pressly mentioned as an invariable element of compensation in claims by dependants that they would only be an element to be taken into consideration when they had been paid by the dependants, and it is only in that case that they could be allowed by the arbiter.

LORD KINNEAR—I agree with your Lordships. The arbiter is to fix such compensation as may be reasonable and proportionate to the injury of the dependants. Now, *prima facie*, I am disposed to say that if a dependant is obliged to provide medical attendance or to pay the funeral expenses of the deceased, that is a part of the injury to such dependant, and that the arbiter is entitled to take such expenses into account in estimating the reasonable and proportionate compensation. It seems to me that this is the plain meaning of the sub-section, the construction of which was very fully considered in the case of *Bevan* v. *Crawshay Brothers, Limited*, L.R. [1902], 1 K.B. 25. I respectfully agree with the judgment of the Master of the Rolls. We are told that that decision is in conflict with the previous case of *Dalton* v. *South-Eastern Railway Company* on the construction of Lord Campbell's Act. The learned Judges in England seem to have thought the two cases distinguishable. But however that may be, we are not required to consider the construction of a statute which does not apply to Scotland; and as to the construction of the statute actually under consideration, I have no difficulty in following the reasoning of the Judges in the case of *Bevan*.

I also agree with what your Lordship in the chair and Lord Adam have said as to the form of the question. A direct answer in the affirmative might be misleading. I think the finding of the Court ought to be that the arbiter in fixing compensation is entitled to take into account sums of money which may have been disbursed in funeral expenses.

The Court answered the question of law in the affirmative.

Counsel for the Appellants — Salvesen, K.C.—Hunter. Agents—W. & J. Burness, W.S.

Counsel for the Respondent — George Watt, K.C.—Munro. Agents—Macpherson & Mackay, S.S.C.

HOUSE OF LORDS.

Thursday, April 30.

(Before the Lord Chancellor (Halsbury), Lord Shand, Lord Davey, and Lord Robertson.)

SCOTTISH PROVIDENT INSTITUTION *v.* ALLAN.

(*Ante* June 4, 1901, 38 S.L.R. 683, and 3 F. 874.)

Revenue — Income Tax — Interest from Securities Abroad — Remittances of Interest or Repayment of Capital—Income Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *sec.* 100, *Schedule D, Case* 4.

A mutual insurance society in Scotland was assessed for income tax under the fourth case of Schedule D of the Income Tax Act 1842 upon certain sums remitted to them from Australia in 1898. They maintained that they were not liable to be so assessed, upon the ground that the sums so remitted were not remitted in payment of interest but in repayment of capital. Between 1885 and 1890 the society had sent various sums to Australia for investment. The interest on these investments was received by the society's representatives in Australia and paid into a bank account there, and prior to 1893 it was not brought to this country but invested in Australia. In and after 1893 certain sums were remitted to Scotland from Australia, and in 1898 the sum upon which income tax was now claimed was so remitted. After all these remittances had been made there still remained in Australia a sum greater than the total of all the sums originally sent out for investment. *Held* (*aff.* judgment of the First Division) that the remittances to this country having been made by the representatives of the society from their bank account in Australia, in which repayments of capital had been immixed with interest, and the particular remittances not having been definitely identified with any particular repayments of capital, the proper inference in the circumstances was that the remittances were made in payment of interest, and that the society was liable to be assessed for income tax upon the sums remitted.

This case is reported *ante ut supra.*

The Scottish Provident Institution, appellants in the Court below, appealed to the House of Lords.

Counsel for the respondent were not called upon.

At delivering judgment—

LORD CHANCELLOR—So far as I am concerned I think this is really a question of fact. The question is, what inference can properly be drawn from the facts as stated by the Commissioners.

The broad facts, and the only facts I shall consider, are these—this is a large

amount of money which has been sent to this country; it has been sent to this country from investments made abroad, that is to say, made in Australia. I cannot appropriate, nor do I think the parties probably could appropriate without the assistance of an actuary, the exact amount earned by each particular investment and say what should be properly applied to capital and what to income. The Commissioners have had the matter before them and they have come to the conclusion that such and such an amount is the amount which they would appropriate to the interest which has been received. It appears to me that we are rather misplacing the burden of proof. This is a large amount of profit which has been made—a large amount which, out of profits, has been remitted to this country. If that is true, then income-tax is payable upon it. If that is not the exact amount, but the parties would be able to show that some part of it ought to be appropriated to capital, and if they could make it apparent that the thing which was received in this country was not only profit, or was not at all profit, but was simply a repayment of capital, I think it is for them to show that. *Prima facie*, this is a large amount of profit (looking at the figures) made by this trading company. It is a mutual company no doubt, but that only affects the question what you will do with the profits when you have got them.

