Friday, October 28.

FIRST DIVISION.

[Lord Curriehill, Ordinary in Exchequer Causes.

H. M. ADVOCATE *v.* THE MARQUIS OF AILSA.

Revenue—Succession Duty Act 1853 (16 *and* 17 *Vict. c.* 51), *sec.* 23—*Growing Timber.*

Held that the amount of succession duty leviable from an heir of entail in respect of his succession to certain woodlands, from which no other income was derived than the profit realised by the sale of the wood, must be determined by the provisions of section 23 of the Succession Duty Act of 1853, and that he could not be called upon to pay in addition succession duty on the value of the said woodlands as appearing in the valuation roll made up under the Valuation Acts.

By the Succession Duty Act 1853 (16 and 17 Vict. c. 41) it is enacted, sec. 23, that "where timber, trees, or wood, not being coppice or underwood, shall be comprised in any succession, the successor shall be chargeable with duty upon his interest in the net moneys, after deducting all necessary outgoings for the year which shall from time to time be received from any sales of such timber, trees, or wood, and shall account for and pay the same yearly; provided that no duty shall be payable on the net moneys received from the sale of timber, trees, or wood in any one year unless such net moneys shall exceed the sum of £10; provided that if the successor shall be desirous of commuting the duty, and shall deliver to the commissioners an estimate of the net moneys obtainable by him from the sale of such timber, trees, and wood as may in a prudent course of management of the property be felled by such successor during his life, the commissioners if satisfied with such estimate shall accept the same, and assess the duty accordingly."

On 20th March 1870 the present Marquis of Ailsa succeeded, on his father's death, to the entailed estates of Cassillis and Culzean, in the county of Ayr. At that date the estates comprised a large quantity of growing timber, which was not of the nature of coppice or underwood. In the schedule appended to the succession duty account given up by the present Marquis at his succession, a sum of £503 was entered as the annual value of the woodlands on the estate, as entered in the valuation roll, and duty at 1 per cent. on £8620, 18s. 5d., the amount of this sum when capitalised, in terms of the tables annexed to the Succession Duty Act 1853, was paid by him thereon.

Since his succession the present Marquis yearly cut down and sold large quantities of the said growing timber.

The present action was brought against him by H. M. Advocate for the Inland Revenue, the conclusions being to have the defender ordained to produce a correct account showing the net moneys in each year, after deducting all necessary outgoings for the year, received by him from the year of his succession down to 1877 from all sales of timber, trees, or wood (not being coppice or underwood) comprised in his said entailed lands and estate; and further, to pay the Inland Revenue such a sum as should be found to be chargeable by way of duty under the Succession Duty Act 1853 on his interest in said net moneys so derived and received by him within the said period.

It was admitted that the defender drew no rent or profit whatever for the land in question other than that which he derived from the sale of the timber as it was cut.

The Lord Ordinary (CURRIEHILL) pronounced this interlocutor:—"Finds (1) that the defender is chargeable with succession duty on his interest in the net moneys, after deducting all necessary outgoings for the year, which he has from time to time received during each of the years from 1870 and 1877, both inclusive, from the sales of timber, trees, or wood, other than coppice or underwood, on the estate of Culzean, to which he succeeded in 1870, except where such sales may not have exceeded £10 in any one year, and that he is bound to account for and pay the same to the pursuer: Finds (2) that in said accounting the defender is entitled to credit for the amount paid by him in name of succession duty on the woodlands on said estate, in so far as these at the time of his succession did not yield, or were not capable of yielding, income not of a fluctuating character, and that he is entitled to deduction of all necessary outgoings: And appoints the cause to be enrolled that the amount of duty now payable in accordance with these findings may be ascertained: Reserves all questions of expenses, and grants leave to both parties to reclaim."

His Lordship added the following note:—"In this action the Lord Advocate, on behalf of the Board of Inland Revenue, claims from the defender the Marquis of Ailsa payment of various sums, in name of succession duty, on sales of timber from the estate of Culzean, in Ayrshire, made by him in the year of his succession to that estate (1870), and in 1877 and the intervening years. The claim of the pursuer is rested entirely on the 'Succession Duty Act 1853;' while the defender in asking absolvitor founds not only on the statute, but also on the 'Valuation of Lands (Scotland) Act 1854' and the 'Valuation of Lands (Scotland) Amendment Act 1857.' The main defence is that the defender has already paid on the basis of the valuation roll (which in Ayrshire is made up by the officer of Inland Revenue as assessor) the full amount of succession duty exigible from him in respect of the woods of Culzean, and that the special provisions of the Succession Duty Act regarding sales of timber are not applicable to this case.

