

COURT OF SESSION.

Saturday, March 19.

FIRST DIVISION.

[Court of Exchequer.]

SULLEY (SURVEYOR OF TAXES)
v. THE ROYAL COLLEGE OF
SURGEONS.*Revenue—Income-Tax—Income-Tax Act
1842 (5 and 6 Vict. cap. 35), Schedule A,
Rule 6—Exemption.*

Rule 6 of Schedule A of the Income-Tax Act 1842 exempts from the duties chargeable under that schedule "any building the property of any literary or scientific institution, used solely for the purposes of such institution, and in which no payment is demanded for any instruction there afforded."

Held that the Royal College of Surgeons, Edinburgh, was not a "scientific institution" in terms of the above clause, in respect that while it promoted the interests of science incidentally, its main objects were professional, namely, the providing instruction for students and the granting licences to practise anatomy, surgery, and pharmacy to such as passed the prescribed examinations.

The Royal College of Surgeons appealed to the General Commissioners of Income-Tax against an assessment of £533, under Schedule A of the Income-Tax Acts, being the annual value of their hall, committee-rooms, library, and museum situated in Nicolson Street, Edinburgh.

The Commissioners sustained the appeal, and relieved the assessment, and the Surveyor of Taxes having expressed his dissatisfaction with this decision, the present case was stated for the opinion of the Court of Exchequer.

The following statements were made in the case—"The Royal College of Surgeons of Edinburgh is incorporated under various Acts of Parliament and royal charters, dating from the year 1505, and its present constitution is regulated by the Act 13 Vict. cap. 23, entitled 'An Act for enabling Her Majesty to grant a new charter to the Royal College of Surgeons of Edinburgh, and for conferring further powers on the said College,' and a royal warrant for a new charter following thereon, dated 11th March 1851.

"By the said royal warrant, which proceeds on the narrative of Her Majesty 'being willing to give all proper encouragement to the advancement of the science of surgery within Her dominions, and to promote the good of the said College,' the then Fellows of the Royal College of Surgeons of the City of Edinburgh, and such other persons as may from time to time be elected Fellows of the said College, are of new

constituted and incorporated into one body-politic and corporate, by the name and style of 'The Royal College of Surgeons of Edinburgh,' and it is ordained and declared that the said Royal College shall have and enjoy all the rights and privileges heretofore belonging to the Royal College of Surgeons of the City of Edinburgh in respect of the arts and sciences of anatomy, surgery, and pharmacy.

"The said charter further provides for the admission of new Fellows by diploma, and empowers the College to grant diplomas or licences to practise anatomy, surgery, and pharmacy after such course of study, and after passing such examination or examinations, as the College might require, and such licentiates 'shall be entitled to exercise and enjoy all rights of practice in the arts or sciences of anatomy, surgery, and pharmacy.'

"In the first century and a-half of the existence of the Corporation of Surgeons their members were the sole teachers, and almost the sole practitioners in Edinburgh of what was then known as the healing art. The original research in the sciences of medicine and surgery, with the kindred branches of chemistry, anatomy, physiology, midwifery, &c., which has proceeded from Edinburgh, has to a very large extent been done by the teachers and members of the Royal College of Surgeons of Edinburgh, which was in existence long before the foundation of the medical faculty of the University of Edinburgh. The diploma of the College was a professional qualification long before the University degree of M.D. was instituted. The College has always been closely allied to the University of Edinburgh. In accordance with the statutes of that University, any four out of fifteen medical classes required for graduation may be attended under College teachers, as well as the practical classes of physiology, pathology, and materia medica. Similar privileges are extended by most of the other Universities in the United Kingdom. The whole education required for graduation at the Universities of London and Cambridge, and for M.D. of the University of St Andrews, may be taken in this school.

"Prior to 1858 none of the degrees of the Scottish Universities conferred any right to practise surgery. It was maintained at one time that the degree of M.D. conferred that privilege, but this was negated by a judgment of the Court of Session.

"The Fellows are the governing body of the College. The Fellowship diploma is granted to candidates who are in possession of a recognised qualification in surgery after due examination in surgery, and on the vote of the College as to their fitness. In certain cases the College admits to its Fellowship without examination registered practitioners whose distinction by original investigations and surgical qualifications seem of a sufficiently high order to warrant their admission.

"In both cases a fee of £30 is payable on entry, and these fees are assessed under Schedule D of the Income-Tax Acts.

