

a special provision in section 17 that undeveloped land duty shall not be charged in respect of any land where the site value of the land does not exceed £50 per acre. Its incidence, therefore, is confined to cases in which the assessable site value is not only a positive quantity but is actually greater than £50 per acre. No difficulty therefore arises in this case, nor does it throw any light upon the matter in issue.

The second argument appears at first sight to be a more formidable one. In sub-section 5 of section 3 it is provided that for the purposes of the collection of duty on the increment value of any land the increment value shall be deemed to be reduced on the first occasion for the collection of increment value duty by an amount equal to 10 per cent. of the original site value of the land, and on any subsequent occasion by an amount equal to 10 per cent. of the site value on the last preceding occasion for the collection of increment value duty. Now it is pointed out that the Act provides that any reference in it to "site value" is to be deemed to be a reference to "assessable site value," and it is urged therefore that this provision is irreconcilable with the idea that "assessable site value" can be a negative quantity, because to reduce a sum by 10 per cent. of a negative quantity would be to increase and not to diminish it.

The true answer to this argument is in my opinion to be found in the very provision as to the meaning of a reference to "site value" in the Act which is relied on for the purposes of this argument. It reads as follows—"Any reference in this Act to site value (other than the reference to the site value of land on an occasion on which increment duty is to be collected) shall be deemed to be a reference to the assessable site value of the land as ascertained in accordance with this section."

In my opinion the words in brackets refer to section 3, sub-section 5, and were inserted with the special object of obviating the difficulty which it is suggested is caused by its language. It follows from those words that in section 3, sub-section 5, the phrase "site value" must not be understood as meaning "assessable site value," but as meaning actual or as it is called in the Act "full site value." This is always a positive quantity, and the difficulty therefore vanishes.

I am of opinion, therefore, that the Commissioners were right in inserting a minus quantity in the valuation as the assessable site value of the land, and that this appeal should therefore be allowed.

Counsel for the respondents, in respect that the case was a test one raising an entirely novel point on the construction of a new statute, and that respondents were merely present to support the unanimous judgment of three Judges in the Court below, asked their Lordships not to give expenses against the respondents.

Counsel for the appellants, while submitting the matter to their Lordships' direction, pointed out that the original

assessment of the Commissioners, confirmed by the Referee, was in accordance with the decision of their Lordships, and that respondents had appealed against that decision to the Valuation Appeal Court and there obtained expenses against the Crown.

LORD CHANCELLOR—Under the very special circumstances of this case their Lordships propose to make no order as to costs—that is to say, the parties will bear their costs here and in the Court of Session and before the Referee. That is only done because the question is an entirely novel one, and because, in order to give it the fullest consideration, the hearing has been somewhat extended.

Their Lordships reversed the interlocutors appealed against, restored the decision of the referee in its first alternative, and ordered that there be no costs in their Lordships' House or in the Court below or before the referee.

Counsel for the Appellants—Attorney General (Sir Rufus Isaacs, K.C.)—Solicitor-General (Sir John Simon, K.C.)—J. A. T. Robertson—W. Finlay, Agents—Hugh Bertram Cox—Sir Philip J. Hamilton Grierson, Edinburgh, Solicitors.

Counsel for the Respondents—Clyde, K.C.—Ryde, K.C.—Hon. Wm. Watson, Agents—Cameron, Kemm, & Company—Connell & Campbell, S.S.C., Edinburgh.

COURT OF TEINDS.

Friday, February 21.

(Before the Lord President, Lord Johnston, Lord Mackenzie, Lord Ormidale, and Lord Hunter).

ANDERSON AND OTHERS v.
MINISTER OF RUTHERGLEN.

Church—Manse—Transportation of Manse—Sale of Old Manse—Question Whether Old Manse Situated on Glebe—Presumption Against Old Manse being on Glebe—Right of Heritors to Sell Site of Old Manse.

In an application by heritors for transportation of a manse and for authority to sell the old manse and the site on which it stood and to apply the proceeds thereof towards the expense of providing a new manse, the minister objected to the proposed sale on the ground that the site of the old manse formed part of the glebe lands.

Held, in the absence of proof to the contrary, that it must be presumed that the old manse was built on manse ground and not on glebe ground, and that the heritors were entitled to sell the site.

This was a petition by James Anderson and others, who were duly authorised to represent the heritors of the parish of Rutherglen, for authority (1) to transport the manse, offices, and garden from the present site to a new site; (2) to sell the site of the old manse, offices, and garden;

and (3) to apply the proceeds thereof *pro tanto* towards the expense of buying the new site and erecting and forming thereon a new manse, offices, and garden.