"As the whole question turns upon the effect, if any, that the Valuation Acts of 1854 and 1857 have upon the Succession Duty Act of 1853, in the way of modifying or altering the mode of assessing the duties on woods, it is necessary to have clearly in view the precise words of these statutes relating to this matter.

"Section 21 of the Succession Duty Act provides that 'the interest of every successor, except as herein provided, in real property, shall be considered to be of the value of the annuity equal to the annual value of such property, after making such allowances as are hereinafter directed, and payable from the date of his becoming entitled thereto in possession, or to the receipt of the income or profits thereof during the residue

of his life, or for any less period during which he shall be entitled thereto;' and tables are given for valuing the annuity, and the duty may be paid either in one sum or in instalments.

"By the interpretation clause, sec. 1, it is declared that 'real property shall include all freehold, copyhold, customary, leasehold, and other hereditaments and heritable property, whether corporeal or incorporeal, in Great Britain and Ireland, except money secured on heritable property in Scotland, and all estates in any such hereditaments.'

"The twenty-second and five following sections contain directions as to the mode of ascertaining the annual value of 'real property.' Section 22 directs that 'in estimating the annual value of lands used for agricultural purposes, houses, buildings, tithes, teinds, rent-charges, yielding or capable of yielding income not of a fluctuating character, an allowance shall be made of all necessary outgoings.' I apprehend that the real annual value of heritable property falling under any of the above descriptions was intended to be ascertained by a valuation made by the officers of Inland Revenue.

"The next five sections deal with real property the income of which is of a fluctuating character, such as woodlands, advowsons, leaseholds, manors, mines, and the like; and with reference to woodlands sec. 23 directs that 'where any timber, trees, or wood, not being coppice or underwood, shall be comprised in any succession, the successor shall be chargeable with duty upon his interest in the net monies, after deducting all necessary outgoings for the year which shall from time to time be received from any sales of such timber, trees, or wood, and shall account for the same and pay the same yearly,' unless the net produce of the sales is under £10; and provision is made for the successor having the duty assessed on an estimate of the annual produce of the sales in a prudent course of management. On this clause I would observe that the words 'timber, trees, or wood' clearly mean growing timber—in other words, woods, woodlands, or land under wood, whether growing wood as contradistinguished from underwood or coppice, which are capable of being regularly cut and of yielding an income not necessarily fluctuating. If the timber, &c., had been cut at the date of the succession, though not removed from the ground, it would have passed as moveable property to the executors of the predecessor, and would not have belonged to the 'successor' in heritage. And I think that, according to the fair and sound construction of this section and sec. 22, land under growing timber is not to be assessed for succession duty under sec. 22, but only under sec. 23, unless, of course, it shall be, as is often the case, available for grazing or similar purposes besides bearing a crop of timber. But where the land yields or is capable of yielding no revenue except from occasional sales of timber, no succession duty is to be demandable from or in respect of woodlands unless and until the timber should be felled and converted into cash. On the one hand, the Inland Revenue might never get any succession duty in respect of land so occupied, or, at all events, several successions might occur while the wood was maturing without producing any succession duty; while, on the other hand, the successor, after several generations had escaped, might become liable (by cutting and selling the timber) to large but fluctuating and uncertain claims for duty. And if the present question had depended solely on the Succession Duty Act, the defender could not have resisted the pursuer's claim.

"But it is said that the Valuation Acts have—not indeed expressly, but by necessary implication—materially modified the rule by which under the earlier statutes the annual value of woodlands is to be ascertained. The interpretation clause of the Valuation Act of 1854 (passed in the year subsequent to the Succession Duty Act) defines 'lands and heritages' to mean and include 'all lands, houses, shootings, and deer forests, where such shootings or deer forests are actually let, fishings, woods, copse and underwood from which revenue is actually derived,' &c. The preamble of the statute sets forth that it is expedient 'that one uniform valuation be established of lands and heritages in Scotland, according to which all public assessments leviable or that may be levied according to the real rent of such lands and heritages may be assessed and collected, and that provision be made for such valuation being annually revised.' The roll is then directed to be made up by assessors to be appointed by the commissioners of supply in counties, and by the magistrates in burghs; and when finally adjusted, after appeals to the commissioners or magistrates, as the case may be, the completed roll is to be the roll in force for the year. Sec. 6 provides that 'in estimating the yearly value of lands and heritages under this Act, the same shall be taken to be the rent at which one year with another such lands and heritages might in their actual state be reasonably expected to let from year to year; and where such lands and heritages consist of woods, copse, or underwood, the yearly value of the same shall be taken to be the rent at which such lands and heritages might in their natural state be reasonably expected to let from year to year as pasture or grazing lands.'

