

rules of a private society, is not one of the purposes of a Free Library established under the Free Libraries Acts.

I am for reversing the decision of the Commissioners and sustaining the assessment.

LORD ADAM—In this case the Magistrates and Town Council of Dundee appealed against an assessment laid upon them under Schedule A of the Inland Revenue Acts as occupiers of a portion of certain buildings known as the “Albert Institute,” Dundee.

The Commissioners sustained the appeal, and we have now to say whether their determination was right.

The appeal was rested on that part of Rule 6 which allows an abatement “on any building the property of any literary or scientific institution used solely for the purposes of such institution.”

It appears from the case that the buildings in question are the property of the Magistrates and Town Council of Dundee, and are used for the purposes of the Public Free Library.

Having regard to the *Manchester Free Library* case in the House of Lords, I am constrained to hold that the Public Free Library is a literary institution, and that the buildings in question are, in the sense of the Act, the property of that institution, although feudally vested in the Magistrates and Town Council.

But to entitle to exemption it must be further shown that the buildings are used solely for the purposes of such institution, *i.e.*, of the Public Free Library.

It appears that there is in Dundee another institution called the Dundee Subscription Library, which has upwards of 200 members, and who acquire about 1500 volumes annually.

These volumes are accommodated in the buildings in question. They remain the exclusive property of the Subscription Library for one year and are under the custody of the chief librarian and clerk of the Free Library Board, who acts as librarian and clerk to the Subscription Library. It appears to me to be clear that the buildings are used for the accommodation and for the purposes of the Subscription Library, and therefore that they are not used solely for the purposes of the Public Free Library.

The arrangement with the Subscription Library may probably be an advantageous one for the Free Library, but I do not think that we have anything to do with that—the only question as I think being whether the buildings are used solely for the purposes of the Free Library. I do not think they are, and on that short ground I think that the determination of the Commissioners is wrong.

LORD KINNEAR concurred.

LORD M'LAREN was absent.

The Court reversed the determination of the Commissioners and sustained the assessment.

Counsel for the Appellant, The Surveyor of Taxes—Sol.-Gen. Dickson, Q.C.—A. J. Young. Agent—P. J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for the Respondents—H. Johnston—Salvesen. Agents—Morton, Smart, & Macdonald, W.S.

Wednesday, June 16.

FIRST DIVISION.

TOD v. INLAND REVENUE.

Revenue—Stamp—Conveyance on Sale—Ad valorem Duty—Decree under Heritable Securities Act 1894 (57 and 58 Vict. cap. 44), sec. 8—Stamp Act 1891 (54 and 55 Vict. cap. 39), secs. 54, 57, and 62.

Held that an extract decree of declarator by the Sheriff in terms of the Heritable Securities Act 1894, following on an unsuccessful exposure of property under the power to sell contained in a bond and disposition in security, and declaring the debtor's right of redemption extinguished, and the creditor vested in the property, is not a “decree upon a sale” in terms of the Stamp Act, and is accordingly not liable to an *ad valorem* duty.

This was an appeal on a case stated by the Commissioners of Inland Revenue under the Stamp Act 1891 (54 and 55 Vict. cap. 39) at the request of Mr David Tod, Eastwood Park, Renfrewshire, with respect to the stamp-duty chargeable on an instrument consisting of an extract decree of the Sheriff, pronounced in terms of section 8 of the Heritable Securities Act 1894 (57 and 58 Vict. cap. 44), and following on an unsuccessful exposure of a property made in virtue of the power to sell contained in a bond and disposition in security.

By the first Schedule of the Stamp Act 1891 there are charged the following stamp duties, *viz.*—“(a) 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 £0 0 6
and so on.

“And see sections 54, 55, 56, 57, 58, 59, 60, and 61.

“(b) Conveyance or transfer of any kind not hereinbefore described . . . £0 10 0
and see section 62.”

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 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 57—“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 incumbrance 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."

Section 62—"Every instrument, and every decree or order of any court or of any commissioners, whereby any property on any occasion except a sale or mortgage, is transferred to or vested in any person, is to be charged with duty as a conveyance or transfer of property; provided that a conveyance or transfer made for effectuating the appointment of a new trustee is not to be charged with any higher duty than ten shillings."