The next question is, whether or not, though earned abroad, the profits have been brought to this country. Here is a large amount, putting these figures together, which to my mind must include, and obviously does include, a large amount of profits. I think it is for the company to show, if the fact be so, that that ought to receive a certain amount of deduction, because a good deal of it was repayment of that which was in truth capital and not profit at all. No attempt has been made to do that, but what has been done in lieu of that is to write out to the local agents and say:—"Whenever you send money to this country do not find out what in strictness is the difference between capital and income, but describe whatever you send back to us as repayment of capital; take care you do not describe it as interest." It is obvious that the mere nicknaming the sum received and ascribing to it because it is so named the character of capital and not of income cannot defeat the right of the Crown to have the tax levied upon that which in substance and truth is profit earned abroad but brought to this country.

For these reasons I am of opinion that the judgment of the Court below was right and that this appeal should be dismissed with costs, and I move your Lordships accordingly.

LORD SHAND—I agree that the decision of the Court of Session ought to be adhered to.

The question is, as your Lordship has put it, entirely one of fact. The amount of money which was sent out by the company as capital remains in Australia. It has been gradually increased and not diminished, and that amount of money still remains there. The company, in short, still has in Australia the capital which they sent out. The moneys that have come home were I think therefore, as a matter of fact, interest or profits on capital, and I do not think that the mere circumstance of there being such letters as are here founded upon (and were arranged if possible to avoid income-tax), representing the profits as capital though they were really interest, can have that effect.

LORD DAVEY — I agree in the motion proposed, and I agree with what has been said by my noble and learned friends, that this is a mere question of fact. I should like to ask what facts we have before us from which we can draw our inference. We have this fact (I will use round numbers because the exact amount is not important), that by the end of the year 1898, before the 31st of December, this company had remitted to Australia, for the purpose of investments on mortgages there, a sum of one and a-half millions, and at the end of the period in question—on the 31st December 1898—they had over two and a-half millions there. In every sense this is profit.

Now, what is the profit made from, because I agree with what Mr Haldane said, that under Schedule D you tax the interest received on securities? The profit is only the interest received on the securities. There can be nothing else. That is the only source from which, from the nature of the business carried on, the profit is derived. Therefore I think the Crown is entitled to draw the inference, and your Lordships are entitled to draw the inference, that this extra sum of £1,034,707—I will call it an extra million—which existed at the end of the year 1898, did represent in one way or another moneys which had been received in respect of the interest derived from the securities on which the original million and a-half had been invested.

The whole of the case of Mr Haldane's clients the Insurance Company rests upon this table on page 6 of the case.* Now I must say that this table gives me the impression of being made up for the purpose, because what do we find? I will take the very first entry. We find on the 1st of February 1898 the agent of the company in Australia remitting to this country a sum of £44,000. We are gravely told to believe that that was a remittance of four sums of capital which had been received by the agents in Australia at four different times—three of them in the year 1891 and the other in the year 1896. I must say that that is a draft upon my credulity; a strain upon my powers of belief, which they will not bear. I agree that the mere calling it capital for the purpose of the Inland Revenue Department will not make into capital that which is essentially and in truth profit—a profit made by the interest received on the securities.

* The nature and contents of this table are set forth in the second column of page 684 of 38 S.L.R.

The other question which was raised by Mr Blackburn I do not treat as being before us, and I express no opinion upon it. All the parties seem to have agreed that the question of whether this sum of £217,350 represented interest or capital was the question for decision, and upon that point I have no hesitation in saying that I agree entirely with the judgment of the Inner House.

LORD ROBERTSON — The circumstance that for convenience the year 1898 was inquired into instead of 1899 does not affect the question before the House, for the parties accepted the figures as reached as applicable to the year of assessment.