"No annual subscription is payable by the Fellows, and no division of profits is made among them.

"The College also grants the qualifications of licentiate, diploma in public health, and licentiate in dental surgery, after due examination in scientific subjects applicable to the respective qualifications. The holders of these qualifications have no voice in the management or affairs of the College, do not pay any annual subscription to, or receive any profit from, the College. The candidates for these qualifications must have had certain courses of study before admission to examination, but such courses may be taken out at any recognised university or medical school. The fees payable by the candidates are included in the general revenue of the College, and any surplus after defraying examination expenses and other outlays is assessed under Schedule D of the Income-Tax Acts.

"The buildings belonging to the College consist of (1) hall, library, two committee-rooms, and officer's house on the ground floor, with museum above, and (2) lecture-rooms, chemical and other research laboratories, dissecting-rooms, and other places of study.

"The former buildings, which (with the exception of the officer's house) are the subject of the present appeal, form the main buildings of the College, and the latter are separated therefrom by a walk, and have separate communications.

"The lecture-rooms, laboratories, &c., are assessed under Schedule A separately from the main buildings, on a net annual rent or value of £227. The officer's house is also separately assessed on the net annual value of £12.

"Meetings of the College are held periodically in the hall, and the library and museum are open for the use of the Fellows of the College, to which privilege they are entitled by virtue of their position as Fellows and the fees paid by them on entry. These buildings are never let for other purposes. The professional examinations are conducted in the hall, library, and committee rooms by the board of examiners, and include chemical testing, laboratory work, examination and description of preserved specimens of anatomy, surgical apparatus, and such like.

"The library contains a valuable collection of scientific works by British and foreign authors, is open to Fellows, and is meant to keep Fellows abreast of the advances, not only in their own spheres of the sciences of medicine and surgery, but in other sciences, and is very important in encouraging and aiding study and research in the various sciences. The College does not publish any transactions in separate form, but many medical and surgical papers by its Fellows are published in the weekly medical journals, such as the *Lancet*, *Edinburgh Medical Journal*, &c.

"The museum contains a very valuable collection of anatomical specimens and other specimens relating to the study of the sciences of medicine, surgery, &c., and

is especially intended and used for study in special branches requiring illustration, the means of which can only be obtained by the possession of such a collection. The conservator of the museum usually devotes one hour a week to the systematic demonstration of the preparations in the museum to registered medical students, whether they are studying in the University or any of the buildings used for extra-mural teaching. No fees are charged for such demonstrations, although desks are placed and arranged in the museum for the convenience of the students attending. The conservator and his assistant are engaged chiefly in putting up new specimens illustrative of the sciences of anatomy, medicine, surgery, natural history, &c., and these are collected with the express object of further developing the study and investigation of special branches of these sciences.

"These new collections are periodically exhibited to and examined by the Fellows of the College at meetings held by them.

"The lecturers in the lecture-rooms adjoining the Royal College of Surgeons are associated together under a deed of agreement. They are not all Fellows of the College, but all those who lecture upon surgery, anatomy, &c., require to be, and are Fellows, and before their teaching is accepted as qualifying for the medical curriculum they undergo a very stringent examination by a special board of examiners, and have to satisfy the College that they possess adequate means of illustrating their lectures. Those who lecture on medicine and some other branches are in like manner examined by the Royal College of Physicians, and some of the teachers, for example in chemistry, are not necessarily Fellows of the College, but they are examined by a joint examining board of both Colleges.

"The associated lecturers pay an annual rent to the College, and receive from the students fees for teaching. These fees are separate and distinct from the fees paid to the College for professional examinations, and do not entitle the students to enter the museum or library of the College; but they have access to the museum when it is open to the public for inspection. The lecturers transact their business within the lecture-rooms, and as lecturers have no right of access to the hall, library, or museum. Beyond payment of the rent the College has no interest in the revenue derived by the lecturers from students' fees.

"The officer of the College is caretaker of the main buildings, the lecturers employing separate janitors for the lecture-rooms. A resident officer is indispensable, as the nature of the property of the College demands careful attention to guard against fire or other risk.

"For the purpose of furthering the study of the sciences of anatomy and surgery, the College annually grants prizes for the best essays on a surgical subject selected by the College for competition amongst its Fellows and licentiates, and prizes to students for the best approved dissections

of the human body, and on examination in materia medica and therapeutics.

"It also grants triennially a prize of £100 for the 'greatest benefit done to practical surgery,' within the triennial period.