The Heritable Securities (Scotland) Act 1894 provides:—Section 8—"Any creditor who has exposed for sale under his security the lands held in security, at a price not exceeding the amount due under the said security, and under any prior security, and any security or securities ranking *pari passu* with the exposor's security (exclusive of the expenses attending the exposure or prior exposures), or at any lower price, and has failed to find a purchaser, may apply to the Sheriff for decree in the terms of Schedule D hereto annexed, and the Sheriff may, after service on the proprietor and on the other creditors, if any, and after such intimation and inquiry as he may think fit, grant such application and issue decree in the said terms. On such decree being pronounced, and an extract thereof in which said lands shall be described at length, or by reference recorded in the appropriate Register of Sasines, the right of redemption reserved to the debtor shall be extinguished, and the creditor shall have right to the lands disposed in security in the same manner and to the same effect as if the disposition in security had been an irredeemable disposition as from the date of such decree, and upon registration of an extract of such decree in the appropriate register, the lands shall be disencumbered of all securities and diligences posterior to the security of the said creditor; or instead of granting such decree the Sheriff may, upon any such application being made to him as aforesaid, appoint the lands held subject to the security to be re-exposed for sale at a price to be fixed by him, and in that event the said creditor shall have right to bid for and purchase the said lands at such sale, and, in the event of the creditor purchasing, the Sheriff may issue decree in the form and to the effect aforesaid, or the creditor may grant a disposition of the lands to himself in the same manner as if he had been a stranger." Schedule D provides—"The Sheriff having resumed consideration of the said petition, finds and declares that X Y [the debtor in the bond] has forfeited the right of redemption reserved to him in the said bond and disposition in security, and that the said right is extinguished as from and after this date, and that A B [design him], the

petitioner, has right to and is vested in the lands described in the said bond and disposition in security, dated and recorded as aforesaid, as absolute proprietor thereof, but subject always to the burdens and conditions contained or referred to in the said bond and disposition in security at the price of £ [here mention the price at which the lands were last exposed, or the price at which the lands have been bought in, as the case may be], and decerns; and grants warrant to record the decree to be extracted hereon in the Register of Sasines."

The following instrument was presented to the Commissioners of Inland Revenue on behalf of Mr Tod, that they might express their opinion as to the stamp duty with which it was chargeable:—"At Glasgow, the 26th day of January 1897, in an action in the Sheriff Court of the county of Lanark at Glasgow, at the instance of David Tod, Esq., of Eastwood Park, Renfrewshire, *Pursuer*; against David Lamont Rodger, residing at 11 Rylet Crescent, Shepherd's Bush, London, heir-at-law of the deceased David Rodger, writer in Glasgow, and as such heir of provision in trust for the firm of Murdoch & Rodger, writers in Glasgow, and Ebenezer Erskine Scott, chartered accountant, Edinburgh, as trustee for the creditors of the said Murdoch & Rodger and of James Murdoch, writer, Glasgow, and the said David Rodger, *Defenders*; the Sheriff in absence found and declared that the defenders had forfeited the right of redemption reserved to the granters in a bond and disposition in security for the sum of Twenty-two thousand pounds sterling, dated the tenth, and recorded in the Division of the General Register of Sasines applicable to the county of the barony and regality of Glasgow the eleventh, both days of September eighteen hundred and seventy-three, granted *quoad* the personal obligation by the said Murdoch & Rodger and James Murdoch and David Rodger, the individual partners of the said company or firm of Murdoch & Rodger, and *quoad* the disposition in security by the said James Murdoch and David Rodger, the only partners of the said firm of Murdoch & Rodger and trustees for said company or firm and partners thereof in favour of the pursuer (therein designed as of Ironbank, Partick), and that the said right was extinguished as from and after the said date hereof, and that the pursuer had right to and was vested in—In the first place, All and Whole . . . ; in the second place (*primo*), All and Whole . . . and (*secundo*) one-half *pro indiviso* of All and Whole . . . ; in the third place, All and Whole . . . ; and in the fourth place, All and Whole" . . . [the subjects are certain heritable subjects in Glasgow, particularly described in the said bond and disposition in security] "as absolute proprietor thereof, but subject always to the burdens and conditions contained or referred to in the said bond and disposition in security (that is to say) . . . the whole conditions, provisions, restrictions, declarations, prohibitions, servitudes, clauses irritant, resolute,

and others specified in" [certain instruments of sasine, a deed of allocation, and a feu-contract, particularly referred to], "at the price of Twenty-seven thousand pounds (the sums due under the said bond and disposition in security at the term of Whitsunday Eighteen hundred and ninety-six, being Twenty-eight thousand four hundred and eighty-three pounds two shillings and twopence), and decerned; and granted warrant to record this extract-decree in the Register of Sasines.—Extracted at Glasgow, this ninth day of February 1897, by me, Sheriff-Clerk-Depute of Lanarkshire.—ALEX. PEARSON, Sheriff-Clerk-Depute."

