

LORD KINNEAR—I also entirely agree with the Lord Ordinary.

LORD DUNDAS—I also agree.

The Court adhered to the interlocutor of the Lord Ordinary and refused the reclaiming note.

Counsel for the Pursuer (Reclaimer)—Jas. Macdonald. Agents—M'Gregor & Purves, W.S.

Counsel for the Defender (Respondent)—Dean of Faculty (Campbell, K.C.)—Munro. Agents—Patrick & James, S.S.C.

Tuesday, July 16.

FIRST DIVISION.

[Exchequer Cause.

INLAND REVENUE v. EDINBURGH MAGISTRATES.

Revenue—Income-Tax—Assessment—Heritable Subjects Prohibited by Statute from Earning Profit but Self-Supporting—Slaughter-Houses Belonging to Corporation—Income-Tax Act 1842 (5 and 6 Vict. c. 35), sec. 60, Schedule A, No. I, and No. III Rule 3—Edinburgh Slaughter-Houses Act 1850 (13 and 14 Vict. c. lxx).

A corporation owned slaughter-houses erected under a private Act, which, *inter alia*, provided that the dues charged on animals slaughtered and the rents payable by fleshers for the use of booths should be fixed triennially at such figures as to make the undertaking self-supporting but not a profit-earning subject.

Held that the subjects fell to be assessed under No. I and not under No. III of Schedule A, Income-Tax Act 1842, sec. 60.

Revenue—Income-Tax—Valuation for Assessment—Valuation by Assessor not an Officer of Inland Revenue—Property and Income-Tax Act 1842 (5 and 6 Vict. c. 35), sec. 60—Lands Valuation (Scotland) Act 1854 (17 and 18 Vict. c. 91).

Per Lord M'Laren—"I see no reason to doubt that the Inland Revenue Department is entitled to found on the valuation made under the Lands Valuation Act, although that valuation is not necessarily binding on them."

The Income-Tax Act 1842, sec. 60, Schedule A, enacts—"No. I—General Rule for estimating lands, tenements, hereditaments, or heritage mentioned in Schedule A—The annual value of lands, tenements, hereditaments, or heritages charged under Schedule A shall be understood to be the rent by the year at which the same are let at rack-rent, if the amount of such rent shall have been fixed by agreement commencing within the period of seven years preceding the fifth day of April next before the time of making the assessment, but if the same are not so let at

rack-rent, then at the rack-rent at which the same are worth to be let by the year; which rule shall be construed to extend to all lands, tenements, and hereditaments or heritages capable of actual occupation, of whatever nature, and for whatever purpose occupied or enjoyed, and of whatever value, except the properties mentioned in No. II and No. III of this Schedule."

No. III—"Rules for estimating the lands, tenements, hereditaments, or heritages hereinafter mentioned which are not to be charged according to the preceding General Rule.—The annual value of all the properties hereinafter described shall be understood to be the full amount for one year, or the average amount for one year, of the profits received therefrom within the respective times herein limited. . . . Third, of iron-works, gasworks, . . . rights of markets and fairs, . . . and other concerns of the like nature, from or arising out of any lands, tenements, hereditaments, or heritages, on the profits of the year preceding. . . ."

At a meeting of the Commissioners for the General Purposes of the Income-Tax Acts, held at Edinburgh on 18th October 1905, the Lord Provost, Magistrates, and Council of the City of Edinburgh appealed against an assessment made upon the Corporation for the year ending 5th April 1905 of £91, 19s., being income-tax at the rate of 1s. per pound on £1839, the net annual value for that year of the slaughter-houses owned and occupied by them at Fountainbridge, and erected by them under the Edinburgh Slaughter-Houses Act 1850 (13 and 14 Vict. c. lxx). The annual value of the premises in the valuation roll, which was made up by an Assessor not an Officer of Inland Revenue, was entered as £2425, and this entry, less deductions, had been adopted for the purposes of income-tax. The appeal having been sustained the Surveyor appealed.