"Now, after the case of *Menzies*, 5 R. 531, it is impossible for the defender to maintain that if this Act had stood alone the succession duty is to be imposed according to the annual value of lands and heritages as ascertained by the valuation roll; as it was there decided that the provisions of that Act are applicable to purposes of local taxation only, and did not repeal or alter the rules laid down by Parliament in the Income Tax Act (and by parity of reasoning the Succession Duty Act) for ascertaining the value of land for the purposes of imperial taxation. And unless the valuation roll is by some subsequent statute made the rule for assessing the succession duty payable in respect of succession to heritable property, the defender's interest in the timber cut by him and sold must be ascertained and assessed according to the rules laid down in sec. 23 of the Succession Duty Act.

"But the defender maintains that by the Valuation of Lands Amendment Act 1857 the valuation roll is in certain cases made the rule for ascertaining the value of all heritable property for the purposes of imperial taxation, including the succession duty. By that statute commissioners of supply in counties, and magistrates of burghs, are empowered to employ as assessor under the Valuation Act the officer or

officers of Inland Revenue having the survey of the income-tax and assessed tax in their respective counties and burghs. Increased facilities for appeals against valuations are given, an appeal being in certain cases allowed to two of the Lords Ordinary of this Court; and then follows sec. 3, upon which the defender mainly relies—'Provided always, that if in any county or burgh the said commissioners or magistrates shall not appoint the officers of Inland Revenue to be such assessors as aforesaid, then no valuation made under the said Act by any other assessor or assessors shall be conclusive against or for the purpose of reducing on appeal or otherwise any assessment, rate, or charge under any Act of Parliament relating to the duties of Excise or the land-tax, or assessed taxes, or income-tax, or any other duties, rates, or taxes under the care or management of the Commissioners of Inland Revenue. This section does not indeed expressly declare that the valuation roll made up by the officer of Inland Revenue shall be conclusive as the rule for assessing to imperial taxation; but I think it would be difficult to hold that it does not by necessary implication make the rule conclusive against the Inland Revenue Commissioners in questions of succession duty involving the annual value of lands, houses, coppice, and underwood, and similar subjects 'capable of yielding income not of a fluctuating character,' seeing that the succession duties are by the Succession Duty Act (sec. 9) placed under 'the care and management' of these 'commissioners.'

"But it does not follow that although for the purposes of local taxation an 'uniform annual value' is attached by the valuation roll to all lands and heritages, whether capable of yielding an income 'not of a fluctuating charater,' or only an uncertain and occasional income, that value is in all cases, and particularly where the income is either non-existent or fluctuating, to be the rule for assessing to imperial taxation. It appears to me that in regard to subjects of the latter character, and particularly in regard to growing timber, trees, and wood, the value of the succession is to be ascertained and the duty assessed in terms of the special directions of the Succession Duty Act. The opening language of sec. 21 is here most important. It declares that 'the interest of every successor, except as herein provided, in real property shall be considered to be of the value of annuity equal to the annual value of such property.' Now, among the exceptions here referred to must clearly be embraced timber, trees, and wood which have no annual value, and in which the successor's 'interest' is by sec. 23 declared to be not 'an annuity equal to the annual value of the property,' but 'his interest in the net monies' produced by each periodical sale, the duty being ascertained and paid in each year, and only in each year in which a sale takes place; and I do not think that a general annual valuation of woodlands on the footing of their being grazing or pasture lands, quite irrespective of the timber which they may bear—a valuation, moreover, made primarily for the purposes of local taxation,—can be held to have been intended by sec. 3 of the Valuation Act of 1857 to be substituted in questions under the Succession Duty Act for the actual net returns received by the successor for the growing timber comprised within his succession, whether such returns are received by him annually or at intervals or once for all.

