Tuuesday, October 22.

FIRST DIVISION.

[Court of Exchequer.

JOHN WILSON & SON, LIMITED *v.* COMMISSIONERS OF INLAND REVENUE.

Revenue — Stamp — Conveyance on Sale — Consideration—Stock or Securities—Conversion of Private Company into Limited Company — Stamp Act 1891 (54 *and* 55 *Vict. c.* 39), *secs.* 54, 55 (1), 57, *and Sched.* (1).

A firm consisting of eight persons, with a capital of £100,000, by agreement among themselves, converted the partnership into a company limited by shares under the Companies Acts 1862–1890. The company had the same capital as the partnership, and the whole shares were allocated among the eight partners in the proportion of their existing interests in the partnership. Thereafter two of their number, who held the whole assets of the partnership, both heritable and moveable, in trust for behoof of the firm, executed, with consent of the other partners, a disposition by which, upon a narrative of the above agreement, they conveyed the assets from themselves, as representing the previous partnership, to the company.

Held that the disposition was a conveyance on sale, the consideration for which consisted of stock or securities, within the meaning of the Stamp Act 1891, and was chargeable with *ad valorem* stamp-duty upon the value of the stock.

John Foster & Son, Limited v. *The Commissioners of Inland Revenue*, L.R., 1894, 1 Q.B. 516, *followed.*

The Stamp Act 1891 (54 and 55 Vict. c. 39) by the first schedule enacts that the following stamp-duties upon instruments shall be charged, viz.—

"Conveyance or transfer on sale of any property (except such stock as aforesaid). Where the amount or value of the consideration for the sale does not exceed £5 ... 6d.

. . . . . .

For every £50, and also for any fractional part of £50, of such amount or value ... 5s. And see sections, 54, 55, 56, 57, 58, 59, 60, and 61."

Section 54 of the Act is as follows:—"For the purposes of this Act the expression 'conveyance on sale' includes every instrument, and every decree or order of any court or of any commissioners, whereby any property, or any estate or interest in any property, upon the sale thereof, is transferred to or vested in a purchaser, or any other person on his behalf or by his direction."

Section 55, sub-section (1), is as follows:—"Where the consideration, or any part of the consideration, for a conveyance on sale consists of any stock or marketable security, the conveyance is to be charged with *ad valorem* duty in respect of the value of the stock or security."

Section 57 of the Act is as follows:—"Where any property is conveyed to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or encumbrance upon the property or not, the debt, money, or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the conveyance is chargeable with *ad valorem* duty."

In 1894 Mr John Wilson, Hillhead House, Glasgow, was sole proprietor of the capital, amounting to £100,000, of the firm of John Wilson & Company, malleable iron tube manufacturers, of which he and his son Matthew Gemmell Wilson were the only partners. By deed of assumption, dated 25th, 26th, and 27th December 1894, the other members of Mr Wilson's family and two gentlemen in the employment of the firm were assumed as partners, making eight persons in all. To these eight persons Mr Wilson senior, with the consent of his son Mr Matthew Gemmell Wilson, by the same deed, donated, conveyed, and assigned the capital of the firm in sums of varying amount. By a subsequent minute of agreement among John Wilson & Son and the partners of the firm, dated 28th, 29th, and 30th December 1894, it was provided, *inter alia*, as follows:—"*First*, that the said whole parties have resolved and now resolve to convert the company into a company limited by shares, to be registered under the Companies Acts 1862 to 1890, the capital of the company after registration being the same as at present. . . . *Second*, that the share and interest which each of the partners has at present in the company shall remain the same after registration, only it shall then be expressed in shares instead of in pounds sterling, . . . and the said several parties agree and engage to accept of such shares in full satisfaction to them respectively of their present shares and interests in the capital of the company and whole assets thereof."

On 2nd and 5th February 1895 Mr Wilson senior, and his son Matthew, who were vested in the whole assets of the company of John Wilson & Son for behoof of said company, executed a disposition in the following terms:—"Considering that by minute of agreement . . . the said partners agreed to convert the said company of John Wilson & Son into a company limited by shares, to be incorporated under the Companies Acts 1862 to 1890, upon the terms contained in the said minute, that the company was incorporated upon the said third day of January Eighteen hundred and ninety-five under the name of John Wilson & Son, Limited, and that after the said incorporation the company by minute of assent, of date the thirtieth, formally assented to the foresaid minute of agreement, and procured the said minute of assent to be filed in the office of the foresaid registrar, of date the thirty-first, both days of January Eighteen

