the following recent decisions:—

I.—LIABILITY TO ACCOUNT FOR INCOME-TAX DEDUCTED FROM ANNUITIES.

(*The Lord Advocate* v. *The Edinburgh Life Assurance Company.* Reported 1909, 2 *Scots Law Times*, 394; *Scottish Law Reporter*, vol. xlvii. p. 94.)

A note on this case in the Court of Session will be found, *ante*, vol. iv. p. 308.

The defenders appealed to the House of Lords. On 9th December 1909 the House (Lord Chancellor Loreburn, Lord Ashbourne, Lord Atkinson, and Lord Gorell) allowed the appeal.

In the course of the debate counsel for the Crown admitted that the income from the Company's investments was "profits and gains brought into charge" within the meaning of the twenty-fourth section of the Act of 1888. But they contended that as the annuities were not made a special charge on any particular fund, but were in fact paid out of a mixed fund, the payments must be ascribed to the whole sources of income in the proportion which each source of income bore to the whole income.

The House rejected this contention. Lord Atkinson, who delivered the leading judgment, held that in order to succeed in their claim to retain the sum sued for, it was not necessary for the Company to go through the form of setting apart part of their taxed income to pay these annuities. "In my opinion," he said, "where annuities such as these are charged upon a tax-bearing fund, amply sufficient to pay them in full though not set apart

for that purpose, they cannot be held to be 'not payable' or 'not wholly payable' out of gains or profits brought into charge within the meaning of the twenty-eighth section. For the purposes of that section, I think that the interest or annuities charged upon the tax-bearing fund must under such circumstances be treated as payable out of that fund so far as it will reach. If the taxed fund be insufficient to pay all the interest and annuities, then the income-tax deducted on the interest or annuities not satisfied out of it must be accounted for. In short, I attach no special virtue to the manipulation of the funds of a corporation in the manner above-mentioned as a means of escape from a liability to pay income-tax. To do so would in effect be, I think, to lose sight of what appears to me to be one of the main objects, if not the main object of the section, namely, to avoid obliging a subject to pay income-tax twice over on the same sum. That object would in the result be defeated if the subject were obliged first to pay income-tax on a given fund, and then to pay income-tax on sums properly payable out of it simply because he had omitted formally to dedicate the fund specially to that use and formally to pay these sums out of it."

Lord Gorell thought that the principles indicated in the judgment in the *London County Council* case (1901, *A.C.* 26) should apply where money out of which annual payments are made is derived from two sources, that coming from one being charged with income-tax, while that coming from the other is not so taxed. He could find no authority for the view of the First Division that because there were two funds practically charged with the payment of the annuities, the liabilities must be apportioned rateably between them. The Company might pay the annuities out of which funds they pleased, and the question of their rights and liabilities with regard to the Crown must depend not on their book-keeping or system of accounts but upon the statutes, according to which the tax might be deducted and retained, although the annuities were not payable exclusively out of the taxable income of the Company. In the case of a business like the Company's, and taking into account the language and object of the Acts, he thought that if the annuities were made payable out of the interest, dividends, and rents charged with the tax, it was immaterial whether the money was taken out of the general till or not, provided that it did not exceed the amount of income on which tax was charged.

Lord Atkinson added that, even if his view on the main question had been otherwise, he should have had great difficulty in determining what, for the purposes of the decree, was to be taken as "revenue of the Company which had not paid income-tax." By the judgment appealed against, the annuities were to be apportioned between receipts which were in their nature portions of capital (*i.e.* prices paid for annuities, etc.) and income from investments, as if these were two ascertained portions of revenue as distinguished from capital, income-tax being leviable on the one and not on the other; while it was admitted that these receipts might be very considerable and yet the net profits made by the trading, apart from income on investments, be nothing or less than nothing. He thought great injustice might result from the application of such a principle.

II.—Income Tax on Foreign Investments.

(*The Scottish Widows' Fund Life Assurance Society* v. *Farmer.* Reported 1909, *Session Cases*, p. 1372; and 1909, 2 *Scots Law Times*, 255.)