The case stated—"The assessment was made under the Acts 5 and 6 Vict. c. 35, sec. 60, Schedule A, No 1 General Rule; 16 and 17 Vict. c. 34, sec. 2; and 4 Edw. VII, c. 7, sec. 7.

"The Corporation claimed as regards the Act 5 and 6 Vict. c. 35, to have the assessment made as in all previous years under No. III Rule 3 of Schedule A and the Rules of Schedule D of that Act.

"The following facts were admitted or proved:— . . . (c) The Corporation levy and take, as authorised by the Act of 1850, from every flesher to whom a booth or a share of a booth in the slaughter-houses is allocated, over and above the dues on cattle slaughtered therein, a yearly rent payable half-yearly at Whitsunday and Martinmas. The booths are occupied in some cases solely by one flesher, in other cases by two fleshers, and in other cases by three fleshers. The rent of each booth is £8 per annum, and where a booth is occupied by more than one flesher each of them pays a proportionate part of the rent of £8. The dues at present payable by a flesher renting a booth or share of a booth

vary from one penny to sixpence per head of cattle. The dues payable by a flesher using the slaughter-houses and not renting a booth or share of a booth are double the amount of the dues payable by a flesher renting a booth or share of a booth.

“(d) The revenues derived from the slaughter-houses, including therein the dues on carcases brought into the city and the dues on the sale of hides, skin, and tallow, and the sums received for the blood, dung, and other refuse arising in the slaughter-houses, and all incidental revenue, are, as directed by the Act of 1850, employed (1) in defraying the necessary expenses of collection, management, and repairs, and all other annual burdens; and (2) in payment to the Corporation of a permanent annuity of £1000 (being interest at the rate of 5 per centum per annum upon the capital sum of £20,000 advanced or borrowed by the Corporation for the erection and completion of the slaughter-houses), and any surplus of the revenues, or any deficiency thereof is, as directed by the Act of 1850, carried forward in the accounts until the first periodical investigation after the arising of such surplus or deficiency. The state of the accounts and of the slaughter-houses is investigated triennially, with the view of determining whether the dues at the rates then current shall be continued or whether they shall be increased or diminished, and the Corporation may if necessary increase or diminish the dues from time to time in order that the requisite income may be realised, taking into account any deficiency or surplus of revenues.

“(e) For the year to 15th May 1905 the gross revenue, as detailed in the City Accounts, is	£4948 12 3
And the gross expenditure is	£4506 2 4
Deficiency of Revenue at beginning of year	310 19 1
	4817 1 5

Surplus Revenue at close of year to 15th May 1905 £131 10 10

“The Corporation contended—(1) That the slaughter-houses were assessable not in respect of the annual value of the premises but only in respect of the profits derived therefrom; and therefore that the assessment should have been made according to the Rules of Schedule D of the Act 5 and 6 Vict. c. 35, under No. III Rule 3 of Schedule A of that Act as amended by section 8 of the Act 29 and 30 Vict. c. 36, the slaughter-houses being ‘concerns of the like nature’ with those described in said Rule 3—*Adam v. Maughan*, 1889, 27 S.L.R. 64; 2 Tax Cases 541; *Webber v. Corporation of Glasgow*, 1893, 30 S.L.R. 255; 3 Tax Cases 202. Under the Act of 1850 there are and can be no profits earned from the slaughter-houses over and above the said sum of £1000 payable annually to the Corporation. (2) That if the slaughter-houses were assessable under No. I General Rule Schedule A the valuation of £2425 was

excessive, and should be reduced to £1000—the amount of the annuity paid to the Corporation. And (3) that the Assessor for the City of Edinburgh not being an officer of Inland Revenue, the annual value of the slaughter-houses appearing in the valuation roll made up by the Assessor was not binding on the Commissioners—*Menzies*, 1878, 5 R. 531; 1 Tax Cases 148.