"I am therefore of opinion that the defendant is bound to account for the net monies received by him for his periodical sales of timber since his succession, and to pay duty thereon in the manner pointed out by sec. 23 of the statute. But while this is my opinion, I am equally clear that in settling the amount of duty he is entitled to credit for the amount of succession duty already paid by him in respect of the woodlands on his estate, in so far as these are productive of no annual value to him apart from their occupation as woods. If, for instance, they are, as is often the case, let or occupied for grazing, then they are of some annual value, and succession duty is payable upon them according to that value, which may be ascertained either by the valuation roll or by some separate valuation of the grazing. And if the payment already made by him fairly represents the duty on that part of his succession, no deduction will be made on that ground from the present claim. But, on the other hand, if the woodlands are of no annual value, *i.e.*, are not capable of yielding any income to the defendant not of a fluctuating character, then I am clearly of opinion that the payment made by him at the succession on the footing that the woodlands were liable to ordinary succession duty according to the value appearing in the valuation roll was a payment which the officers of the Inland Revenue had no power to demand, and for which they must now give credit in the present accounting. Such subjects as I have already pointed out were by sec. 23 placed on a different footing as to succession duty from heritable property having a fixed annual return, and could not, prior to the Valuation Act, have been assessed at all for the duty. The lands and their annual value were virtually exempted from the duty, and in lieu thereof the duty was imposed on what is quite a different thing, viz., the net produce of the timber when sold. It was not the intention, and I think it was not the meaning, of the Valuation Acts, on the one hand, to render liable to duty lands which were not liable under the Succession Duty Act, or, on the other hand, to exempt from duty the sales of timber which were expressly made liable by the Succession Duty Acts.

"The defendant further maintains that the 'outgoings' from the sales which the pursuer proposes to allow in fixing the 'net monies' received by him are not sufficient. This is a matter of fact which must be ascertained either by a proof or by a remit to an accountant, or in some other similar manner. The case is ordered to the rolls to have these points disposed of."

The Inland Revenue reclaimed.

Authorities—*Menzies* v. *Inland Revenue*, Jan. 18, 1878, 5 R. 531; *Attorney-General* v. *Lord Sefton*, July 6, 1863, 2 Hurlston and Coltman, 362, and Mar. 3, 1865, 11 Clark. H. of L. Ca. 257.

At advising—

Lord President—This is a question as to the way in which the succession duty should be assessed upon growing timber forming part of the estate which the successor has obtained by means of his succession in terms of the statute.

It appears that on the 20th of March 1870 the present Marquis of Ailsa succeeded his father in

the entailed estates of Cassillis and Culzean, and that these estates comprised a large quantity of very valuable growing timber—that is to say, large timber not being in the nature of coppice or underwood; and it is alleged by the pursuer that a portion of this timber has been cut down and sold by the defender in each year since he succeeded to the estate, and he specifies what the amount realised by these sales was. He further says that the duty falls to be assessed in terms of the 23d section of the Succession Duty Act upon the amount realised by these sales, and that upon the amount of all future sales duty will be leviable in the same manner. Now, this is not disputed on the part of the defender, but he says that if that be the true mode of assessing the succession duty in respect of his interest in timber, then he has been improperly assessed at a previous time upon the same subject, in respect that at the time of his succession he was made to pay duty upon the ground on which this timber grows according to its value as ascertained by the assessor of the county in terms of the Valuation Acts. And there is no doubt that he did so. At the time of his succession to the estate the Crown demanded and obtained payment from him of a certain sum of money, which is specified in the record as the value of the ground upon which this timber grows, valued in terms of the 6th section of the Valuation Act of 1854, which provides, among other things, that "where such lands and heritages consist of woods, copse, or underwood, the yearly value of the same shall be taken to be the rent at which such lands and heritages might in their natural state be reasonably expected to let from year to year as pasture or grazing land." Now, this assessment could not have been levied in terms of the 6th section of the Valuation Act until the passing of the subsequent Valuation Act of 20 and 21 Vict. cap. 58, for before that time the valuation under the original Valuation Act did not apply to imperial taxes. But it was made applicable to such by the 20th and 21st of Victoria.