The Commissioners were of opinion that the decree was chargeable in terms of section 54 of the Stamp Act 1891 with *ad valorem* duty as a conveyance-on-sale, and that under section 57 the sum upon which the duty was payable was £27,000, being the sum set out in the instrument as the "price of the subjects." They accordingly assessed the *ad valorem* conveyance-on-sale duty as £135.

Mr Tod expressed himself dissatisfied with the determination of the Commissioners on the ground that the instrument was not a conveyance-on-sale within the meaning of section 54 of the Act, in respect that the property in question was not "upon the sale thereof" vested in him by the instrument, but that on the contrary it had vested in him on the recording of the bond and disposition in security, and all that the decree did was to take away the debtor's right of redemption with the consequence that his right became absolute. He contended that the extract decree if subject to any duty was subject only to the deed-duty of 10s., and accordingly called on the Commissioners to state a case.

The question for the opinion of the Court was—"Whether the said instrument, in the circumstances above set forth, is liable to be assessed and charged with the said *ad valorem* conveyance-on-sale stamp-duty; or if not, with what other duty, if any, it is liable to be assessed and charged?"

Argued for appellant—This document did not fall under either section 54 or 57 of the Stamp Act. (1) All that the declarator of the Sheriff did was to make the appellant's right indefeasible and irredeemable. It could not be said—as the Crown contended—to convert the bond and disposition in security into a "conveyance on sale"—*Anderson v. Commissioners of Inland Revenue*, October 19, 1878, 6 R. 56; *Belch v. Commissioners of Inland Revenue*, February 24, 1877, 4 R. 592. On the contrary, the order was only made after the failure to sell. (2) The 57th section did not apply because there was here no conveyance, no transfer of a right of property—*Scottish Equitable Life Assurance Society v. Commissioners of Inland Revenue*, November 23, 1894, 22 R. 85. Moreover, this section did not impose the duty, but merely decided how the consideration was to be ascertained. The case really fell within section 62, which applied exactly to it.

Argued for respondents—The two sections, 54 and 57, taken together, covered this case. There was a consensual contract entered into when the bond was granted, to the effect that the bondholder was entitled to use the remedies given him by law. He acquired the property, and for a price, the decree having the effect of a disposition at that date. If this were not a sale, what could it be termed?—*Foster v. Commissioners of Inland Revenue*, L.R. [1894], 1 Q.B. 516; *Huntington v. Commissioners of Inland Revenue*, L.R. [1896], 1 Q.B. 422.

At advising—

LORD PRESIDENT—Proceedings under the 8th section of the Heritable Securities (Scotland) Act of 1894 are novel, but they are simple and intelligible. Given a bond and disposition in security, and an unsuccessful exposure under the power to sell, and the Sheriff may declare the right of redemption extinguished and the creditor vested in the lands. The question which we have to determine is, whether the Sheriff's decree to this effect is a decree upon a sale.

Prima facie there is no sale. On the contrary, the decree is pronounced because there is no sale. It is impossible to say when, where, and to whom the sale took place upon which the decree is pronounced.

It was attempted to evolve, out of the combined effect of the bond and disposition and the decree something which could be called a sale. This seems to me much too far fetched and is inconsistent with the business-like views of the Stamp Act itself. In one view (and that is the view of the argument) a bond and disposition in security itself may be represented as a conditional sale. But the Act sharply distinguishes from sale the class of contracts embodied in security writs, and groups them under the title "Mortgage." The question therefore comes to be whether the unsuccessful exposure to sale and the application to the Sheriff constitute a sale in the sense of the 54th section; and I am of opinion that those words are entirely inapplicable. The case is provided for under section 62, which contemplates a class of decrees importing conveyances which are not on the occasion of a sale or mortgage.