hundred and ninety-five: *And further considering* that the heritable subjects and others hereinafter described and disponed, which form part of the assets of the said company of John Wilson & Son, were acquired by the said company of John Wilson & Son, when we, the said John Wilson and Matthew Gemmell Wilson, were the only partners therein, the titles being taken in favour of us, the said John Wilson and Matthew Gemmell Wilson, as trustees for behoof of the said company and partners thereof, present and future, according to their respective rights and interests therein, and that we as such trustees still stand heritably vested in said subjects and others: *And further considering* that in consequence of the said company being now incorporated as aforesaid, and therefore able to hold and be heritably vest in the said subjects and others directly without the intervention of us as trustees, it is right and proper that we should grant the disposition under written in order to divest ourselves of the said subjects and others, and devolve the same and all other assets in favour of the said company: Therefore we, the said John Wilson and Matthew Gemmell Wilson as trustees, heritably vest as aforesaid, at the request and with the special advice and consent of the said company of John Wilson & Son, . . . do hereby assign and dispone to and in favour of the said John Wilson & Son, Limited, incorporated as aforesaid, and to the assignees of the said John Wilson & Son, Limited, heritably and irredeemably"—in the *first*, *second*, *third*, *fourth*, and *fifth* places, certain heritable properties, including the whole business premises of John Wilson & Son, with the buildings and machinery thereon: "And in the *sixth* place, All and Sundry the whole moveable estate, property, and effects of and relating to the aforesaid company of John Wilson & Son, and businesses carried on thereby in Glasgow, including all book debts and goodwill, as also the whole moveable machinery on or connected with the several heritable subjects hereinbefore disponed, dispensing with the generality of this conveyance, and declaring the same to be as good, valid, and effectual as though every particular of the said whole moveable estate, property, and effects, machinery, and others had been herein particularly set forth, with entry as at the first date hereof." . . .

The Commissioners of Inland Revenue were of opinion that this instrument was chargeable with *ad valorem* duty as a conveyance on sale, and that the sum to be deemed the consideration in respect of which it was so chargeable was the sum of £100,000, being the cumulo amount or value of the stock or shares of John Wilson & Son, Limited, agreed to be allotted to the partners of John Wilson & Son, in terms of the said minute of agreement. The Commissioners fixed the duty accordingly.

The said John Wilson & Son, Limited, declared themselves dissatisfied with the determination of the said Commissioners, on the ground that the acts and procedure of John Wilson & Son, in assuming Mrs Wilson and others as partners in the company of John Wilson & Son, and after the assumption agreeing to convert the company into a company limited by shares, and thereafter carrying the agreement into effect, did not constitute a sale either in substance or form, and that the disposition was not liable to an *ad valorem* duty, but was sufficiently stamped with the duty of 10s.

At the request of John Wilson & Son, Limited, the Commissioners stated a case under sec. 13 of the Stamp Act 1891, in which the question for the opinion of the Court was—"Whether the said instrument in the circumstances above set forth is liable to be assessed or charged with the said *ad valorem* conveyance on sale duty in respect of the sum of £100,000, or with the duty of 10s. only?"

Argued for the appellants—Sec. 55, subsec. (1), was not in point. That section provided that stocks and shares as well as money might be the consideration in a conveyance on sale, but to make the section applicable there must be a sale. The mere transference of stocks or shares was not sufficient unless "on sale." Here there was no sale either in form or in reality. In form this conveyance was a donation; in reality it was a divestiture for the purpose of carrying out a new arrangement among those interested. Before it was executed the heritable property had been held by two trustees for all interested; afterwards it was held by the persons interested themselves. Had there been no heritable property, no conveyance would have been necessary, because the moveables would have passed by delivery. There was no sale, because the parties and their rights were unaltered by the conveyance; there was no consideration, and there was no seller and no purchaser—*idem non potest emptor et venditor*. The case of *John Foster & Sons, Limited* v. *The Commissioners of Inland Revenue*, L.R. 1894, 1 Q.B. 516, relied upon by the Crown, was not in point. There a style had been adopted applicable to sale, and in that case upon the conveyance the partners got stocks and shares and the benefit of being members of the joint-stock company. They had these advantages here before the disposition. It was not to be said that no private firm could by arrangement convert itself into a limited liability company without executing a conveyance on sale, and paying the attendant stamp duties. The duty upon registration had been paid, and that was all the Government could demand. The ruling case was rather that of *Anderson* v. *Commissioners of Inland Revenue*, October 19, 1878, 6 R. 56. The present case was distinguishable from that of *Foster*, but even if it were not, this Court was not bound to follow an English decision, especially on questions of revenue—*cf. Macleod* v. *Commissioners of Inland Revenue*, June 3, 1885, 12 R. 1045.

