

The plea of *bona fide* consumption is not pleaded on record. All that I have got to say with regard to it is that if it had been pleaded I think there would have been room for it on the view that on a reasonable reading this clause did mean what it has been held to mean. Such a plea could, I think, have been raised. Not having been raised, I am not able to give a final opinion upon it.

LORD ADAM—It seems to me that the deed of discharge contains a discharge and an obligation, and the construction of that deed is not to be found in any other deed. If it were merely a discharge containing an acknowledgment on the part of Thomas James Harkness that he had received his portion of the estate of his father, and that he thereby made his election, there would have been no necessity for inserting the clause of obligation at all. It appears to me that there is here a new obligation in a new clause, and that it must be construed. If it is a mere recital of the obligation in the settlement well and good, but if it is different I do not see why it should not receive effect. If we apply our minds to the construction of the clause, I agree with your Lordship that the words “whenever required” really have a meaning, and that Thomas James Harkness was entitled to hold the house till he was required to part with it, and as a necessary parallel consequence that he was entitled to the rents if he let it.

If that be so, there is no dispute about the fact that he was not required to give it up till 1888, and that there was no obligation upon him to make up a title to it and sell it till then. I therefore agree that the Lord Ordinary’s interlocutor should be altered to the effect proposed.

LORD M’LAREN—Your Lordship has expressed fully the view I take on this case, and I have nothing to add to what your Lordship has said. I wish, however, to say, as at present advised, that I should not be able to concur in the observations with regard to the question of *bona fide* consumption which have fallen from Lord Shand. It appears to me that that question can only arise where parties are contending on competing titles. We have no such case here, the only question being whether Thomas James Harkness held the house property on a beneficial title or merely as a trustee.

The Court altered the Lord Ordinary’s interlocutor by substituting the words “since 11th August 1888” for the words “since the death of the late Mrs Janet Comrie or Harkness in January 1862,” and *quoad ultra* adhered.

Counsel for the Pursuers and Respondents—Guthrie—Wilson. Agents—Somerville & Watson, S.S.C.

Counsel for the Defender and Reclaimer—Low—Sym. Agents—J. K. & W. P. Lindsay, W.S.

Saturday, June 14.

FIRST DIVISION.

[Court of Exchequer.

ABERDEEN COMMISSIONERS OF SUPPLY v. RUSSELL (SURVEYOR OF TAXES).

Revenue—Income Tax—Act 5 and 6 Vict. cap. 35, sec. 102.

Section 102 of the Act 5 and 6 Vict. cap. 35, enacts that upon all annual interest of money not otherwise charged, duty shall be charged as there set out—“Provided always, that where any creditor on any rates or assessments not chargeable by this Act as profits shall be entitled to such interest, it shall be lawful to charge the proper officer having the management of the accounts with the duty payable upon such interest.”

Held that where the commissioners of supply of a county borrowed money for the erection of county buildings, and in security of the loan mortgaged the rates and assessments which they were authorised by statute to levy for the erection of new buildings, it was lawful to charge them with the duty payable on the annual interest due on the borrowed money.

This was a case stated by the Commissioners of Income Tax for the county of Aberdeen under the Taxes Management Act 1880 on the appeal of the Commissioners of Supply for the county of Aberdeen. The case set forth as follows—At a meeting of the Commissioners of Income Tax for the county of Aberdeen, held at Aberdeen on the 12th February 1890, James Forbes Lumsden, Clerk of Supply, appealed against an assessment on £92, 10s. under Schedule D of the Income Tax Acts made against the Commissioners of Supply of the county of Aberdeen for the year 1889-90.

The following facts were found by the Commissioners—

1. The Commissioners of Supply are the vested proprietors of certain portions of buildings in the city of Aberdeen known as the “Aberdeen County and Municipal Buildings,” erected under the provisions of the Act 29 and 30 Vict. cap. 104.

2. The portions of the buildings in question are occupied as a county hall, and as the rooms and offices of the Clerk of Supply, and as writing chambers rented by Messrs Robertson & Lumsden, advocates, at a yearly rent of £40, and are assessed under Schedule A of the Income-Tax Acts on £145, their full annual value, as appearing in the valuation roll.

3. Under the provisions of the Act in question the Commissioners of Supply are empowered to borrow money for the erection of the buildings, and the sum of £92, 10s., which forms the subject of appeal, is the interest for the year 1889-90 of the money so borrowed.