It was stated, *inter alia*, in the petition—"The present Manse of the parish of Rutherglen, offices, and garden, containing 2958½ square yards or thereby, have been the Manse, offices, and garden for the minister of the parish of Rutherglen for several hundreds of years. The glebe, arable and grass, of Rutherglen consists of (1) a piece of ground situated beside Rutherglen Burn at some distance from the Manse, and extending to 4 acres 2 roods or thereby, and (2) another piece of ground lying in the immediate vicinity of the Manse, and extending to 1 acre 1 rood or thereby."

The Rev. George S. Yuille, the minister of the parish, lodged answers in which he, *inter alia*, stated—"The glebe of the parish of Rutherglen, together with the minister's grass, consists of (1) a piece of ground which lies on the west side of the Rutherglen Burn at some distance from the Manse, and extends to 4 acres 2 roods or thereby; (2) a piece of ground on the east side of the said burn which extends to 1 acre 1 rood or thereby; and (3) a piece of ground which extends to 2 roods 17 poles 23½ square yards or thereby, and is contiguous to the piece of ground second above mentioned.

"The Manse of the parish of Rutherglen with its offices and garden is situated on, and completely covers, the piece of ground third above mentioned. It is admitted that the said Manse has occupied its present site for a long period. The said site was occupied by the said Manse many years before the right of a parish minister to half an acre of ground over and above his glebe as a site for his manse came into existence. In any event, the said site was so occupied long before the said right was recognised. Further, Rutherglen is, and has been for several centuries, a royal burgh. The right of the minister of a royal burgh, which, like Rutherglen, is partly landward, to a manse, was not decided till the beginning of the nineteenth century. In a number of cases during the eighteenth century the Court rejected claims to manses by ministers of royal burghs in this position. The right of the minister of any royal burgh, whether partly landward or not, to half an acre of ground over and above his glebe as the site for his manse, could not therefore have been recognised prior to the beginning of the eighteenth century. The Manse of the parish of Rutherglen, in accordance with the views prevailing at the time it was built, was erected upon the glebe, and the site it now occupies is part of the said glebe. . . . The respondent does not object to the petitioners selling the materials of which the said Manse and offices are composed."

The respondent, while not opposing a finding as to the expediency of transporting the manse with decrees following thereon, pleaded—" (1) That the petitioners' averments are irrelevant and insufficient

to support said prayer; (2) that the ownership of the present site of the said manse, offices, and garden is in dispute, and that it is incompetent to try that question in this process; and (3) that in any event the said present site is part of the glebe of the parish of Rutherglen, and does not therefore belong to the heritors, or any of them."

Argued for the petitioners—(1) On *competency*. The question at issue was quite properly raised in the Court of Teinds, which was not a separate Court but merely a branch of the Court of Session, and entitled to exercise the full jurisdiction of the latter—*Presbytery of Stirling v. Heritors of Larbert and Dunipace*, February 2, 1900, 2 F. 562, and *per* Lord Kinnear at p. 568 *et seq.*, 37 S.L.R. 455. The petition here was in ordinary form and according to precedent—*Connell's Parochial Law*, p. 229. (2) It was admitted by all parties that it was expedient to remove the manse, and it was usual in such cases to apply the price realised for the old manse towards the cost of the new one. The site had been occupied by the manse for centuries, and the presumption was against its being situated on glebe. In any event, no relevant averment had been made by the minister that it was built on glebe. Even if originally built on glebe the site became designated to manse and ceased to be part of the glebe—*Gloag v. Heritors of Galashiels*, November 17, 1873, 1 R. 187. Rutherglen was a royal burgh and a landward parish, and it was only in 1812 that it was finally decided that a minister of such a parish was entitled to a manse—*Heritors of Dunfermline v. McLean*, November 19, 1805, Fac. Col. and Mor. Appendix 1, No. 1, s.v. Manse, *aff.* March 9, 1812, 5 Paton 593, *Duncan's Parochial Law*, p. 367, *Connell's Parochial Law*, p. 261 *et seq.* The manse in question having been built long before 1812, as shown by *Fairie v. Leach*, February 2, 1813, Fac. Col., it must have been provided by the heritors as a matter of grace. Counsel referred to *Duncan's Parochial Law*, p. 353 *et seq.*, and the *New Statistical Account*, vol. vi. p. 395.