Argued for the respondents—There was admittedly a conveyance or transfer here. The only question was—Was it "on sale?"

Foster's case was conclusive, and could not be distinguished from the present. That the disponers here were trustees for the old firm, and not the partners of that firm themselves was immaterial—being trustees they were merely the hands of the firm, and bound to do as the firm required. There were here, as there, different legal *personæ*, although the same individuals might be concerned. There was a transference from individuals to a corporation—who composed that corporation was a matter of indifference—and there was a consideration, viz., allocation of stocks and shares of the company, and the advantages of being members of a limited liability company. In *Anderson's* case there was only a deed of retrocession.

At advising—

LORD PRESIDENT—I think the determination of the Commissioners is right. It seems to me that the counsel for the parties are right in what they have made common ground, namely, that the earlier and initial transaction which is set out in this case does not materially affect the merits of the legal question which we have to determine. It appears that Mr Wilson was minded to distribute his interest in this business among the several members of his family; and he accordingly by deed donated to them certain portions of the partnership assets. But that is rather historically than argumentatively the beginning of this question; because we find that in the very end of 1894 this donation had been carried into effect, and there was constituted a private partnership, consisting of Mr Wilson, several members of his family, and two gentlemen who had been connected with him in business; and these were then by Mr Wilson's gift beneficially vested in the assets, which ultimately are the subject of conveyance. Now, so stood matters for about a month, there existing this private partnership, consisting of these eight persons. It is true that the heritable property was not formally vested in the partners, but stood in the names of Mr John Wilson and Mr Matthew Wilson, his son; but this was for a purely technical reason, and not the less were those eight persons beneficially interested in all the property which they proceed to deal with; and the trustees, it is needless to say, had but one duty, and that was to keep the property for them, or to hand it over to their assignees. Now, they determined to constitute a limited liability company, of which they should be, I think it is safe to say, in the meantime, the whole members; and they put this in form by executing the minute of agreement, the substantial parts of which are printed in the case. That agreement sets forth that they resolved to constitute a company. The company was constituted; and once that was done the deed in question was executed. Now, the deed in question in substance is a conveyance by the private company to the limited liability company. It is true that, formally, the leading parties to the deed are the trustees who held the property; but then, as I have said, they were absolutely at the call and command of their beneficiaries, and they intervene merely to give effect to the agreement and the resolution of their beneficiaries. Now, the conveyance is a conveyance of property, both heritable and moveable, from the private company to the limited company. It is quite true that this has been represented as being neither more nor less than a conversion of a private company into a limited liability company. That, in a sense, is true; but then the legal effect of what was done was that the private company parted with their rights in the specific articles of property, land, tubes, stock-in-trade, and the like, handed them over to the limited liability company, and got in exchange merely shares in the limited liability company. Now, the question we have to do with is, whether that is a conveyance on sale in the sense of this statute; and we are aided in determining that question by the interpretation clause, which has been referred to—section 55—which says that you do not require to have money, but that money's worth, including shares, will do perfectly well as the consideration. Now, first, what do the true disponers—for I take them to be the private company—what do the true disponers have? Certain property, land, and stock-in-trade. What do they get for that? The answer to that is set out in the deed itself, which is the subject of dispute, and it is to be found in the previous agreement by which the private company and its individual members resolve to part with the specific articles, giving them to the joint-stock company and taking in exchange the right to shares. It seems to me, that on a fair construction of the statute, the sections invoked by the Crown do apply to that transaction. But further, Mr Balfour has very fairly admitted that, setting aside certain rather superficial distinctions to which he gave a fair although not excessive consideration, this case is not distinguishable from the case of *Foster* which was decided very recently in the Appeal Court of the High Court of Justice in England. I have examined that case, and I think Mr Balfour is perfectly right, that it deals with precisely the case which we have here, taking it as a case of conversion of a private company into a limited liability company; and there the reasoning of the judges, which in the Court of Appeal was entirely in one direction, leads them to the conclusion that that is a conveyance on sale, the consideration being stock, and there being, not merely in legal language but in substance, a conveyance of property from one party to another. I am greatly influenced by that case, which I think a direct authority, and I concur in the reasoning which prevailed.

