and satisfy all their engagements and liabilities fairly and properly charged against revenue. I do not understand it to be disputed that the transfer of the harbour undertaking to the company, effected by the Act, was a "conveyance or transfer on sale" within the meaning of the Stamp Act 1891.

At 31st July 1900 the capital debt due by the Bo'ness Harbour Commissioners was £266,458, 17s. 7d., and the arrears of interest on that debt, which the Commissioners had been unable to pay to the creditors therein, and which the company had paid to these creditors under their guarantee, amounted at that date to £303,376, 19s. Two further sums of £1000 each were also payable by the Harbour Commissioners, as to which no question arises in this case.

The Inland Revenue authorities did not insist on payment of duty on account of one of the two sums of £1000 each, above mentioned, but they claimed duty on the amount of the capital debt and on the other sum of £1000 mentioned, and so far their claims are not disputed by the company. The Inland Revenue authorities also claimed duty on the £303,376, 19s. of arrears of interest due by the Harbour Commissioners to the company as at 31st July 1900, in respect of the company having paid that interest to the creditors in the harbour debt under a guarantee given by the company to these creditors; and the company maintains that duty is not payable upon that sum on the grounds, as I understand, (1) that that debt is not due to other creditors but to the company; (2) that the effect of the Act of Parliament and of the transfer of the harbour undertaking to the company was to cancel that debt; and (3) that the debt was of no value, inasmuch as the Harbour Commissioners could never have paid it. It does not, however, appear to me that any of these contentions are well founded. If the debt had been due by the Harbour Commissioners to anyone else than the company, I do not think that it could have been disputed that duty was payable in respect of it, even although it was bad in the sense that the debtors were unable to pay it, and it does not appear to me to make any difference that it was due to the company. The agreement scheduled to the Act makes it clear that the debt formed part of the consideration for the sale, and the circumstance that it was a bad debt in the sense already stated does not appear to me to make any difference. In this connection I may refer to section 57 of the Stamp Act 1891, which declares that "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." The company maintains that the Act relates only to debts due by the Commissioners to persons other than the company, but I find no warrant for such a limitation. The circumstance that the debt in question may have been regarded as a bad debt is not, in my judgment, material; and there is no reason to suppose that the Commissioners would have agreed to the transfer of the harbour undertaking unless they had been relieved of this debt, as well as of their other obligations. A liability is none the less a debt because the debtors may be unable to pay it in whole or in part. I am unable to find any ground for the contention that the debt was for the purposes of the present question cancelled by the transfer to the company.

For these reasons I am of opinion that the judgment of the Lord Ordinary is right.

LORD M'LAREN and LORD KINNEAR concurred.

LORD ADAM not having been present at the hearing gave no opinion.

The Court adhered.

Counsel for the Pursuer and Respondent—Dundas, K.C.—A. J. Young. Agent—P. J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for the Defenders and Reclaimers—Jameson, K.C.—Grierson. Agent—James Watson, S.S.C.

Friday, October 25.

FIRST DIVISION.

BROWN *v.* SMITH.

Revenue — Income-Tax — Exemption — Buildings Used for County and Municipal Government.

Commissioners under a private Act of Parliament were vested in certain subjects consisting of a county hall and other rooms, certain of which were used by the town-clerk of the head burgh of the county, and certain others by the procurator-fiscal of the Sheriff Court. The hall was chiefly used for meetings of the county council and other local bodies, but occasionally as a court of justice. The procurator-fiscal and the town-clerk conducted, in the rooms occupied by them respectively, not only their official business, but also private business as law-agents. For the rooms occupied by the town-clerk a rent was paid to the Commissioners. In a case stated for appeal, *held* that, as the subjects were not exclusively used for the administration of justice, the Commissioners were liable to income-tax under Schedule A.

This was a case stated for appeal by the Commissioners of Income-Tax for the Upper Ward of Lanarkshire at the instance of John Brown, Surveyor of Taxes, to determine whether the Commissioners acting under the Act 3 and 4 Will. IV. cap. cviii.,

in whom certain subjects containing the Lanark County Hall and other rooms were vested by the said Act, were liable for income-tax under Schedule A in respect of these subjects.