"For the last twenty-nine years the average revenue of the College from all sources has been £2478, and the average expenditure necessary to discharge its functions has been £1454.

"The particulars of income and expenditure in the account for the year ended 30th September 1890 are as follows—

"INCOME.

1. Sums received from candidates for the diplomas of licentiate of the College, &c.,	£1652	5	0
2. Fees of Fellowships,	760	0	0
3. Rent of lecture-rooms,	236	6	6
4. Dividends and Interest,	908	7	1
5. Fines recovered from Fellows,	3	9	6
	£3560	8	1

"EXPENDITURE.

1. Salaries, &c.,	£691	14	0
2. Fees to Examiners,	427	7	0
3. Payments on account of buildings, repairs, rates, taxes, &c.,	784	17	7
4. Additions to lecture-rooms,	100	0	0
5. Law and Parliamentary expenses,	114	18	6
6. Books and stationery,	277	19	0
7. Museum,	77	1	2
8. Donation—Nurses' Institute,	105	0	0
9. Annuity—Society of Barbers,	10	0	0
10. Widows' Fund for 12 members,	12	0	0
11. Printing and advertising,	142	11	10
12. College dinner,	75	8	11
13. Postages, telegrams, &c.,	28	18	2
	2847	16	2

Showing a surplus revenue of £ 712 11 11"

Rule 6 of Schedule A of the Income-Tax Act 1842 provides for exemption in the following cases—"For the duties charged on any college or hall in any of the universities of Great Britain in respect of the public buildings and offices belonging to such college or hall, and not occupied by any individual member thereof, or by any person paying rent for the same, . . . or on any building, the property of any literary or scientific institution, used solely for the purposes of such institution, and in which no payment is made or demanded for any instruction there afforded, by lectures or otherwise; provided also, that the said building be not occupied by any officer of such institution, nor by any person paying rent for the same."

Argued for the Surveyor of Taxes—The Royal College of Surgeons was not entitled to the exemption claimed, as they were not a scientific institution in the sense of the Act. Down to 1850 they were simply one of the incorporated trades of Edinburgh. Under the charter of 1851 the objects of the society were mainly the providing of means of instruction to students, and the granting of licences to practise after due examination. The objects of the society were thus mainly professional, though

indirectly no doubt it promoted medical science, and the principle of the *Writers to the Signet* case applied rather than that of the *Institution of Civil Engineers—Society of Writers to the Signet v. Commissioners of Inland Revenue*, November 3, 1886, 14 R. 34; in *re Duty on Estate of Institution of Civil Engineers*, 1887, L.R., 19 Q.B.D. 610, 1888, L.R., 20 Q.B.D. 621, and 1890, L.R., 15 App. Cas. 334, per Lord Watson, 350; see also *Commissioners for Special Purposes of Income-Tax v. Pemsel*, 1891, L.R., App. Cas. 581. Assuming that the College was a scientific institution in the sense of the Act, it was still not entitled to exemption in respect of any of its buildings, because part of its buildings were rented for lectures, and on a sound construction of the clause the Act limited the exemption to institutions in which no payment was demanded for instruction there afforded.

Argued for the Royal College of Surgeons—The fact that the College of Surgeons had been regarded in times past as a trade did not derogate from its present position, which was that of a scientific institution. It was in no sense a teaching body, nor were its funds devoted to teaching. The qualification of membership was not necessary to entitle a person to practise as a doctor, and no pecuniary advantage attached to being a member of the College. The College was in its main objects a scientific institution, and the case therefore fell within the principle of the *Institution of Civil Engineers*, 1887, L.R., 20 Q.B.D., per Lord Esher, M.R., 629.

At advising—

LORD PRESIDENT—The exemption from income-tax claimed in this case is rested on the following words in that part of Schedule A of the Income-Tax Act 1842 (5 and 6 Vict. c. 35) which states the allowances to be made in respect of the duties in that schedule—"Or on any building the property of any literary or scientific institution, used solely for the purposes of such institution, and in which no payment is made or demanded for any instruction there afforded by lectures or otherwise." The hall, museum, and library sought to be assessed are the property of the Royal College of Surgeons of Edinburgh, and accordingly the claim can only be allowed if that body is a "scientific institution" in the sense of the Act. That is the question we have to decide.

