

## VOL. V.—PART IV.

No. 282.—COURT OF EXCHEQUER (SCOTLAND), FIRST  
DIVISION.—3rd and 22nd November, 1904.

HOUSE OF LORDS.—11th and 19th December, 1905.

CURTIS (Surveyor of Taxes) v. OLD MONKLAND CON-  
SERVATIVE ASSOCIATION.<sup>(1)</sup>

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TIVE  
ASSOCIATION.

*Income Tax.—Exemption.—Section 163 of the 5 and 6 Vict. cap. 35. An unincorporated Association claims exemption from Income Tax on the ground that its income from all sources does not exceed £160 per annum.*

*Held, that only persons in the primary sense of the term, and not Bodies Corporate or Unincorporate, can claim relief from tax on the ground of smallness of income.*

### CASE.

At a Meeting of the Commissioners for the General Purposes of the Income Tax Acts, and for executing the Acts relating to Inhabited House Duties for the Middle Ward of Lanarkshire, held at Hamilton on the 25th day of February 1904 :

The Old Monkland Conservative Association (hereinafter called the Association) per Mr. John Henderson Russell, writer, Coatbridge, appealed against an assessment of £65 for the year 1903-4, under Schedule A of the Income Tax Acts, made upon it in respect of premises situated at No. 20/2 Church Street, Coatbridge.

The following facts were found or admitted :—

1. The Association is constituted under certain rules.\* A copy of the Rules and Bye-Laws is appended hereto, and forms part of this case.

2. The Association is the owner and occupier of the premises at No. 20/2 Church Street aforesaid. The premises are occupied by the Association as reading and recreation rooms, offices, etc.

(1) Reported 7 F. 119 ; 43 S.L.R. 119 ; [1906] A.C. 86.

\* The documents referred to in this paragraph are omitted from the present volume for reasons of space.

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3. The feu-duty (£2 15s. 5d.) paid by the Association for its premises, and the interest (£31) paid by it on a bond over its premises, amount to £33, 15s. 5d., from which the Association deducted income tax amounting to £1, 10s. 11d.

4. For the year of assessment the Association had no excess of income over expenditure.

The Association claimed total exemption from income tax (except in respect of the feu-duty and interest referred to in No. 3) for the year 1903-04, on the ground that its income from all sources did not exceed £160, and in support of this claim, founded on the following enactments:—

(1) 5 and 6 Vict. cap. 35, section 163, which provides:—  
‘That any person charged or chargeable to the duties granted by this Act, either by assessment or by way of deduction from any rent, annuity, interest, or other annual payment to which he may be entitled, who shall prove before the Commissioners for general purposes, in the manner hereinafter mentioned, that the aggregate annual amount of his income, estimated according to the several rules and directions of this Act, is less than £150, shall be exempted from the said duties.  
\* \* \* \*’

(2) 57 and 58 Vict. cap. 30, section 34, by which the foregoing exemption is extended to ‘persons whose respective incomes do not exceed £160 a year.’

(3) 5 and 6 Vict. cap. 35, section 40, which provides that:—  
‘All bodies, politic, corporate, or collegiate, companies, fraternities, fellowships or societies of persons, whether corporate or not corporate, shall be chargeable with such and the like duties as any person will under and by virtue of this Act be chargeable with \* \* \* \*’

(4) 5 and 6 Vict. cap. 35, section 192, which is as follows:—  
‘Wherever in this Act, with reference to any person, matter, or thing, any word or words is or are used importing the singular number or the masculine gender only, yet such word or words shall be understood to include several persons as well as one person, females as well as males, bodies politic or corporate as well as individuals, and several matters or things, as well as one matter or thing, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction \* \* \* \*’

On behalf of the Association it was contended that the constitution of the Association is defined by and embraced in section 40 of 5 and 6 Vict. cap. 35, under which section it is therefore entitled to rank; and alternatively under Section 192 of said Act it was further argued that section 40 applied not only for the purpose of ‘charging’ any body of persons, but also for the

purpose of relieving them under section 163 of the same Act, and that otherwise the word 'wherever' at the opening of section 192 would have to be wholly disregarded.

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On behalf of the Crown it was contended that section 40 was a charging section; that section 163 granted exemption to 'any person' with a certain limited aggregate annual amount of income; that the words 'any person' could not be held to include an association, as the wording of section 163 was repugnant to such construction, and that the Association was not a body politic or corporate.

A club as a body, though a distinct entity, has no position recognised in law; it is not a company or a corporation, but an unincorporated society (per Day, *J. Steel v. Gourley*, 1886, 3 T.L.R. 119).

The Commissioners sustained the appeal, the chairman in announcing the decision expressing himself as quite satisfied that the Association was entitled to be included in one or more of the definitions contained in section 40, and was therefore 'chargeable with such and the like duties as any person will 'under and by virtue of this Act be chargeable with.' He further added that section 192 materially strengthened the Association's position, and he was of opinion that it seemed only reasonable, that, if associated bodies were liable to be charged as a person, then conversely they were entitled to be relieved as such.

Whereupon the Surveyor of Taxes (Mr. Frederick James Curtis) declared his dissatisfaction with the determination of the appeal as being erroneous in point of law; and having duly required us to state and sign a Case for the opinion of the Court of Session as the Court of Exchequer in Scotland, it is hereby stated and signed accordingly.

