

The question for the opinion of the Court was—“Whether the said instrument is liable to be assessed and charged with the said *ad valorem* conveyance on sale stamp-duty, in terms of the Act 33 and 34 Vict. c. 97; or, if not, what other stamp-duty it is liable to be assessed and charged with?”

Argued for appellant—The case was ruled by that of *Belch*, Feb. 24, 1877, 14 Scot. Law Rep. 389, 4 R. 592. The only difference was in the appellant's favour, since he did not, as the appellant in that case had done, pay the £2000 of his own will, but under an obligation.

Argued for Inland Revenue—The question in *Belch's* case related to a security—a ground-annual. A feu-duty was in a different position, being a separate estate.

At advising—

LORD GIFFORD—This is a case bringing up a general point of some practical importance which the Commissioners of Inland Revenue wish to have determined. It was contended that there was a distinction between the present case and that of *Belch*, and that the decision in the case of *Belch* does not apply to the circumstances of the present case. It was urged that this is a proper case of redeeming a feu-duty, and that different principles rule the cases of ground-annuals and of proper feu-duties, which last constitute a separate feudal estate. Now, I am not able to draw any distinction between this case and the case of *Belch*. No doubt, feudally speaking, in the case of a feu-duty there is a *dominium directum* and a *dominium utile*; there is a proper separation of estates which does not occur in the case of a ground-annual, which is more of the nature of a burden. But in reality this does not affect the present question as to the proper stamp required for the instrument. The release of a ground-annual is, so far as it goes, the release of a burden, and the release of a feu-duty or of part thereof (the two estates remaining as before) is no more. In the one case the feu-duty is restricted or taken away altogether, and it may be with the conveyance of a separate feudal estate; in the other a burden is restricted or taken away. I think they both fall under the same principle, and the reason of the rule is the same. It is quite plain that this piece of ground laid out for feuing purposes was sold for a price, and it does not make any difference whether the price was to be paid down or stated as a feu-duty calculated at a percentage of what would otherwise have been the price. Then the superior stipulates that he shall get part of the price in money within five years—£100 of the feu-duty is to be redeemed in three years, and another £100 within five years. That in substance is just a stipulation for payment of the price, and though the vassal pays the price instead of continuing to pay the interest or feu-duty, the transaction is not a transaction of sale properly so called. It is all embraced in and provided for, and is really a part of the original transaction (as your Lordship observed in *Belch's* case), and it is solely in virtue of the original agreement that the vassal now redeems the feu-duty, which is just the interest of price, by paying off a part of the capital. I think that is a proper case of release, renunciation, or discharge, not upon a sale or by way of security, and that it falls under the heading in

the schedule “in any other case ten shillings.” If the deed were to be held to be a discharge or surrender of a burden redeemed in terms of an obligation or consent to do so, then it would fall under the fourth head of the schedule—a reconveyance or renunciation—and the stamp-duty would be the same. I think the appeal should be sustained and the duty fixed at ten shillings.

The LORD JUSTICE-CLERK and LORD YOUNG concurred.

The Court sustained the appeal, found that the duty payable is ten shillings, and ordered repayment of the £9, 10s. paid in excess, and found appellant entitled to expenses.

Counsel for Appellant—Keir. Agents—Mitchell & Baxter, W.S.

Counsel for Inland Revenue—Lord Advocate (M'Laren, Q.C.)—Rutherford. Agent—David Crole, Solicitor of Inland Revenue.

Friday, November 26.

FIRST DIVISION.

[Sheriff of Midlothian.]

HEDDLE v. GOW.

Process—Appeal—Competency—Value of Cause.

A summons raised in the Small-Debt Court, concluding for £12 as assessment under a sewerage statute, was remitted to the Sheriff's ordinary roll, and judgment given against the defender. On his appealing to the Court of Session, the appeal was, in Single Bills, *dismissed* as incompetent, on the ground that the value of the cause was not of the requisite value of £25, and that the appellant had not shown that a question of continuing liability was involved.

James Gow, S.S.C., clerk to and as representing the Water of Leith Sewerage Commissioners, sued James Heddle, rectifier, Water Street, Leith, in the Small-Debt Court at Leith, for £13, 7s. 6½d., restricted to £12, being amount of assessment laid by said Commissioners on the defender's property as a “reasonable sum of money for the use of the main or branch sewers and works,” in terms of the 47th section of “The Edinburgh and Leith Sewerage Act 1864.”

The Sheriff-Substitute (HAMILTON) sent the case to the ordinary roll, and subsequently, after proof led, repelled the defences and decerned for the sum sued for.

On appeal the Sheriff (DAVIDSON) adhered.

The defender appealed to the Court of Session. When the case appeared in Single Bills, counsel for the respondent objected to its being sent to the roll, and craved that the appeal be dismissed as incompetent, in terms of section 22 of the Sheriff Courts (Scotland) Act 1853 (16 and 17 Vict. c. 80), the value of the cause being under £25.