The argument of the Crown is that they are entitled to retain what they levied at the time of the defender's succession to the estate, because the assessment which they are entitled to under the 23d section of the Succession Duty Act is an assessment on wood or trees only, whereas the assessment which they levied at the time of the defender's succession was an assessment on the value of the ground on which the trees grow. Now, it is matter of fact admitted upon the record that the defender draws no rent or profit whatever of any kind from this ground, except the profit which he derives from the sale of the timber as it is cut, and therefore if both of these assessments are now sustained, then the Crown is undoubtedly levying succession duty upon the interest of the successor to this estate in respect of a value which is not realised, and cannot be realised so long as the ground remains in its present condition occupied by growing timber. That is a plainly unjust result. We may be driven to adopt it by reason of the words of the Acts of Parliament that we are dealing with, but certainly we should not adopt it upon any other ground than being absolutely compelled to do it by positive enactment. Now, let us see how the statutes stand in this respect. It appears to me that the circumstance of this ground being entered in the valuation roll in terms of the Valuation Act of 1854 has nothing to do with the question before us. That is, in so far as succession duty is concerned, a mere accident. We must construe the Succession Duty Act as it was passed in the year 1853 without reference to any subsequent legislation whatever, unless such subsequent legislation has altered the incidence of that succession duty or altered the mode of levying the succession duty in such a manner as to justify the present demand. But so far from the Valuation Act having any such effect, it is quite plain that it is impossible that it should have that effect—in the first place, because it is an Act for valuing lands and heritages, and for nothing else; and secondly, in respect of the express provision in the 41st section of that Act, which says that "nothing contained in this Act shall exempt from or render liable to assessment any person or property not previously exempt from or liable to assessment." I therefore dismiss from farther consideration either the Valuation Act of 1854 or the subsequent statute which was passed three years later, and inquire what is the true meaning and construction of the clauses of the Succession Duty Act prescribing the mode in which succession duty is to be levied on the interest of every successor in heritable estate. There is a series of sections prescribing the mode in which the duty is to be levied on such interest, and the first of these is section 21, which is very comprehensive and general. It provides—"That the interest of every successor, except as herein provided, in real property shall be considered to be the value of an annuity equal to the annual value of such property after making such allowances as are hereinafter directed and payable from the date of his becoming entitled thereto in possession, or to the receipt of the income or profits thereof during the residue of his life, or for any less period during which he shall be entitled thereto, and every such annuity for the purposes of this Act shall be valued according to the tables in the schedule annexed to the Act." Now, that describes generally the manner in which the interest of the successor in heritable estate is to be ascertained and valued for the purposes of imposing the succession duty. But the statute goes on very naturally to make more special provisions in respect of different kinds of interests which parties may have arising from the sort of produce which the heritable subject may yield. Some heritable subjects yield a constant yearly rent, not of fluctuating amount. Others again yield an income of a very different kind—fluctuating—becoming annually due, it may be, but still fluctuating; others again yield only an occasional return; and it was obviously quite necessary that the statute should proceed to deal with each of these classes. The 22d, 23d, 24th, 25th, and 26th sections are all directed to that subject. The first is the 22d, which deals with property yielding or capable of yielding income not of a fluctuating character, and it prescribes how that is to be dealt with. The 26th section, passing over the three intervening ones in the meantime, provides generally for subjects which yield income of a fluctuating character. It provides—"The yearly value of any manor, open mine, or other yearly property of a fluctuating yearly income shall either be calculated upon the average produce or income derived therefrom after de-

ducting all necessary outgoings during such a number of preceding years as shall be agreed upon for this purpose between the commissioners and the successor before the first payment of duty on the succession shall become due, or if no such period shall be agreed upon, then the principal value of such property shall be ascertained, and the annual value thereof shall be considered to be equal to interest at the rate of 3 per cent." Now, that is a section which, if the case were not otherwise provided for, would cover the very question before us, because this is just a subject of real property yielding a fluctuating income.

But we do not require to resort to that section in the present case, because there is a section especially applicable to the case of wood, and that is the 23d. It is provided by it that "Where any timber, trees, or wood, not being coppice or underwood, shall be comprised in any succession, the successor shall be chargeable with duty upon his interest in the net moneys, after deducting all necessary outgoings for the year which shall from time to time be received from any sales of such timber, trees or wood, and shall account for the same and pay the same yearly, provided that no duty shall be payable on the net monies received from the sale of timber in any one year, unless such net monies exceed £10, and provided that if the successor be desirous of commuting the duty he may agree with the commissioners for that purpose." Now this is the section under which the present assessment is laid, and the argument of the Lord Advocate is that this is an assessment upon trees or wood, and not an assessment upon the land upon which it grew. But it is an entire fallacy to suppose that an assessment is laid under this statute upon land. The assessment is laid upon the interest of the successor in such land, and upon nothing else. Every section of the statute proves that, and the leading section (21), referring to real property, commences in this way—"The interest of every successor in real property shall be considered to be of the value" of so-and-so. And that is repeated in various of the other sections. It is obvious, therefore, that it is not the land that is to be assessed, but the interest of the successor in the land, valued according to what he derives from the land. That is the principle of the statute. Now, applying that principle here, is it not very plain that if the only value which the successor derives from the land is that which he obtains by the sale of the timber, that is the whole of the interest to which the succession duty can be applicable?