4. The money borrowed is secured not on

mortgage over the buildings, but on mortgage of the several rates and assessments authorised by the Act in question to be levied by the Commissioners of Supply. . . .

6. The money to pay the interest is raised by the Commissioners of Supply by an assessment (commonly called the County Buildings Assessment) levied under the provisions of the Act in question, and the rent received for the portion of the buildings let is not placed to the credit of this assessment, but to the credit of the County General Assessment, being the rate liable for the maintenance and repair of the buildings.

In support of his appeal the appellant stated that the money, the interest of which formed the subject of assessment, was borrowed under the provisions of the Act 29 and 30 Vict. cap. 104, for the express purpose of erecting the buildings, and as these buildings are assessed to income-tax under Schedule A on the full annual value, the Commissioners of Supply are entitled, in paying to the creditors in the money so borrowed the yearly interest thereof, to deduct and retain the tax corresponding to such interest in the same way as if there were a bond over the buildings for the money borrowed.

The appellant argued that the right to make such deduction and retention under section 102 of the Act 5 and 6 Vict. cap. 35, and section 40 of the Act 16 and 17 Vict. cap. 34, was not limited to interest on mortgages of the property assessed, but extended to interest on any personal debt or obligation of the person or corporation whose property is assessed. He further argued that to assess the interest under Schedule D as well as the buildings under Schedule A would be to assess the same subject twice, as the interest simply represented *pro tanto* the annual value of the buildings.

He therefore claimed that if the interest was to be assessed under Schedule D, a sum equivalent to the interest must be deducted from the annual value of the buildings before assessing their value under Schedule A. In other words, the Commissioners of Supply are only liable in income-tax on the net annual value of these buildings, and that result is arrived at by their paying income-tax (either wholly under Schedule A, or partly under Schedule A and partly under Schedule D) on the gross annual value, and retaining the tax from the yearly interest payable out of it.

The appellant also argued that the concluding proviso of section 102 of the Act 5 and 6 Vict. cap. 35, only applied where the creditor on the rates and assessments had no debtor paying income-tax deductible from the yearly interest payable to such creditor.

The surveyor (Mr Russell), on the other hand, contended that the buildings being the property of the Commissioners of Supply, are assessable under Schedule A, which indeed was admitted; that there is no provision in the rules relating to Schedule A of the Income-tax Acts, authorising any deduction in name of interest to

be made from the annual value before assessment, such as contended for by the appellant, that any deduction except those enumerated is prohibited by the express words of the Statute 5 and 6 Vict. cap. 35, sec. 60, No. 4, rule 14, and also that as the money borrowed is secured on mortgage over the rates, and the interest on the same is payable out of the assessment levied for that purpose, and not out of the rents of the property, such interest is assessable in terms of section 102 of 5 and 6 Vict. c. 35. He further argued that as the tax under Schedule A is borne by the Commissioners of Supply, and the tax under Schedule D by the creditors on the rates as argued for by the appellant, there is no double assessment.

The Commissioners having fully considered the case, refused the appeal, and requested a case to be stated.

Section 102 of the Act 5 and 6 Vict. cap. 35 enacts—"And be it enacted, that upon all annuities, yearly interest of money or other annual payments, whether such payment shall be payable within or out of Great Britain, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation thereof, or as a personal debt or obligation by virtue of any contract, or whether the same shall be received and payable half-yearly, or at any shorter or more distant periods, there shall be charged for every twenty shillings of the annual amount thereof the sum of sevenpence, without deduction, according to and under and subject to the provisions by which the duty in the third case of Schedule D may be charged. . . . Provided always that where any creditor on any rates or assessments not chargeable by this Act as profits shall be entitled to such interest, it shall be lawful to charge the public officer having the management of the accounts with the duty payable on such interest, and every such officer shall be answerable for doing all acts, matters, and things necessary to a due assessment of the said duties and payment thereof, as if such rates or assessments were profits chargeable under this Act, and such officer shall be in like manner indemnified for all such acts as if the said rates and assessments were chargeable."