The question then is, was this sum of £212,000, which admittedly was remitted, profits or gains of the year? As the whole money remitted came out of a bank account, it is impossible to identify the money, and the facts of the case must furnish the inference. On this question of fact it seems to me that the judgment of the Court of Session is clearly right. First of all there is the fact of remittance in two consecutive years; for the year 1898 is taken as fairly representing the year 1899. There is no suggestion that any exceptional reason required remittances of capital in either year or in both. On the other hand it is certain that the amount of invested capital left behind in the colony, after these remittances, is larger than before, so that the capital is fully accounted for. Well then, what is done with this so-called capital remitted? The answer is, exactly what would be done with profits. The inference from these facts is that the moneys remitted were in fact profits, and, in the absence of anything to the contrary, profits of the year in which they were remitted.

Appeal dismissed with costs.

Counsel for the Appellants — Haldane, K.C. — Blackburn. Agents — Dundas & Wilson, C.S., Edinburgh; Grahames, Currey, & Spens, Westminster.

Counsel for the Respondent—Attorney-General (Sir R. B. Finlay, K.C.) — Lord Advocate (Graham Murray, K.C.)—A. J. Young. Agents—Philip J. Hamilton Grierson, Solicitor of Inland Revenue for Scotland — F. C. Gore, Solicitor of Inland Revenue.

Monday, May 25.

(Before the Lord Chancellor (Halsbury), Lord Shand, Lord Davey, and Lord Robertson.)

EARL OF HOME *v.* LORD BELHAVEN.

(*Ante*, July 19, 1900, 37 S.L.R. 990, and 2 F. 1218.)

Superior and Vassal—Casualty—Composition—Minerals—Method of Ascertaining Amount of Composition from Minerals—Act 1469, *c.* 36—*Tenures Abolition Act* 1846 (20 *Geo. II. c.* 50), *sec.* 12.

Held (*aff.* judgment of the First Division with Three Consulted Judges) (*following Allan's Trustees* v. *Duke of Hamilton*, January 12, 1878, 5 R. 510, 15 S.L.R. 279) that the returns derived from minerals in the course of being worked are to be taken into account in fixing the amount of composition due to a superior; and (2) (*rev.* judgment of the First Division with Three Consulted Judges) that the amount due to the superior was the amount of the rents and royalties received by the vassal for the year in which the composition became exigible, subject to all proper and usual deductions.

This case is reported *ante ut supra.*

The Earl of Home, pursuer and reclaimer, appealed to the House of Lords.

Lord Belhaven, defender and respondent, presented a cross appeal.

At delivering judgment—

LORD CHANCELLOR—I have had an opportunity of considering the judgment prepared by my noble and learned friend Lord Robertson, and I feel I could certainly add nothing to the cogency of the reasoning or the precision with which that reasoning is stated. I therefore content myself with saying that I entirely agree with the judgment which my noble and learned friend has prepared.

LORD SHAND—The learned and anxious opinions of the Judges of the Court of Session, and the examination of the statutes and authorities which have thus been considered, have been of great assistance to your Lordships in dealing with the arguments in the important questions raised by this appeal, and at the close of the debate I proposed in my judgment also to enter fully on the consideration of the nature and extent of the superior's right to the casualty to be paid to him on the entry of a singular successor. Under the statutes of 1469 and 1669, relating to apprisings and adjudications respectively, and looking to the terms of the Statute of 1747, the language of the opening words of section 12, which is so important, I am satisfied (1) that the right extends to a year's rent or maill "as the land is set for the time;" (2) that this rent or maill includes mineral rents where coal or other mineral is being worked; and (3) that the actual rent payable on the year of entry, including the return for minerals where these, although not let, are worked by the vassal himself, is the measure of the superior's right. An opportunity has been given to me of reading and considering the terms of the judgment of my noble and learned friend Lord Robertson to that effect, in which his Lordship has fully given his reasons for coming to that conclusion, and as my judgment would only proceed on the same grounds, I refrain from saying more than that I entirely concur in the judgment his Lordship is about to give. I have only to add, that I think the case of *Belhaven*, 23 R. 423, in which his Lordship as Lord President gave the leading judgment, is a strong authority on the points that a coal rent is to be included in the rent for the year, and that the actual rent