LORD ADAM—I agree that this case cannot be distinguished from the case of *Foster*, to which we have been referred; and I have further to say that there has not been raised, to my mind, any such doubt as to the soundness of the decision in the case of *Foster* as to lead me to dissent or

differ from the judgment of the Appeal Court in that case.

LORD M'LAREN—I agree in the judgment proposed. My opinion is that the contract between the private company, consisting of Mr Wilson's family and two gentlemen connected with him in business, on the one hand, and the new limited company consisting of the same partners on the other, followed by a conveyance of the stock and assets, included a conveyance on sale in the sense of the Stamp Act. There is no exhaustive definition of sale in the Stamp Act; but there is a series of clauses from the 54th to 62nd, in which a number of different cases—in fact, all the more usual and obvious cases—which look a little different from sale, are considered and are placed under that category. I say this is not an exhaustive category, because the subject is resumed in the 73rd section, where the case of exchange of land for land is considered and an equivalent duty is imposed. But I think this much is clear on the series of sections to which I have referred, and especially on the 55th and 57th sections, that where land, or a *universitas*, or capital stock, being the subject of sale, is given in exchange for securities or shares, the securities or shares are considered to be the equivalent of a price, and the value of the securities or shares is charged with duty as consideration money. Indeed, I think it was hardly disputed that if the circumstances had been varied to this extent, that the new joint-stock company was a company consisting of different members from the old, the statute would have applied. Mr Balfour's argument was rested mainly, I think, on this, that he was entitled to take it as a fact that under the transaction in question there was substantial identity in the persons who received benefit as vendors and purchasers. He did not and could not contravert the proposition that there is no legal identity, because when a number of persons are constituted as a company under the Companies Act, the new company is by statute a corporation, having an identity distinct from that of its constituent members, or those to whom shares may be allotted. Now, after giving the best consideration to that argument, and admitting that this may be considered a hard case for the family, I am unable to adopt the view that a case of substantial identity between sellers and purchasers who are theoretically distinct can be regarded as an exception to the scope of the statute. I think this case must be determined upon the legal fact that there is a sale, or what the statute treats as equivalent to a sale, from a private partnership to a company, which for the present consists of shareholders having the same proportionate interests as in the old partnership, but which may hereafter be very different in its constitution. If it were possible to distinguish the case as specifically different from the ordinary case of the sale of a business to a joint-stock company, I should have been disposed to give effect to Mr Balfour's argument. But it seems to me to be impossible to draw a distinguishing line anywhere between—first, the case of a sale where the vendors and purchasers are entirely distinct; secondly, the case of a sale to a company which consists in substantial proportions of the original sellers, and also of new shareholders who come in; thirdly, the case of a sale by private individuals to a company which, except to a very small extent, consists of members of the old undertaking; and lastly, the case where the interests are identical. I think the case where the component members of the new firm and the old are the same, and where their shares are the same, is merely a limiting case of a sale with a reserved interest in the vendor, and not a distinct and separable case.

Then I agree with your Lordship in the chair that our opinion on this point is very much fortified by the decision in the English case of *Foster*, in which all the arguments that have been addressed to us to-day were considered, and were considered so carefully that there resulted a difference of opinion amongst the Judges, the majority being in favour of the view on which we propose to proceed. I should be extremely averse to considering questions of revenue law independently of English precedents, because this Court in Revenue cases is just a co-ordinate court with the English Exchequer jurisdiction. It would be in the highest degree inconvenient that the same revenue statute should be interpreted differently in different parts of the United Kingdom, with the result that taxation should be levied in the one country while there was exemption in the other. Of course where the circumstances are different it may happen that indirectly a conflict of opinion should arise. But I see no distinction of circumstances here, and even if I were less fully persuaded of the soundness of the decision of *Foster's* case, I should be disposed to defer to it as an authoritative exposition of the law. I agree with your Lordships who have spoken that the determination of the Commissioners is right, and that it is put upon the right ground.

LORD KINNEAR—I agree. The case of *Foster & Sons* v. *The Commissioners of Inland Revenue* is not distinguishable from the present, and I think that we ought to follow that decision. I agree with your Lordships that the argument which we have heard from Mr Balfour has entirely failed to displace the reasoning upon which that case stood.

The Court held that the determination of the Commissioners was right, and refused the appeal.

Counsel for the Appellants—Balfour, Q.C. —Shaw, Q.C.—Cook. Agent—R. P. Stevenson, S.S.C.

Counsel for the Respondents—Lord Advocate, Sir Charles Pearson, Q.C.—A. J. Young. Agent—Solicitor of Inland Revenue.