

required for payments of expenses or dividends.

In these circumstances it appears to me not doubtful that the company through their factors or agents, the appellants, have traded within the United Kingdom, and apparently hitherto within the United Kingdom only, although that is not material, and that profits or gains have accrued to them from the exercise of such trade, and that therefore they are chargeable under Schedule D in respect of such gains.

The company not being resident in the United Kingdom, section 41 of the Act of 1842 directs how the assessment shall be imposed in respect of such gains. It enacts that the company shall be chargeable in the name of any factor or agent, in the like manner and to the like amount as if the company were resident in the United Kingdom, and in the actual receipt thereof.

The assessment bears to be imposed in respect of the profits of the barque "Chanaral." It is not disputed that the appellants are factors or agents of the company. I think therefore that the company were chargeable for these profits in the names of the appellants, as was done.

On the whole matter I am of opinion that the determination of the Commissioners should be affirmed.

LORD KINNEAR concurred.

LORD M'LAREN was absent.

The Court refused the appeal and affirmed the determination of the Commissioners.

Counsel for the Appellants—H. Johnston—Deas. Agent—Thomas Liddle, S.S.C.

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

Wednesday, June 16.

#### FIRST DIVISION.

#### MUSGRAVE (SURVEYOR OF TAXES) v. MAGISTRATES AND TOWN COUNCIL OF DUNDEE.

*Revenue—Income-Tax Exemption—Free Library—Buildings Used also for Other Purposes—Income-Tax Act 1842 (5 and 6 Vict. cap. 35), sec. 61, No. 6.*

Held that the buildings of a free public library, in which accommodation was given to books belonging to a private subscription society, on condition that after being thus housed for a year the books should become the property of the free library, did not fall under the exemption given by section 61 of the Income-Tax Act 1842 to any building "the property of a literary or

scientific institution," inasmuch as they were not used solely for the purposes of the free library.

At a meeting of the General Commissioners of Income-Tax for the Dundee District of Forfarshire, held at Dundee on 3rd December 1896, the Magistrates and Town Council of Dundee appealed against an assessment under Schedule A of the Income-Tax Acts, for the year 1896-97, on £500 made upon them as occupiers of a portion of the buildings known as the "Albert Institute" Dundee.

The Commissioners, after hearing the parties, relieved and discharged the assessment, whereupon the Surveyor of Taxes called upon them to state a case for the opinion of the Court of Exchequer. The following facts, *inter alia*, were stated in the case—"1. The Magistrates and Town Council of Dundee are the proprietors of the property known as the Albert Institute, in the city of Dundee, which is administered under sections 18 to 27, both inclusive, of the Public Libraries Consolidation (Scotland) Act 1887. 2. The Magistrates and Town Council acquired the subjects belonging to them in virtue of three dispositions, the first of which proceeds, *inter alia*, on the preamble that the Public Libraries Acts for Scotland had been adopted by the town of Dundee, and in which there is a provision to the following effect:—'And it is further hereby expressly provided and declared that the said lands and subjects above disposed, and whole buildings erected or to be erected thereon, shall be constructed, used, and occupied as a library or libraries, reading-room or rooms, and museum and picture and sculpture gallery, and their respective pertinents, or for similar public purposes as may be agreed to by us and the said Provost, Magistrates, and Town Council of Dundee and their successors, and for no other purposes whatever;' and the subjects conveyed by the second and third dispositions are practically held for the same purposes. The Public Libraries Acts for Scotland were adopted by the town of Dundee in the year 1866, and since then the said Albert Institute buildings have been occupied (except in so far as otherwise occupied) and administered by the Free Library Committee, duly appointed annually under and for the purposes of the Public Libraries Acts. 3. In 1876 a subscription library was formed by a number of gentlemen in Dundee. The subscription is £1, 1s. per annum; and by the third rule of the rules of the Dundee Subscription Library it is provided that 'The chief librarian and clerk of the Free Library Board shall act as librarian and clerk to the Subscription Library, the books of which shall be in his custody.' Rule 4 provides that 'The Committee of Management to be elected by the subscribers at the annual meeting shall consist of thirteen persons, of whom, as stipulated in rule 1, the Provost shall be chairman, the treasurer shall be a member *ex officio*, four of the members to be elected must also be members of the Free Library Board for the time being (if they are subscribers),