If there was any rent or value derived from this land other than that which arises from the sale of wood, I do not in the least doubt that it might be liable in duty. There is nothing in the statute to prevent that. But we have it distinctly admitted here by the Crown that the only income of any kind derived from this land is by the sale of the timber. It was said that it is not merely the value which is yielded by the property that is to be considered in fixing the assessment, but also the value which it is capable of yielding, and that is quite true. But is this land capable of yielding any other value than that which it does yield by growing timber and selling the timber? I apprehend not, in its present condition. If the trees were cut down and the ground pastured, it certainly would yield another and a different value, but then it would not yield the value which it is yielding now. In short, the growth of the timber for the purpose of sale is incompatible with any other use of the ground whatever; and therefore this ground neither yields nor is capable of yielding any other value than that which arises from the sale of the timber grown upon it. I am therefore of opinion that the Lord Ordinary's interlocutor is well founded, and ought to be adhered to.

Lord Deas—This question has been very fully and ably argued, and we have carefully considered it at consultation. I think it quite sufficient therefore to say that I entirely agree with the observations and the opinion of your Lordship.

Lord Mure—The question is raised in the following circumstances. As I understand it, the defender on his succession was assessed for succession duty on these lands on a valuation made under and in respect of the Valuation Acts of 1854 and 1857, for woodlands in terms of the provisions of the statute; and under an arrangement with the Inland Revenue he has paid that duty as succession duty for these woodlands ever since. That is made matter of averment by the Crown in the 4th article of the condescendence, and in the explanatory article it is stated as quite a clear and distinct fact. Since then a further demand has been made upon the defender by the Inland Revenue under the 23d section of the Succession Duty Act of 1853 for payment of an assessment on the value of the timber which has from year to year been cut upon these woodlands since that date. The defender does not dispute as a general proposition his liability to be assessed for timber under that 23d section of the Succession Duty Act, but he denies his liability to be assessed for that timber and for the land on which the timber was grown as woodland in addition; and he maintains that if an assessment is now to be laid on under the 23d section of the statute for the value of the timber, he is entitled to deduct from the sum so brought out the sum that he has already paid as succession duty on a valuation of that woodland as woodland. The Lord Ordinary has given effect to this contention, and, as I understand it, the defender does not dispute the Lord Ordinary's proposition that he is liable for assessment under the 23d section of the statute, but maintains that if the Lord Ordinary's judgment is right, defender is entitled in an accounting to credit for the sum he has already paid as succession duty on these woodlands. The question therefore now to be determined is simply this, whether the Crown is entitled to payment of both these assessments? Now, that depends upon the provisions of the Succession Duty Act of 1853, and I quite concur with your Lordship's exposition of the effect and bearing of the Valuation Acts upon that question. The liability does not arise under the Valuation Acts of 1854 or 1857, which are Valuation Acts alone, and in the first of which there is an express provision to the effect that it shall not subject to assessment any lands that are not otherwise subjected to assessment. Therefore the Crown take no assistance from the Valuation Acts of 1854 and 1857 as to their right to recover

this money; and the question is reduced to the simple one which your Lordship has explained—Does the Act of 1853 entitle the Inland Revenue to make any such double assessment upon woodland property? Now, I do not intend to go over in detail the different clauses of the statute to which your Lordship has referred. I am very clearly of opinion that in a case of this sort, where the woodland, the timber of which is cut and made matter of assessment, returns no other value whatever to the proprietor, the Inland Revenue cannot claim to have these lands assessed both on the value of the timber cut upon it, and for the value that the lands would have been worth to him if no timber had been grown on them—for that is what the Inland Revenue claim. That, I think, is not according to the language of the statute, and would be substantially to that extent a double assessment, which the Inland Revenue is not entitled to exact unless upon a clear and distinct provision of the Act of Parliament authorising it.