That every incorporated body of surgeons or medical men has a relation to physical science, and that the association of surgeons or medical men tends to promote physical science, are propositions which cannot be questioned. On the other hand, it is manifest that the term "scientific institution" cannot be applied indiscriminately to all incorporations or associations composed of surgeons or medical men. We must find out whether science is the object of the institution in some other sense than that in which it may grandiloquently be said that it is the object of the profession of surgery.

The mode of determining such questions

is usefully illustrated by the two cases cited at the bar—*The Writers to the Signet* and the *Institution of Civil Engineers*. Those cases arose under the Customs and Inland Revenue Act 1885. The words in that Act, corresponding to those in the Act of 1842 now before us, confer an exemption on property legally appropriated and applied for the promotion of science, and as the exemption in those cases was claimed on the ground that the property was applied to the purposes of the institutions assessed, the question at issue was very nearly the same as that which more directly arises here, viz., is the institution a scientific institution? And the opinion of the noble and learned Lords and learned Judges have a very direct bearing.

Now, the existing charter of the Royal College of Surgeons of Edinburgh was granted in 1851 by royal charter granted in pursuance of an Act of Parliament. Down to 1851 the College was one of the fourteen incorporated trades of Edinburgh, as the *Chirurgeons* or *Surgeons Craft*, being denominated at one time the *Chirurgeons* or *Barbers of Edinburgh*; afterwards the *Chirurgeons* or *Chirurgeon-Apothecaries of Edinburgh*; afterwards the College or Corporation of Surgeons of the City of Edinburgh, and having first received incorporation by royal charter in 1778 by the name of the Royal College of Surgeons of the City of Edinburgh.

In 1847, as is well known, the exclusive rights of the trades was done away with, and of course the growing dignity of the medical profession generally made the status of the trade guild inappropriate to a privileged body of surgeons. Accordingly, by the charter of 1851 the connection with the trades was terminated; arrangements were prescribed for the admission of new Fellows by diploma, and the granting of diplomas or licences entitling the recipients to practise anatomy, surgery, and pharmacy, and provisions were made for winding-up a Widows' Fund connected with the institution.

At this stage it may be asked—Prior to 1851 was the Royal College of Surgeons or the Surgeons' Craft a scientific institution? I hardly think this question could be answered in the affirmative. It was a professional association, developed out of the original Surgeons' Craft, and I see in it no note of a scientific institution.

I turn now to the College as it exists. Much has been made of the expression which occurs in the preamble of the charter of Her Majesty's willingness to give all proper encouragement to the advancement of the science of surgery within her dominions, and to promote the good of the said College. I do not think that this use of the word "science" goes far to show that the College is, in the sense we are now concerned with, a scientific institution. We must look at the facts. The Fellows are the governing body. They are qualified surgeons, admitted as a rule after examination, and by a vote as to fitness. The College grants licences after due examina-

tion. Neither Fellows nor licentiates receive pecuniary profit out of the funds. The Fellows have the use of the library and museum, both of which are valuable collections. The College does not publish any transactions, but (as may readily be supposed) many of the Fellows are individually contributors to medical journals.

The College is concerned with education in this way. Among the buildings belonging to it are class-rooms, in which are taught the subjects of which study is necessary to the attainment of a qualification to teach surgery. The lecturers on surgery and anatomy must be Fellows of the College, but the lecturers on other subjects need not be so. All lecturers before being allowed to lecture must satisfy the College that they have adequate means of illustrating their lectures. Rent is paid to the College for the lecture-rooms by the lecturers, who draw fees from the students. Attendance on the lectures is recognised as qualifying for the medical degrees conferred by the University of Edinburgh, which avail as a qualification to practise medicine or surgery.

So far as to teaching. The College examines candidates for the licences to teach surgery which it confers, and for diplomas in public health. It also gives prizes for the best essays on surgical subjects, for dissections of the human body, and for knowledge in *materia medica* and therapeutics.

Such, stated shortly, are the facts. From them I gather that the Royal College of Surgeons of Edinburgh is a professional body, whose members enjoy certain privileges, and which promotes the professional teaching of its licentiates, and also of those studying for the practice of medicine generally. It certainly promotes science, because the profession is a scientific profession, and the privilege of its Fellows and the education of its licentiates, and of all who learn their profession within its walls, conduce to the advancement of science. But its primary and proximate objects are professional, and its methods square with the requirements of the profession, and if it furthers research, it is only incidentally and indirectly.

My opinion is that the decision of the Commissioners was wrong.