The material facts set forth in the case were as follows:—"The building in question is situated in the burgh of Lanark. It consists of ground floor and first floor. On the ground floor it contains the Town Council Chamber, a clerk's room, which is also used as his office by the Town-Clerk, who is a law-agent, and in which he conducts private as well as public legal business, a fire-proof safe for records, a private room occupied by the Town-Clerk, and a fire-proof safe used for burgh records, also two rooms occupied by the Procurator-Fiscal of the Sheriff Court. The safes in question are used for the keeping of private municipal records as well as of public documents. On the first floor is the County Hall, with a room leading off it, used for committee meetings, &c. Under the stair leading to the hall is a cellar, which has been utilised as a store by the Town Council in connection with the lighting of the burgh, as also a w.c. The word 'hall,' as used in the description of the property assessed, includes the County Hall and the committee room leading off it. The whole buildings open off the main entrance, but there is a separate entrance to the Town Council Chamber, used chiefly, if not solely, on Town Council election days, and a back stair leads from the Council Chamber to the hall above. There is a communication from the main lobby to the Sheriff Court House and offices connected therewith, which adjoin on the south. These (the Court House and offices) are not the property of the appellants, but of the County Council, and being used solely for the administration of justice are not assessed to income-tax. The hall is used for meetings of the Commissioners of Supply and the County Council of the County of Lanark, of which Lanark is the head burgh; for meetings of the District Committee of the Upper Ward of the County and their subcommittees, including the Valuation Committee; for the Quarter Sessions of the County and the Petty Sessions of the Upper Ward, and for the meetings of the Income-Tax Commissioners of the Upper Ward District, as also when required for the Burgh and Police Courts of the burgh of Lanark. It was lately used temporarily for holding the Sheriff Court when the Sheriff Court-House was being altered. It has also at times, but not within the year of assessment, been used for balls given by the various regiments of the reserve and volunteer forces connected with the County, the Caledonian Hunt, and others; for public worship when a church was under repair; and for various other meetings not connected with public business. On no occasion has a charge been made for the use of it. The bulk of the Police Court, Magistrates Court, Dean of Guild Court, and Valuation Appeal Court business of the burgh of Lanark is disposed of in the Town Council Chamber, which is more frequently used for these purposes than for the Council meetings, all of which are held in it, recourse being had to the County Hall only when the Council Chamber was likely to be overcrowded. The Town Clerk is required to be in attendance personally or by a representative, and according to arrangement, uses the Council Chamber for private as well as burghal business. The clerks' room is used by clerks in his employment for discharge of burgh as also private business. The Procurator-Fiscal is paid by Government for official work, but as a law-agent he conducts private as well as public business in the rooms occupied by him on the ground floor of the building, and his clerks are engaged in both."

"The said Commissioners in 1836 fixed the rent to be paid for the offices, including the Town Council Chambers and the record rooms of the Town-Clerk and the Sheriff-Clerk who then occupied a part of the premises, at £8 each. For the year of assessment the part of the premises allocated to the Town-Clerk is still rented at £8, while the part allocated to the Sheriff-Clerk is now occupied by the Procurator-Fiscal, who pays no rent. This part is entered in the valuation-roll as being of the annual value of £6.

In respect of these subjects the Commissioners were assessed for income-tax to the amount of £2, 0s. 6d., being £1, 6s. 6d. in respect of the County Hall and 14s. in respect of "offices," being the parts of the premises occupied by the Town-Clerk and the Procurator-Fiscal. Apparently "offices" included the Town Council Chamber. Against the assessment John Smith, Clerk to the Commissioners under 3 and 4 Will. IV., cap. cviii., appealed to the Commissioners of Income-Tax.

The Commissioners of Income-Tax were of opinion that no part of the building was properly assessable to income-tax, and discharged the assessment.

Against this decision the Surveyor of Taxes appealed, and argued—It was not disputed that buildings occupied exclusively for the administration of justice were exempt from income-tax, on the principle that they were theoretically in the occupation of the Crown, and that the Crown, not being mentioned in the Income-Tax Acts, was not bound by them. That was all that was decided in *Mersey Docks* v. *Cameron*, 1865, 11 H.L.C. 443, and *Coomber* v. *Justices of Berks*, 1883, 9 App. Cas. 61. That principle did not cover the buildings in question in the present case. They were mainly used for county business—only incidentally as Courts of Justice. The use of buildings for local government conferred no exemption from income-tax. It was not enough to show that the buildings were used for public purposes—it must be for something which theoretically was part of the administration of the Sovereign. Thus the council chambers of a burgh and university buildings were not exempt—*Magistrates of Edinburgh* v. *Surveyor of Taxes*, November 15, 1889, 17 R. 73, 27 S.L.R. 64; *Greig* v. *University of Edinburgh*, June 8, 1868, 6 Macph. (H.L.) 97, 5 S.L.R. 260. The rooms

used by the Procurator-Fiscal and Town-Clerk were clearly assessable, because they were used for private as well as official business.