“The Surveyor of Taxes maintained—(1) That the slaughter-houses were capable of being let at an annual rent, and should be dealt with as ordinary trade premises, the annual value thereof being assessable under No. I General Rule of Schedule A of the Act 5 and 6 Vict. c. 35, and the profits derived therefrom being assessable under Case 1 of Schedule D of that Act on the three years’ average, the annual value being deductible as a trade expense in arriving at the amount of the profits assessable under Schedule D. (2) That the slaughter-houses, not being of the like nature with the concerns described in No. III Rule 3 of Schedule A, and not being specifically mentioned therein, were properly assessable under No. I General Rule of Schedule A. And (3) that the fact that the Assessor for the City of Edinburgh was not an officer of Inland Revenue did not preclude the Commissioners from adopting, if they thought fit, for the purposes of the Income-Tax Acts, the valuation of the slaughter-houses made by the Assessor.

“The Commissioners, upon a consideration of the facts and arguments submitted to them, were of opinion that the slaughter-houses were assessable by relation to the profits derived therefrom, in accordance with the provisions of the Act 5 and 6 Vict. c. 35, s. 60, Schedule A, No. III Rule 3, and the rules prescribed by Schedule D of that Act, and were not assessable under No I General Rule of Schedule A.”

Argued for appellant (the surveyor)—(1) The subjects of assessment were different from those mentioned in No. III, rule 3, of Schedule A of the Income-Tax Act 1842. The properties to which No. III applied were heritable subjects ancillary to profit-making concerns, e.g., quarries, mines, tolls, where the heritable subjects were really the stock-in-trade or plant—*Ystradyfodwg and Pontypridd Main Sewerage Board v. Bensted (Surveyor of Taxes)* [1906] 1 K.B. 294 (per Walton, J., at p. 309); *aff.* [1907] 1 K.B. 490 (per Collins, M.R., at p. 498); *Edinburgh Southern Cemetery Company v. Surveyor of Taxes*, November 14, 1889, 17 R. 154, 27 S.L.R. 71. No. I was a general rule, and applied where no other rules were specifically applicable. (2) As to the amount on which the Corporation were to be assessed, the valuation of the Assessor could be taken. The subjects were worth £1839 annually, and there was no reason why they should be treated exceptionally.

Argued for respondents—(1) The Commissioners were right. Assessment here fell to be made under No. III, rule 3, i.e., on profits, and not under No. I, i.e., on the basis of a hypothetical rent. The rent received here was not paid by a tenant but

was made up of dues charged in virtue of statutory powers. *Esto*, however, that a hypothetical tenant might be imagined for such property, still there were other subjects capable of being assessed on that basis which were not so treated, *e.g.*, gas works (*vide* No. III, rule 3). The subjects fell within the words "rights of markets and fairs"—*vide* Dowell's Income Tax Laws, 5th ed., p. 66-70. Reference was also made to *Adam v. Maughan*, November 15, 1889, 27 S.L.R. 64, 2 Tax Cases 541; and *Webber v. Corporation of Glasgow*, January 19, 1893, 30 S.L.R. 255, 3 Tax Cases 202. The assessment hitherto had been made under No. III, and no reason had been assigned for the proposed change. (2) In any event the entry in the valuation roll should not be taken for the purpose of assessment, that entry not having been made by an officer of Inland Revenue and so not being binding on the parties—*Menzies v. Solicitor of Inland Revenue*, January 18, 1878, 5 R. 531, 15 S.L.R. 285.

At advising—

LORD M'LAREN—The question in this case relates to the mode of assessment under which the Corporation of Edinburgh are to be assessed for income-tax for the slaughter-houses, which are the property of the Corporation.

The Surveyor of Taxes claims that these subjects should be assessed under Schedule A, No. 1 General Rule, which is the ordinary rule for the assessment of lands and heritages not falling under any special rule. The Corporation claims to have the assessment made under No. III Rule 3 of Schedule A and the rules of Schedule D of the principal Act, which by a later statute are made applicable.