LORD ADAM—The question in this case is, what is the amount of stamp-duty payable on the instrument set forth in the print. Now, that instrument is an extract decree by the Sheriff of Lanark, by which he found and declared—[reads]. That is the instrument in question in this case. Now, that decree, it appears to me, is in entire conformity with the terms and provisions of the 8th section of the Heritable Securities (Scotland) Act 1894, and as your Lordship has said, the proceeding being somewhat novel, the instrument was laid before the Commissioners to ascertain what stamp was exigible, and the Commissioners were of opinion that the decree of the Court in question was chargeable in terms of the 54th section of the Stamp Act 1891

with *ad valorem* duty. The question for us is whether that determination is right or wrong. On that I agree with your Lordship that this instrument does not fall within the 54th section of the Act, which it is said to do by the Commissioners. Of course the conveyance on sale there described is said to include every instrument and decree of Court "whereby any property or any estate or interest," &c.—[reads]. Now, the question is whether this is a transfer on a sale. I can find with your Lordship no evidence of sale in the matter. We should naturally look in the case of sale for a seller. Who is the seller? There is no disposition contained in this instrument at all, no conveyance by any seller whatever. There is no donee. All that is done by this instrument is that the Sheriff, under powers conferred upon him, has declared a certain right of reversion forfeited. That does not appear to me to partake at all of the character of a transfer on sale. Therefore I agree with your Lordship that the determination of the Commissioners in this case is wrong, and that the case falls expressly within the 62nd section of the Act, which provides—[reads]. It is by a decree of the Court and not a sale at all that this property is declared to be vested in the proprietor. I therefore agree with your Lordship.

LORD KINNEAR—I am of the same opinion. I think it clear that the right arising to the creditor under the 8th section of the Heritable Securities Act 1894 is not a right which arises from sale. A sale of land is a consensual contract by virtue of which the seller becomes bound to convey the land which is the subject-matter of the contract to the buyer for a price, and the conveyance on sale must be a conveyance which is executed in the performance of such a contract. There is no such contract here. The appellant acquired a totally different kind of right from the original owner of the property. He acquired a right in security only, which is a totally different thing from the right of property acquired by a purchaser upon a sale. Then the Heritable Securities Act comes in and gives him what your Lordships have described as a novel remedy, and which certainly is a remedy which does not belong to creditors by the law of Scotland before the passing of that statute. The statute provides a new and very ready method by which a creditor may be enabled to make the subject of a security available for the payment of his debt, and in the application of that method he has obtained a decree from the Sheriff extinguishing the right of his debtor—the right of the owner of the land—and vesting the right of property in the creditor. That appears to me to be certainly not a right arising upon a sale, for the reasons which your Lordships have already given. It is agreed by both parties that it is not a conveyance upon a mortgage, but nevertheless it is a decree which has the effect of transferring and vesting in the appellant a right of property which had previously been vested in another

person, that is, in the borrower. It appears to me, therefore, that it falls directly under the language of the 62nd section of the statute, and that the duty chargeable must be in accordance with that section.

LORD M'LAREN was absent.

The Court pronounced the following interlocutor:—

"Reverse the determination of the Commissioners: Assess the duty of 10s. on the instrument in question, being the duty chargeable upon a 'conveyance or transfer other than a conveyance or transfer on a sale,' under section 62 of the Stamp Act 1891; and ordain the Commissioners of Inland Revenue to repay to the appellant the sum of £134, 10s., being the excess duty paid."

Counsel for Appellant—Guthrie—Aitken. Agents—Smith & Watt, W.S.

Counsel for Inland Revenue—A. J. Young. Agent—Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Friday, June 18.

FIRST DIVISION.

[Dean of Guild Court,
Leith.

MACGREGOR v. MAGISTRATES
OF LEITH.

Burgh—Dean of Guild—Jurisdiction and Powers—Alterations of Structure—Burgh Police Act (55 and 56 Vict. cap. 55), sec. 167.

Where proposed structural alterations of an existing building are admittedly such as to improve the light and ventilation thereof, it is *ultra vires* of the commissioners of a burgh, in the exercise of the powers conferred upon them by section 167 of the Burgh Police Act 1892, to refuse to grant warrant for such alterations on the ground that the existing building itself is defective as regards light and ventilation.

William Daniel Macgregor, the proprietor of certain tenements in Leith, presented a petition to the Magistrates of that burgh in their Dean of Guild Jurisdiction for warrant "to improve the lighting, ventilation, and sanitary arrangements of the premises" by executing certain alterations, such as enlarging windows, taking down partitions, providing a new bathroom, &c.

On 26th April 1897 the Master of Works, after examining the plans lodged with the petition, reported as follows—"The alterations to be made on the windows shown on the plan may improve in a slight degree the light of the respective rooms. It may be further stated for the information of the Court, with respect to the buildings, that