At advising—

LORD PRESIDENT—I think the Aberdeenshire Commissioners understand the Income-Tax Acts better than the Commissioners of Supply, and particularly the 102nd section of the Act 5 and 6 Vict., which seems to me to be too plain to admit of any double construction. The leading purpose of that 102nd section is that all yearly interest of money not chargeable otherwise under the statute is to be charged in the terms set out in that section 102, and there is a proviso at the end of the section which specially applies to the case in hand. It provides that "where any creditor on any rates or assessments not chargeable by this Act as profits shall be entitled to such interest"—that is annual interest,

which is the leading subject of the clause, "it shall be lawful to charge the proper officer having the management of the accounts with the duty payable upon such interest." Now, it is quite clear upon the face of that that the Legislature intend that persons in the position of these Commissioners are to pay income-tax in the case which has occurred; and the way in which it is wrought out is simply this—in paying the interest upon the money which the Commissioners have borrowed, they deduct from the amount of the annual interest a sum corresponding to the income-tax chargeable upon that amount of interest, that is to say, instead of paying £92, 10s. which is the annual interest payable upon this debt, they pay £92, 10s. *minus* the amount of the income-tax. They therefore have not paid the full amount due to the creditor, and the reason why they have not paid the full amount due to the creditor is that they are liable to account for that part of the £92, 10s. to somebody else, and that somebody else happens to be the public exchequer or the tax-gatherer, or whatever you may call him. If they were allowed to keep that amount in their pocket, then it would be simply the case that the income-tax payable upon this £92, 10s. would be paid not to the public exchequer but to the debtor in the bond. And it is just to avoid that absurd result that this proviso is inserted at the end of the clause. It seems to me that the case is perfectly clear.

LORD SHAND, LORD ADAM, and LORD M'LAREN concurred.

The Court affirmed the determination of the Commissioners.

Counsel for the Commissioners of Supply—Cheyne—C. S. Dickson. Agents—Macenzie & Kermack, W.S.

Counsel for the Surveyor of Taxes—A. J. Young. Agent—The Solicitor of Inland Revenue.

Tuesday, June 17.

FIRST DIVISION.

[Lord Trayner, Ordinary.

M'DONALD v. THE SYNOD OF ARGYLL AND OTHERS.

College—Bursary—Trust—Contract—Damages—Title to Sue—Relevancy.

A bursary was founded for "a student on his entering the Divinity Hall of any University in Scotland for the purpose of becoming a minister of the Established Church of Scotland, and that so long as he is pursuing his studies in the Divinity Hall." It was provided "that the qualification required of competitors for the Divinity Hall bursary shall be not only great proficiency in the ordinary branches of an university educa-

tion, but also speaking, reading, and writing the Gaelic language fluently and well, and also acquaintance with Gaelic literature of" a certain named standard. The charge of the bursary was entrusted to a committee of the Synod of Argyll.

A candidate for the bursary, who had unsuccessfully competed therefor at an examination, raised an action against the committee and the successful candidate (1) for declarator that he was duly elected to and was in right of the bursary; (2) for interdict against payment of the bursary to the successful candidate; (3) for reduction of the award; (4) for decree of payment to himself; and (5) for damages. He averred that the successful competitor "was not eligible to compete for the Divinity Bursary, he having been entered as a student, and having been a student at the Divinity Hall of the University of Edinburgh for at least one session prior to" the date of the examination; and that the fact of this ineligibility was known to the committee. He averred damage, but failed to specify in what way this had arisen. Further, it did not appear, and the pursuer did not aver, that the reduction of the appointment would entitle him to the bursary.

Held that as the pursuer had not been "duly elected to" the bursary, he had no title to sue the first and three following and subsidiary conclusions of the summons; and that as there was no contract between the committee and the pursuer, and no sufficient averment of damages, the action was irrelevant.

Angus M'Donald, a student in the University of Glasgow, raised the present action against the members of the Synod of Argyll and others, concluding for declarator that he had been duly elected to, and was in right of, a bursary of £119, tenable for three years, under the bequest of the deceased Gillian M'Laine, Fascalale, Ardrishaig, and, *inter alia*, for damages.

The action was raised in the following circumstances:—By trust-disposition and settlement dated 24th May 1875 the late Angus M'Laine, Fascalale, Ardrishaig, directed his trustees to invest a portion of his estate in certain securities in name of the Moderator and Clerk of the Established Church of Scotland, Synod of Argyll, who should hold and apply the annual produce of one-half of the capital "for a bursary to a student on his entering the Divinity Hall of any university in Scotland for the purpose of becoming a minister of the Established Church of Scotland, and that so long as he is pursuing his studies in the Divinity Hall; and it is hereby declared that the qualification required of competitors for the Divinity Hall Bursary shall be not only great proficiency in the ordinary branches of an university education, but also speaking, reading, and writing the Gaelic language fluently and well, and also acquaintance with Gaelic literature of such a standard as Dr Smith's