The slaughter-houses and houses accessory thereto were erected by the Corporation under the Edinburgh Slaughter-houses Act 1850. The mode of occupation and the particulars of the revenue derived by the Corporation from the persons who make use of the slaughter-houses are set forth in the case and relative appendix, and it is not necessary to the explanation of the grounds of my opinion that I should enter into particulars on this subject. But I must direct attention to the provisions of the Act of Parliament which regulate the application of the revenue to be derived by the Corporation for the use of the slaughter-houses.

Under sections 12 and 13 the Corporation is empowered to advance the capital required for the construction and equipment of these buildings, and for that purpose to borrow money on the security of the property to an extent not exceeding £20,000.

By section 21 the revenues derived from the slaughter-houses are to be employed, first, in defraying the necessary expenses of collection, management, and repairs, including certain charges therein specified; secondly, in paying an annuity, originally at the rate of £7, 10s. per cent., on the capital provided, but eventually reduced to £5 per cent.; and it is further provided that any surplus of the said revenues after satisfying the foresaid purposes, or any

deficiency thereof for such purposes, shall be carried forward in the said accounts until the first periodical investigation to be made after the arising of such surplus or deficiency.

The periodical investigation here referred to is the subject of section 23, and it is to be repeated at intervals of three years. Without entering into further detail, it may suffice to say that under the fifth head of this section the Magistrates and Council are to take into consideration the reports obtained by them, and to determine whether the dues on cattle shall be continued as formerly, or whether and to what extent the same shall be increased or diminished. Under section 24 there is a qualified appeal to the Sheriff. The Act gives no power to the Magistrates and Council to appropriate any part of the revenue of the slaughter-houses other than the annuity or interest on the capital provided, and it is perfectly clear that the slaughter-houses are intended to be self-supporting, but that the dues are to be so fixed that no permanent profit can be derived from them.

If it appears that a surplus has arisen in any triennial period after providing for annual outgoings and extraordinary repairs, if any, then the dues must, in accordance with the statute, be so fixed that this surplus shall be extinguished in subsequent years, and if there is a deficiency this is to be made up by levying dues at a higher rate in subsequent years. The result of the administration prescribed by the statute is, as I conceive, that the undertaking is not carried on with a view to profit, and that there can be no perception of profits by anyone, although there may be an apparent profit on certain years which is to compensate the deficiency in the accounts of other years.

It appears to me that the undertaking carried on under such conditions cannot in sound construction be brought within the scope of the provisions of No. III Rule 3 of Schedule A.

If we put together the introductory part of No. III and the special Rule 3 the statutory provision will read as follows:—"The annual value of all the properties hereinafter described shall be understood to be the full amount for one year, or the average amount for one year, of the profits received therefrom within the respective times herein limited . . . ; (3) of ironworks, gasworks, . . . and other concerns of the like nature, from or arising out of any lands, tenements, hereditaments, or heritages, on the profits of the year preceding."

I have not quoted the enumeration of the different species of works contained in Rule 3 because in my view we do not need to consider whether slaughter-houses are concerns of the like nature with the works enumerated. One can never be quite sure as to the principle of an enactment in a taxing Act, but in this case I think the principle is reasonably clear, and it is that in the case of ironworks and the other works enumerated, which are carried on with a view to profit, it is impossible, or at least extremely difficult, to separate the

profit derived from the use of the land from the profit derived from the mercantile undertaking carried on by means of the land or its produce, and therefore the two things are massed together and are assessed as a going concern. The supplementary part of No. III directs that the duty is to be charged on the person, corporation, &c. "carrying on the concern," and the Act 29 and 30 Vict. c. 36, sec. 8, directs that the assessment is to be made according to the rules prescribed by Schedule D of the principal Act. Now, if I am right in my conclusion that these slaughter-houses are not carried on with a view to profit, and that no profit in any true sense is made, the provisions of No. III Rule 3 are inapplicable. But it does not follow that the subject is to escape taxation, because the only result of excluding No. III and all its rules is to put the subject into the category of property in the natural occupation of its owner who is not using it as a profit-yielding investment, and it is thus chargeable according to the General Rule No. I of Schedule A upon the rent "at which the same are worth to be let by the year."