This was an appeal by way of stated case against a decision of the Commissioners of Inland Revenue upholding an assessment of the Society

for income-tax on a sum of £101,607, being income derived from interest on investments in (1) American railroad and other bearer bonds, and (2) mortgages over real estate in America and the British Colonies. The interest on the bonds was payable on presentation of coupons, which along with the bonds themselves were kept by the Society at its head office in Edinburgh. The interest on the mortgages was payable on presentation of interest notes, which were some of them kept in the Society's agents' hands in America and others in Edinburgh where the mortgages themselves were kept. The interest was payable in America, and the practice of the Society was to forward the coupons and interest notes to America for payment as they fell due. As the revenue of the Society apart from these sums of interest was more than sufficient to meet the expenditure of the year, the interest was not remitted home, but was allowed to accumulate in America until it could be invested there in similar bonds and mortgages, which were sent to the head office in Edinburgh as they were obtained. The interest on all these foreign investments was included in the revenue account of the Society and treated as assets of the Society in the general statement of its affairs.

The question in the case was whether that interest was in the sense of the Income Tax Act, 1892, section 100—"received in Great Britain in the current year."

The Commissioners held that the bearer bond coupons having been received into this country, where there is a ready market for their sale, the interest represented by them was chargeable with duty. As regards the interest notes, as there is not a ready market for realisation of these in the United Kingdom, they held that only so much of these was chargeable with duty as was represented by the new bearer bonds brought to this country, where there is a ready market for such bonds.

In the Court of Session it was not argued for the Crown that the keeping of the coupons in this country rendered the Society chargeable with tax on their amount, but it was maintained that when the interest received in America was invested in bonds and mortgages which were then sent here, the receipt of these in this country rendered the Society liable to tax upon their value. They were negotiable instruments which could easily be turned into money.

The First Division (Lord President Dunedin, Lord Maclaren, Lord Kinnear, and Lord Pearson) reversed the decision of the Commissioners and ordered repayment of the tax paid with interest at 4 per cent. from the date of payment. The Court followed the decision in *The Gresham Life Assurance Company* v. *Bishop*, *Law Reports* 1902; *Appeal Cases*, 287, which decided that interest on foreign investments not actually remitted to this country was not liable to tax although the Company credited this interest in its accounts. (See also *Standard Life Assurance Co.* v *Allan*, 1901, 3 *Fraser*, 805.)

The Lord President said that the word used in the statute was "receipt," and nothing less than actual receipt would do, either in specie or in a form which according to the ordinary uses of commerce was one of the known forms of remittance. The bonds he held were not such. They were nothing more than vouchers of debts not yet payable and still in the pockets of the foreign debtors. The fact that such bonds have been held liable to probate duty he considered irrelevant. Probate duty was a return for giving the executor an active title which he would not otherwise get. It had nothing to do with receipt of money in this country. The fact that a bearer bond is a marketable security was equally beside the question. It was not a recognised form of remittance of money because it had a fluctuating value. The same considerations applied to the mortgages as to the bonds.

On a discussion as to the interest to be allowed on the tax ordered to be repaid the Court, following the case of *The Standard Life Assurance Co.* v. *Allan*, *supra*, allowed 4 per cent. as being the average rate earned on investments by such a company as the appellants.

III.—Assignability of Policy effected under the Married Women's Policies of Assurance (Scotland) Act, 1880.

(*The Edinburgh Life Assurance Company* v. *Balderston and Another.* Reported 1909, 2 *Scots Law Times*, 323.)