Argued for the Respondent—(1) It was not competent to decide this question in a summary process of petition. It ought to have been raised in a declarator in the Court of Session. The case of *Presbytery of Stirling v. Heritors of Larbert and Dunipace*, *supra*, only dealt with the question of jurisdiction of the Teind Court and not with any question of procedure. (2) It was only fair that the minister should have the benefit of the old site if it was originally part of the glebe. The facts here favoured the presumption that that was so. There was no dispute that the old manse was built prior to 1778, when it was first recognised in *Griersons v. Ewart* (June 26, 1778, 2 Hailes 799), that a minister was entitled to half an acre for a manse over and above the glebe. Prior to that date he was only entitled to four acres, including the site of manse—*Clark v. Ramsay*, December 14, 1621, M. 5144; *Kerse v. Reid*, July 5, 1626, M. 5132.

At advising—

LORD PRESIDENT—This is a petition for the transportation of the manse of the parish of Rutherglen and for authority to sell the old manse. The only point that is raised before your Lordships is raised by the minister upon the last branch of the crave, namely that for authority to sell the old manse. It has been argued to your Lordships that it must be presumed that the existing manse is built upon the glebe, and that if that is so it would be improper that the manse should be sold, but that the old manse should remain part of the glebe.

I do not think that that argument can be sustained, because it is really based upon nothing but mere speculation. The parties have supplied us with all they know about the history of the manse, and all that we know is that it is an old manse, what was its origin no one can tell. Now it may be that the manse has come down from pre-Reformation times—it may be that it was originally erected in terms of the various statutes which gave ministers a right to call upon heritors for a manse—but where nothing is known of the origin of the manse it must be presumed that the ground on which the manse stands is dedicated as manse ground, and that as manse ground it is something other than glebe.

I can understand that in a case where in modern times a manse has to be rebuilt, and it is more convenient that the new manse should be built upon the glebe, and where, with the consent of those representing the benefice, the new manse is built upon the glebe, inasmuch as so much glebe has been taken up by the new manse it would only be equitable that the ground cleared by taking away the old manse should be given to the glebe. But where you know nothing about the past history, but where you merely find a manse standing, then I take it that the ground on which the manse stands is manse ground and separate from the glebe ground. Inasmuch as the heritors here have found a new site it is only right and just that they should be allowed to dispose of the old one. They were not bound to find a new site for the manse, they might have rebuilt it upon the old site. But in the circumstances of this case it was thought expedient to build the manse elsewhere. The heritors have had to find a site elsewhere, and have with the consent of all parties built the new manse upon it. I think they are entitled to the site that has been rendered free.

That I think is obviously the view which the Court held in the case of *Gloag*, which is reported in 1 R. 187. The report of that case bears (p. 188) that "The Court were doubtful whether authority could be granted to feu the site of the old manse, offices, and garden, without a designation thereof as glebe." That clearly points to the opinion held by the Court that manse ground was one thing and the glebe was another.

Accordingly, upon the whole matter I think that the crave of the petition as

lodged is correct and ought to be granted. I may say that if one had to guess I think it is very likely that this never was glebe ground at all, because it seems to be upon the other side of the water from the glebe. But I do not go upon that because that is also mere speculation. I go upon the simple point that if one knows nothing about the origin of the manse, manse ground is manse ground and not glebe ground.

LORD JOHNSTON—I agree with your Lordship. I think it is quite clear that where nothing is known or can be ascertained as to the history of the site of a manse it must be presumed that the ground of that site wherever it came from was dedicated to the purposes of a manse, and must be dealt with as such in any case such as we have before us where it is desired to transport the manse from one site to another.

LORD MACKENZIE—I am of the same opinion.

LORD ORMDALE—I concur.

LORD HUNTER—I concur.

The Court granted the prayer of the petition.

Counsel for the Petitioners—Blackburn K.C.—D. P. Fleming. Agents—A. B. & F. J. Dewar, W.S.

Counsel for the Respondents—Crabb-Watt, K.C.—Hunter. Agents—Laing & Motherwell, W.S.

COURT OF SESSION.

Thursday, November 28, 1912.

OUTER HOUSE.

[Lord Skerrington.

SALAMON v. MORRISON'S TRUSTEES.

Trust—Trust Accounts—Right to Inspect—Assignee of Beneficiary under the Trust—Assignment of Contingent Interest in Trust Estate—Expense Occasioned by Assignee's Inspection of Trust Accounts.

Held that a person who held an assignation of the interest of a beneficiary in a trust estate in security of advances was entitled to see the trust accounts.

Observed that where the exercise of this right of inspection of the trust accounts involved unusual or excessive expense, it was proper that the assignee should pay a reasonable fee to the law agents of the trustees.

Mrs Bella Salamon, widow, residing at Oxford Gardens, Notting Hill, London, pursuer, brought an action against James Logan Strang and others, trustees acting under the trust-disposition and settlement of the deceased Hugh Morrison, 22 Bute