JOS. HUTCHISON, }  
WILLIAM MEEK, } Commissioners.

Hamilton, 19th August, 1904.

This case was argued before the Court of Exchequer on the 3rd November, 1904, the Solicitor-General (Dundas, K.C.) and Mr. Young being heard for the Crown, and Mr. Horne for the Association. The Court pronounced judgment on the 22nd November in favour of the Association, and awarded costs to them. An appeal was entered on behalf of the Crown, and came on for hearing in the House of Lords on the 11th December, 1905. Judgment was delivered by their Lordships on the 19th December, reversing the decision of the Court of Exchequer. The Attorney-General (the Right Honourable Sir Robert Finlay, K.C., M.P.), the Lord Advocate (Mr. Scott

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Dickson, K.C.), and Mr. A. J. Young appeared as Counsel for the Crown, while Mr. C. N. Johnston, K.C., and Mr. R. S. Horne appeared for the Respondents.

The Attorney-  
General.

*The Attorney-General.*—In Section 40 of the Act of 1842 the word “person” is distinguished from Bodies Corporate or Unincorporate. In Section 100 of that Act, while provision is made for taxing a business firm in one sum, special provisions are made requiring any partner who is entitled to exemption to claim the relief separately. The Act provides that an Association shall be charged with like duties as individuals, but it does not make an Association a person, and only a person is entitled to claim relief under Section 163. The question has already been partly raised in the case of *Mylam v. The Market Harborough Advertising Company, Ltd.*(<sup>1</sup>)

*Mr. C. N. Johnston*, in reply.—Section 40 of the Act of 1842 recognises an Association as an entity for purposes of taxation. A person with an income of under £160 is not chargeable with tax, and as by Section 40 an Association is chargeable with the “like duties” as a person, it is, if its income is below £160, chargeable with nil.

The present case is not covered by the decision in the case of the *Market Harborough Advertising Company, Limited*, because that was a dividend-paying concern.

#### JUDGMENT.

Lord  
Robertson.

*Lord Robertson.*—My Lords, the section primarily and directly under construction is the 163rd of the Act of 1842; and it purports to confer an exemption upon persons. “Any person charged” is the recipient of the exemption. This, of course, carries us straight to the charging sections; and in that section, which hits the respondents, viz., section 40, we find that, while societies (I use this term for shortness) meet the same fate as persons, the scheme of the section is to do this by express enactment, the section holding the two notions, of societies and persons, as antecedently separate and requiring enactment to bring about their identic treatment in the matter of charge.

In full view of this structure of this charging section, the exempting section, instead of either expressly applying both to persons and to the bodies which are charged in the same way as if they were persons, or adopting some neutral term common to both persons and societies, deliberately adopts one only of the two contrasted classes, and confers the exemption on “persons.” It seems to me that this is decisive of the

(1) 5 T.C. 95.

construction, that societies are purposely left out; and that the persons favoured are persons in the primary sense of the term—the same sense in which the word is used in the 40th section itself.

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In this view, the Act has not left the scope of the exemption to inference from a *primâ facie* probability that the exemption would square (as regards the class affected) with the charge. But I am not sure, when the subject matter is looked to, that there is any such *primâ facie* probability for it is at least conceivable that the needs or poverty of the individual should be viewed in a different light from the needs and the poverty of a society. And this view is supported by the machinery provided for the individuals of, *e.g.*, a partnership working out their own relief.

Lord  
Robertson.

I am unable to think that the present question is affected or elucidated by those provisions which place on the officers of societies the duties in relation to the charge which in the ordinary case fall on the individual to be charged. And (to mention another argument relied on in the Court of Session) the view that the 192nd section which makes "person" read as "persons" seems to prove too much. If it were sound, the charge on the Conservative Association is wrong, and the charge ought to have been made on the individual members of the Association; I think the charge was rightly made on the Association, and that the true question is, whether the Association is entitled to the exemption? I think it is not; and, therefore, I am for allowing the appeal; and I move accordingly.

*The Earl of Halsbury.*—My Lords, I have had an opportunity of reading the judgment which has been delivered by my noble and learned friend Lord Robertson; and my noble and learned friend, Lord Lindley, and I both concur in what he has said, and we desire to add nothing.

The Earl of  
Halsbury.

*Mr. W. H. Beveridge.*—Before your Lordship puts the question, may I recall to your Lordship's recollection the discussion that took place as to costs when this case was before your Lordships. Your Lordship will remember that Mr. Johnston asked for costs on behalf of the Respondents in any event, and Sir Robert Finlay, for the Crown, said he would grant that request as it was a test case. Your Lordship will remember that?

*The Earl of Halsbury.*—Yes, that was quite so. I had not forgotten it.

*Mr. W. H. Beveridge.*—The costs, both here and below.

*The Earl of Halsbury.*—Well, that the Crown should win and that you should get the costs both here and below strikes me as a very odd thing; but, if the parties have agreed to that, the House will make the Order.

*Mr. W. H. Beveridge.*—If your Lordships please.

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*Questions put.*

That the Order appealed from be reversed.

*The contents have it.*

That the Crown do pay to the Respondents the costs, both here and below.

*The contents have it.*

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