This was a multiplepoinding brought by the Company to determine the right to the contents of a policy effected on his life by a certain James Shearar who died on 25th January 1909. The competing claimants were the widow and James Balderston and James R. Walker, who were assignees under an assignation of the policy granted by the widow with consent of her husband. The policy had been taken out by Shearar in 1891 for the benefit of his wife under the provisions of the Married Women's Policies of Assurance (Scotland) Act, 1880, and under it the Company agreed to pay to the person who might be trustee under the Act the sum of £500 with bonus additions. At the date of Shearar's death the bonus additions amounted to £97. The assignation to Balderston and Walker was dated 29th March 1894, and was made in security of a debt of £1000 then due to them by Shearar. It had been duly intimated to the Company. In the assignation Shearar bound himself to pay the premiums on the policy and to reimburse the assignees for all payments made by them for keeping the policy in force. He paid the premiums up to and including 30th March 1895. In June following his estates were sequestrated, and the surrender value of the policy at the date of sequestration was £41, 7s. The assignees claimed in the sequestration and deducted this amount from their claim as the value of the security they held in respect of the assignation.

The assignees paid the premiums on the policy from 30th March 1896 to the date of Shearar's death, amounting to £290, 16s. 3d. They now claimed the whole proceeds of the policy, or, alternatively, these proceeds under deduction of £41, 7s., the surrender value at the date of Shearar's sequestration. The widow maintained that as the policy was a postnuptial provision to her the assignation to creditors of her husband was bad, and she was entitled to the proceeds of the policy, less the amount expended by the assignees on premiums with interest on that amount.

Lord Mackenzie sustained the widow's contention. He found that in terms of Section 2 of the Married Women's Policies of Assurance (Scotland) Act, 1880, the policy was to be deemed a trust by Shearar for the benefit of his wife, and that it was incompetent for him to become a party to an assignation of the policy in security of his own debt. To do so was to attempt to revoke a trust which the statute made irrevocable. His Lordship referred to the cases of *The Scottish Life Assurance Co., Ltd.*, v. *Donald*, 1901, 9 *Scots Law Times*, 200, and *Hay's Trustees*, 6 *Fraser*, 978, as authorities justifying the conclusion that the policy could not be validly assigned to the husband's creditors.

It was further contended for the assignees that even if the assignation was invalid as regards the property secured to the wife by the policy, the amount of that property was only £41, 7s., being the surrender value at the date of the husband's sequestration. The present value of the policy, they maintained, was due to the premiums voluntarily paid by them, and they were therefore entitled to the proceeds of the policy in so far as these exceeded £41, 7s. Lord Mackenzie rejected this contention and held that

the case was one of recompense. The assignees having *in bona fide* spent money upon property which they believed was theirs, but which in truth belonged to another, were entitled to be recouped their outlay with interest, but no more. The benefit created by that outlay must go to the true owner.

The assignees were accordingly held entitled to be ranked and preferred for the amount of the premiums paid by them with interest at 5 per cent. from the dates of payment, and the widow was found entitled to the balance of the proceeds of the policy.

IV.—(*J. G. Blyth* v. *The Corporation of the Royal Exchange Assurance.* Not reported.)

This case, decided by Lord Skerrington on 8th January 1910, turned purely on questions of fact. A question of law was raised in the pleadings as to whether a mortgage in English form is validly executed in Scotland if signed before and attested by one witness only, but the Lord Ordinary did not find it necessary to give a decision upon the point.

The pursuer, who was an engineer in Leith, asked reduction of two mortgages, one for £20 and one for £10, bearing to be granted by him on 14th and 29th April 1909 respectively, in favour of the defenders over an endowment policy effected by him with the defenders in 1897, and payable with bonus additions in 1914. It appeared from the proof that the mortgages were granted by the pursuer's wife, who forged his signature to the application for the loans and also to the mortgages themselves. She also forged endorsements to the cheques sent out for the loans, and although those were crossed, succeeded in getting them cashed through the cashier of a co-operative store with which she dealt, who accepted the endorsements and paid the cheques without question. The defenders failed to prove that the pursuer had any knowledge of his wife's actings or any good reason to suspect her fraud. It appeared that the defenders had never troubled to compare the signatures on the applications and the mortgages with the pursuer's genuine signature on the original proposal for the policy, which was in their possession. They also failed to prove that the pursuer had obtained any benefit from the money they had advanced to his wife. The Lord Ordinary granted decree of reduction and for delivery of the policy to the pursuer.

I am, SIR,

Yours, etc.,

JOHN L. WARK.

EDINBURGH, 2*nd February* 1910.