LORD ADAM—The question here—at least the leading question—is, whether the Royal College of Surgeons is a scientific institution? If it be not a scientific institution, there is no other question, because in that case the question as to the use of the buildings does not arise at all. If, in the sense of the Act, the main and leading purpose of the institution is the advancement of science, it will not, I think, be the less entitled to the exemption claimed because it aids incidentally and consequently the promotion of professional purposes, as appears to have been very much the case with the Institution of Civil Engineers in London. On the other hand, if the main and leading object of the institution be that of advancing the interests of a profession, then the fact that it may

incidentally and as a consequence promote science will not the less make it other than a professional institution, and as such not entitled to the exemption claimed.

I must say I entertain no doubt that the College of Surgeons in its main and leading object is a professional institution. I think its main purpose is exactly that which is set forth in its recent charter. It says, that it shall be in the power of the said College, under its common seal, to grant diplomas or licences to practise anatomy, surgery, and pharmacy in such form as shall from time to time be thought fit to arrange, and then it goes on to say that such parties after examination shall be entitled to be admitted licentiates of said College, and shall be entitled to exercise and enjoy all the rights of practising anatomy, surgery, and pharmacy which are commonly enjoyed by the Fellows of the said College, and which have heretofore been enjoyed. I think that is the leading purpose of this institution. It is for the purpose of qualifying persons to practise, and giving them licence to practise, anatomy and surgery, and if we look at the statement given us of the funds we see that it is from that source that the main portion of their funds is delivered. One item of income consists of the sums received from candidates for the degree of licentiate of the College, and the next is exactly in the same position, namely, fees of Fellowships—the Fellowships being obviously taken, I think, for the purpose of obtaining a degree of superior reputation than that of a mere licentiate of the College. I need not repeat what your Lordship has said about the history of the institution. By producing learned men it necessarily promotes incidentally and consequentially the study of science, but that it does so I cannot think makes it a scientific institution in the sense of the Act. Its main and leading object is that of a professional institution for the encouragement and promotion of the practice of surgery, and not of science. On these grounds I entirely concur with your Lordship.

LORD M'LAREN—The Act of Parliament gives no definition of a scientific or literary society, and we are left to define it, I presume, by a reference to the objects and practice of such associations. These, I think, may be stated generally to include the meeting for the discussion of such subjects of literature or science as the society undertakes to promote, the publication of papers, and the making grants to individuals who undertake to prosecute studies of scholarship or scientific research.

Now, in reading the opinions in the latest and most authoritative case on this subject—the case of the *Institution of Civil Engineers*—I think it is evident that in the opinion of all the law Lords who took part in the case, a body that is constituted for professional objects is not a literary or scientific society in the sense of the Act; and the distinction taken between the case of the *Institution of Civil Engineers* and that of the *Writers to the Signet* was this,

that the Institution of Civil Engineers gave a professional qualification neither to members of the corporation or to licentiates, and that while it was certainly an advantage to an engineer to be known to belong to such a society; it gave him no rights which he could exercise outside the walls of the association. And it appeared to their Lordships that this—though consisting of professional men, because these were the only men competent to discuss such questions—was a body constituted for objects similar to those of societies which are universally recognised as scientific societies, such as the Royal Society or the Linneæan.

Now, in comparing the present case with that of the *Civil Engineers*, I think it is chiefly distinguished by the absence of those incidents which in the opinion of the House of Lords suffice to characterise the Institution of Civil Engineers as a scientific society, and we have all or nearly all the incidents which mark out the *Writers to the Signet* as a professional body who were not entitled to the exemption. It is true that the Fellowship of the College of Surgeons is not technically a professional qualification—a qualification to practise—and for this reason, that no one except honorary members can become a Fellow until he has already got a professional qualification. But then while the College of Surgeons does not and cannot by making a man a member of the corporation give him what he has already, they give professional qualifications to students. They have a school, and they have an examining body, and by Act of Parliament their licence given to their students is a professional qualification. That circumstance, I think, points out very clearly what is the true character and object of this College, and I am of opinion with your Lordship that they are not entitled to exemption, and the decision of the Commissioners ought to be reversed.

LORD KINNEAR concurred.

The Court reversed the determination of the Commissioners and remitted to them to sustain the assessment.

Counsel for the Surveyor of Taxes—Mackay—Young. Agent—Solicitor of Inland Revenue.

Counsel for the Royal College of Surgeons—Comrie Thomson—Strachan. Agent—James Robertson, L.A.