Argued for the respondent—The subjects in question were used for public purposes and not for profit. Courts were held in the hall as well as county-meetings. Such a case was within the principles of exemption recognised in *Coomber* v. *Justices of Berks, cit. supra.* Exemption was not confined to premises exclusively used for the administration of justice.

At advising—

LORD PRESIDENT—The question relates to a county hall in the burgh of Lanark, and to certain rooms occupied by the Town-Clerk and the Procurator-Fiscal respectively for business purposes there. The facts are set out in detail in the case, and it is unnecessary to repeat them. It is sufficient to say that the court-house and offices connected with it, which form parts of the building in question, being used solely for the administration of justice, are not assessed to income-tax, but that the hall is used for the meetings of the Commissioners of Supply and of the County Council of the county of Lanark, of which Lanark is the head burgh; for the meetings of the District Committee of the Upper Ward of the county and their sub-committees, including the Valuation Committee; for the Quarter-Sessions of the county, and the Petty Sessions of the Upper Ward, and for the meetings of Income-Tax Commissioners of the Upper Ward District; as also, when required, for the Burgh and Police Courts of the burgh of Lanark. It was lately used temporarily for holding the Sheriff's Court when the Sheriff Court-house was being altered. The bulk of the Police Court, Magistrates' Court, Dean of Guild Court, and Valuation Appeal Court business of the burgh of Lanark is disposed of in the Town Council Chamber, which is more frequently used for these purposes than for the council meetings, recourse being had to the county hall only when the Council Chamber was likely to be overcrowded. The Town-Clerk uses the Council Chamber for private as well as for burghal business, and his room is used by him and by clerks in his employment for the disposal of burgh and also of private business. A rent of £8 a-year is paid by the Town-Clerk to the appellants for the part of the premises occupied by him. The Procurator-Fiscal is paid by Government for official work, but as a law-agent he conducts private as well as public business in the rooms occupied by him on the ground floor of the building, and his clerks are engaged in both. No rent is now paid for the rooms occupied by the Procurator-Fiscal, but they are entered in the valuation roll as being of the annual value of £6.

The general rule is that courts used for the administration of justice, whether criminal or civil, and buildings used for purposes incidental to the preservation of order and the punishment of crime, form parts of the Government establishment for the administration of justice, so as to be deemed to be for the use and service of the Crown, and that consequently they cannot be subjected to assessment for income-tax unless they are specially mentioned in the Act as being liable to such assessment. All these buildings are provided and maintained for purposes of the Government, which are, according to the theory of the constitution, administered by the Sovereign. But county and municipal buildings which do not fall under that description are liable to assessment for income-tax. As the County Hall was built and is used primarily and usually for the performance of county business, and only exceptionally and accidentally for the purposes of a court of justice, I consider that it cannot be regarded as part of the King's establishment for the administration of justice; and that for similar reasons the rooms occupied by the town-clerk and procurator-fiscal cannot be regarded as forming parts of that establishment.

The case might have been different if the rooms occupied by the procurator-fiscal had been parts or adjuncts of a court of justice or of a gaol, and had been used exclusively for criminal business, but it is clear upon the statements in the case neither of these conditions exists.

For these reasons, I am of opinion that the deliverance of the Commissioners should be recalled in so far as it relates to the county hall and the two rooms referred to, and that we should remit to the Commissioners to give effect to this finding.

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

The Court pronounced this interlocutor:—

"Reverse the determination of the Commissioners of Income-Tax for the District of the Upper Ward of Lanarkshire: Find that the premises in question are assessable to income-tax, and remit to the Commissioners to sustain the assessment accordingly: Find the Surveyor of Taxes entitled to expenses, and remit," &c.

Counsel for the Appellant — Solicitor-General (Dickson, K.C.) — A. J. Young. Agent—P. T. Hamilton-Grierson, Solicitor for Inland Revenue.

Counsel for the Respondent — A. M. Anderson. Agent—R. G. Bowie, W.S.