Lord Shand—I am of the same opinion, and I concur in the judgments that have been now delivered. It is quite clear that the provisions of the Valuation Acts of 1854 and 1857 do not affect the incidence of taxation. Section 41 of the Act of 1854 expressly guards against any notion that the Acts could have such an effect, and one cannot read the whole of their provisions together without seeing that they are Valuation Acts only, intended to provide the means of valuation where there is a liability to taxation, but not intended to go further. Accordingly this question has to be settled upon the terms of the Succession Duty Act of 1853 alone. And I take it that the facts which are to be assumed in dealing with the question before the Court are these—that these woodlands are of no value to the proprietor except in so far as they are growing timber for the purpose of sale. The defender avers that he "derived and derives no income, rent, or profit of any kind from the woodlands, other than the profit, if any, realised by the sale of wood, and that the woodlands are incapable of yielding any income, rent, or profit other than as aforesaid;" and the first branch of that averment is expressly admitted by the Crown, by the addition made to the record in the course of the discussion. In regard to the second branch of the averment, the Crown have not asked for any proof that the woodlands are capable of yielding any income, rent, or profit other than the timber growing on them; and it was conceded upon the part of the respondent that if the woodlands did admit of being pastured to a limited extent notwithstanding the growth of timber, and if the Crown could have made that out, then to the extent of the profit or annual value thus accruing liability to duty could not be disputed. But as in point of fact there is no profit or rent derived from pasturing the woods, and as the Crown do not ask any proof that the woods are capable of being so pastured, I take the case on the footing that they are incapable of being pastured; and in that view of the case I have no difficulty in concurring with your Lordships in holding that under the Succession Duty Act the timber, which is the only subject that yields any return to the proprietor, is the only subject of taxation. I have only farther to say, that even if it could be shown that a proprietor might make the woodlands available for pasturing to a limited extent, and to a limited extent only, in consequence of the timber with which they were covered, it appears to me that sec. 6 of the Valuation Act of 1854 would have no application. That section provides that where lands and heritages consist of woods, coppice, or underwood, the yearly value of the same shall be taken to be the rent at which such lands and heritages might in their natural state be reasonably expected to let from year to year as pasture or grazing lands—that is to say, that ground occupied by woods, coppice, or underwood is to be treated entirely as if it were pasture land. There is no valuation as against the proprietor of either the wood or the coppice or the underwood as a separate subject. The taxation is to be imposed entirely upon the footing of its being pasture land; and there would be therefore no double taxation in such a case, treating it first as land under wood, and secondly as land under pasture. Accordingly, that is the exhaustive valuation of the land in such circumstances.

The proposal of the Crown here is, that under the Succession Duty Act they should first take the ground as producing a valuable return or crop of wood, and value it in that way, and then treat it as if there were no wood upon it at all, and it were pasture land under sec. 6 of the Statute of 1854. It appears to me that that would be unreasonable, and that it is unwar ranted by the Acts. I think that if in addition to the value of the woods there be any value at all in respect of the limited pasturing of these lands, which are truly woodlands, the return must be ascertained by getting at the actual value of the pasture, and not by adopting the provision of sec. 6 of the Act of 1854, which I think would have no application in that case.

The Lords pronounced this interlocutor:—

"Recal the second finding [Lord Curriehill's interlocutor of 11th June last] therein contained, and in place thereof 'Find that in said accounting the defender is entitled to credit for the amount paid by him in name of succession duty on the woodlands on said estate, in so far as these are occupied by timber, trees, or wood not being coppice or underwood, and not yielding any value except such as arises from sales of wood; and that he is entitled to deduction of all necessary outgoings:' *Quoad ultra* adhere," &c.

Counsel for Pursuer—H. M. Advocate (Balfour, Q.C.)—Rutherfurd. Agent—D. Crole, Solicitor.
Counsel for Defender—D.-F. Kinnear, Q.C.—Blair. Agents—Hunter, Blair, & Cowan, W.S.

Friday, October 28.

SECOND DIVISION.

[Lord Curriehill, Ordinary.

GORDON *v.* GORDON'S TRS. (CLUNY ENTAIL).

Entail—Trust to Entail—Construction of Trust—Entail executed in terms of Truster's Directions—Heirs whatsoever of Person last called—Heirs whatsoever of Entailer.