and seven shall be chosen from the general body of the subscribers.' Rule 12 provides that 'The books of the Subscription Library shall be kept separate from those of the other libraries, and also marked with a distinctive label for twelve months after their purchase, at the expiry of which time they shall be stamped with the seal of the Dundee Free Library and Museum, and all right and property in them on the part of the subscribers shall cease and determine, it being understood that in consideration thereof the expenses attending their circulation and safe keeping shall be defrayed from the ordinary revenues of the Free Library Board.' The books belonging to the Subscription Library are kept in a public room of the Albert Institute Buildings, not reserved for the members of the Subscription Library, but open to and used by the public. These books occupy four, and rarely five, shelves of one of the many bookshelves in the said room. They never exceed 1500 in number. On the other shelves in that room there are over 15,000 books of the Free Library Lending Department. 130 feet of shelving is occupied by the Subscription Library books, and 2442 feet is occupied by the Free Library books, and there is no division of any kind between the two. The books of the Free Library altogether occupy 9147 feet of shelving, and number 71,000 volumes. Any member of the public wishing a book from the Subscription Library for any special literary purpose at once gets it on application to the librarian as a matter of favour, but not as a matter of right; and there is not, on the part of the members of the Subscription Library, any exclusive possession of any room whatever.

7. The Magistrates and Town Council appealed against the said assessment on the ground that public free libraries were exempt from taxation, and they referred to the judgment of the House of Lords in the *Manchester Free Library* case. It was contended on behalf of the Magistrates and Town Council:—*First*—That the Albert Institute Buildings being used as a free library, reading room, museum, and permanent art gallery, without any payment demanded or made for admission, or for any instruction afforded by lectures or otherwise therein, they are necessarily exempt from taxation. *Second*—That the arrangement between the Subscription Library and the Free Library as to the accommodation afforded, as above mentioned, whereby books of the average value of £220 are handed over annually without price to the Free Library Committee, does not and cannot affect the exemption under section 61 of 5 and 6 Vict. cap. 35. The Surveyor of Taxes, Mr Philip Musgrave, on the other hand, contended:—*First*—That the Albert Institute did not come within the exemption granted under the above recited Act, in respect that in one of the rooms of the Free Library, and under the control of the librarian of the Free Library, there is a Subscription Library of 1500 volumes, with a member-

ship of about 220, each member paying an annual subscription of one guinea; that the subscribers appoint a committee of management annually, and the books of said library, after being one year in circulation, are then handed over to and become the absolute property of the Free Library."

The question for the opinion of the Court of Exchequer was—"Whether, in the circumstances above mentioned, the Albert Institute, Dundee, or any part thereof, is exempt under section 61 of 5 and 6 Vict. cap. 35?"

The arguments advanced by the parties sufficiently appear from their contentions before the Commissioners quoted *supra*.

At advising—

LORD PRESIDENT—In accordance with the *Manchester* case, the building in question is the property of the Free Library of Dundee, established under the Public Libraries Acts; and the question is whether it is used solely for the purposes of that institution. In my opinion, the case shows distinctly that it is not. It is used also for the purposes of another institution, viz., the association or club which owns the Dundee Subscription Library. That society consists of people who are not content with the books of the Free Library and buy with the subscription of the members other and I suppose newer books. The Society have an arrangement with the Free Library by which the Subscription Library is housed in the buildings in question, and gets the services of the chief librarian of the Free Library, in return for which it hands over each book it buys after retaining it for a year only. This seems a very sensible arrangement for both parties. The Subscription Library getting house room and services for nothing is able to devote the whole of the subscriptions to the purchase of books; while the Free Library gets in return some £220 worth of books each year. It is a very suitable friendly treaty between two literary institutions; but it has no effect in identifying the two, which are necessarily distinct.

The only theories upon which it could be said that to use the building for the purposes of the Subscription Library is to use it for the purposes of the Free Library are two—(1) It is said that, as the rent paid in books for room and services is applied to the Free Library, the use is for its purposes. But this would prove too much, for it would equally apply to the money rent which might be paid by a chess club or a lodger. (2) It is suggested that reading, or the promotion of reading, is the purpose of the Free Library. This seems to me much too vague. I think the purposes of the institution, in the sense of the Act, are the purposes of the Free Library of Dundee, as a concrete literary institution, which pursues its ultimate object according to its statutory constitution. Lending out to guinea subscribers books bought with funds not belonging to the Free Library, and according to the

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,