The appellant argued that the value of the cause was in fact over £25, as it involved a question of continuing liability.

Authorities—*Drummond v. Hunter*, Jan. 12,

1869, 7 Macph. 347; *Macfarlane v. Friendly Society of Stornoway*, Jan. 27, 1870, 8 Macph. 438.

At advising—

LORD PRESIDENT—I do not think this question admits of any doubt. I give full effect to the fact that this case was transferred from the Small-Debt Court to the ordinary roll of the Sheriff Court, and I deal with it as if it had been originally raised there. But by the terms of the Sheriff Court Act no appeal is competent to this Court in any case the value of which is a sum under £25. Now, we arrive at the value of a cause by the conclusions of the summons; and the value in this case is only £12. But then it is argued for the appellant that the decree appealed against involves a further and continuing liability, and that the value of the case is therefore above the sum required for this appeal, and if he could have made this out there might have been some foundation for the argument. But I see no ground whatever for this view. When the assessment complained of has been paid it does not appear, or at least it is not a necessary result, that the appellant will ever have a further liability under the statute by which it is imposed, and if he had any such fear his proper remedy would be in the form of a declarator. I think we must refuse this appeal as incompetent.

LORDS DEAS and MURE concurred.

LORD SHAND concurred, and expressed his opinion that the conclusions of the summons having been restricted by the pursuer for the express purpose of bringing the cause within the Small-Debt Court, this Court would not afterwards entertain it on the footing that it represented a larger value than £12, or inquire into the question whether or not a further liability was involved.

The Court dismissed the appeal, with expenses modified at £4, 4s.

Counsel for Appellant—C. S. Dickson. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Counsel for Respondent—M'Kechnie. Agent—James Gow, S.S.C.

Friday, November 26.

SECOND DIVISION.

MORISONS v. THOMSON'S TRUSTEES.

Arbitration—Disqualification of Arbitrer—Corruption—Act of Regulations 1695.

Irregular transactions between an arbitrer and the parties to a submission, as distinguished from actual corruption, not a ground for reducing the award, unless some connection be shown between the irregularity and the award issued.

An arbitrer becoming during the dependence of a submission deeply embarrassed in circumstances, applied to one of the parties, with both of whom he was intimate, shortly before issuing notes of his award, to assist him with a loan. The party-submitter entertained the application, but did not give a definite answer till after the notes were

issued. Some time thereafter he refused to grant a loan, but continued to plead before the arbitrer till shortly before the final award was issued, when he protested against the proceedings and declared that he reserved right to reduce the award.

The arbitrer meantime having been refused by one party, applied to the other shortly before the final award was issued, and was refused by him. *Held*, on a proof, that while the proceedings of the arbitrer were grossly irregular, they did not amount to corruption, and that in respect they were not shown to have influenced the award, the award must stand.

Question—Whether the party who had continued to plead before the arbitrer, after knowing of such an irregularity, had not waived his right to object?

In the year 1869 Messrs John Morison senior, John Morison junior, and William Thomson, brewers in Edinburgh, entered into a contract of copartnership by which they agreed to carry on the business of brewing in premises in the Canongate of Edinburgh, called the Commercial Brewery, under the firm of J. & J. Morison & Thomson. The duration of the contract was fixed to be nineteen years. In the year 1878, certain differences having arisen between Mr Thomson and the Messrs Morison, it was agreed that Mr Thomson should, in consideration of the receipt of a sum of money, retire from the firm, and make over to Messrs Morison his whole interest therein, and in the stock and funds thereof. The sum to be paid to Mr Thomson was referred to the decision of Mr James Steel, formerly a brewer in Edinburgh, and now a spirit merchant in Glasgow. Mr Steel on 5th June 1878 accepted the reference, and appointed Mr J. A. Dixon, writer, Glasgow, to be clerk. Proof for both parties on the questions involved in the submission was led before him at various dates in the months of April, May, and June 1879, and counsel were heard on 16th July 1879, and he then made *avizandum*. For some time previous to that date Steel had been in very straitened circumstances, owing in great measure to the failure in October 1878 of the City of Glasgow Bank, from which he had an overdraft, for repayment of which the liquidators were pressing him. He had tried through his agents to raise money on his premises in Glasgow, which were already burdened to a considerable extent, but had failed to arrange a loan. On 16th July 1879 he called on Mr Duncan, agent for Messrs Morison in Glasgow, and told him he was in need of money; that he had got two persons—one a distiller, the other a brewer—to assist him on condition that he would purchase his stock of spirits and porter from them respectively; and asked him whether he or his firm in Edinburgh, Messrs Morison, would take into consideration a loan to him of the rest of the sum, of which he was in immediate need, provided that he bound himself to purchase from them his stock of beer. It appeared from the proof allowed in the case, and hereafter referred to, that it is a common practice in the trade for brewers to lend money to publicans on such an undertaking. Steel asked Mr Duncan to keep the matter private, and Mr Duncan on the same date (16th July 1879) wrote the following letter to Messrs Morison:—