This is the principle of the decision of Mr Justice Walton in the case of the *Ystradyfodwg Sewage Board* (1906, 1 K.B. 308), where the learned Judge considered it to be perfectly clear that the mode of assessment prescribed by No III Rule 3 of Schedule A could not be applied to undertakings that were not established or carried on with a view to profit. The contrary contention seems to have been abandoned in the later stage of the case reported in 1907, 1 K.B. 490, and subsequently affirmed in the House of Lords (23 Times' L.R. 621), because, if I rightly follow the report, the only question raised was whether a main sewer was assessable under General Rule No. I or was not assessable at all.

A separate point was made as to the amount of the assessment. I see no reason to doubt that the Inland Revenue Department is entitled to found on the valuation made under the Lands Valuation Act, although that valuation is not necessarily binding on them. No other valuation consistent with General Rule No. I is suggested in the case. The assessable income for the year 1904-1905 accordingly, after making the deductions allowed under the Income-Tax Acts, is £1839, and in my opinion the appeal should be allowed, and it should be found that the subjects are assessable under No. I General Rule of Schedule A upon a net annual value of £1839.

LORD KINNEAR—I concur.

LORD PEARSON—I also am of opinion that the original assessment by the Surveyor was right, and that the appeal must be sustained. It would be a singular and, as I think, an unexpected result if the public slaughter-houses of the city were in the circumstances disclosed to us to be assessable to income-tax under the Rules of No. III of Schedule A. I do not say that in no circumstances could a slaughter-house be brought

within the category of works specified in the Third Rule of No. III. But one thing is clear, that in all cases falling under that Rule the charge is to be on the amount of yearly profits, calculated either on the year preceding or on an average of a specified number of years. The undertakings, or "concerns" as the statute calls them, are regarded as going concerns, carried on for the purpose of earning profits. Of course it is always possible that even a concern to which the Rule undoubtedly applies may in any given year or period of years earn no profit, in which case there will be nothing to assess. But I am unable to see how the Rule can apply to a concern which not merely earns no profits but which is not run for the purpose of profit, and which, moreover, being created by statute, is expressly debarred by its statute from earning anything which can really be called profit. That is the position of the Edinburgh City Slaughter-houses. They were built at the expense of the common good of the city at a cost of £20,000, and a perpetual annuity of £1000 a-year is payable out of the slaughter-house returns to square the account. Beyond that, they are forbidden by statute to make a single penny of profit, and they are enjoined so to adjust their rates periodically as to secure this result. I cannot recognise such a concern as falling within No. III of Schedule A, and the alternative must be that the subjects are assessable under No. I General Rule of Schedule A, which provides for an assessment on the annual value of lands, tenements, and hereditaments generally. How that annual value is to be arrived at in the particular case is another matter, but the Commissioners fixed the net annual value of the premises at £1839, which I presume will be allowed to stand for the year of assessment.

The LORD PRESIDENT was absent.

The Court reversed the determination of the Commissioners, remitted to them to refuse the appeal and confirm the assessment, and decerned.

Counsel for the Appellant—Cullen, K.C. —A. J. Young. Agent—Solicitor of Inland Revenue (Philip J. Hamilton Grierison).

Counsel for the Respondents—Cooper, K.C. —Macmillan. Agent — Town Clerk (Thomas Hunter, W.S.)

Friday, July 19.

EXTRA DIVISION.

[Lord Johnston, Ordinary.

BROWNLEE'S EXECUTOR v. ROBB.

Assignment—Donation—Insurance—Evidence—Circumstances of Execution—Terms of Deed dealing with Life Assurance Policy which in the Circumstances was Held to Assign Jus Crediti.

The assured, in a policy of life assurance, executed before five witnesses and gave to his daughter, with a certified