

Thursday, February 9.

OUTER HOUSE.

[Lord Wellwood.

LORD ADVOCATE v. MARSHALL AND
OTHERS (FRASER'S TRUSTEES).

Revenue — Succession-Duty — Trust for Charitable Purpose — Succession-Duty Act 1853 (16 and 17 Vict. c. 51), secs. 10 and 16—Customs and Inland Revenue Act 1888 (51 Vict. c. 8), sec. 21.

Held that the additional duties enacted by sec. 21 of the Customs and Inland Revenue Act 1888 are not exigible in respect of property which has become the subject of a trust for charitable purposes, as defined by section 16 of the Succession-Duty Act 1853.

This was an action at the instance of the Right Honourable John Blair Balfour, Her Majesty's Advocate, on behalf of the Board of Inland Revenue, against William Calder Marshall, Royal Academician, London, and others, the trustees of the late Patrick Allan-Fraser of Hospitalfield, for payment of £1000, the amount of additional succession-duty alleged to be due in respect of the real property or estate, situated in Scotland, of the deceased Patrick Allan-Fraser.

The deceased Patrick Allan-Fraser died on 17th September 1890 predeceased by his wife and without issue. He left a deed of settlement and mortification dated 2nd August 1873. By this deed the deceased conveyed his whole estate in the event of his surviving his wife to the defenders and others named, as trustees, in trust for certain declared purposes. In the first place the deed provided for payment of all the deceased's just and lawful debts, and Government duties and expenses, which were to be liquidated before any other purpose of the trust came into operation. It was then directed and appointed, that after payment of these debts, the whole free income of his means, estate, and effects conveyed in trust should, after deduction of expenses of management, be permanently devoted and applied to the following main purposes—“(Primo), For the assistance and encouragement of young men not having sufficient means of their own, who shall be desirous of following out one or more of the professions of painting, sculpture, carving in wood, architecture, and engraving”; and (Secundo), “To provide for the comfortable maintenance and support of aged or infirm professional men, and those who from physical defects are incapable of supporting themselves in comfortable circumstances, being painters, sculptors, and literary men (that is, men who have devoted the greater part of their lives to literature as a profession), and all of whom, when engaged in their respective professions, were men held in esteem for their moral conduct, as well as for their artistical or literary talents, but who from unavoidable causes have been unable to provide or lay up for themselves sufficient

means wherewith to secure comforts and requirements in their declining years or infirmities, and that in the way and manner to be hereafter particularly pointed out and described.” The deed then went on to make more detailed provision for the carrying out of these purposes.

The defenders, who were the accepting and acting trustees under the said deed of settlement and mortification, delivered a succession-duty account on 31st May 1892, comprising the deceased's heritable estates in Forfarshire and Perthshire. The principal value of these estates, according to a valuation obtained by the defenders, was stated at £60,371, 1s. 7d., and on this sum they on 13th July 1892 paid succession-duty at the rate of £10 per centum, amounting to £6037, 2s. 2d., and also the interest thereof. Duty at 10 per cent., amounting to £70, 7s. 3d., was at the same time paid on the sum of £703, 12s. 6d., being the net proceeds of sales of trees and timber grown on two of the estates. The payment was not accepted as final, and it was now claimed that payment ought to have been made at the rate of £11½ per centum, and this action was brought to recover the additional duty of £1½ per centum.

The Succession-Duty Act 1853 (16 and 17 Vict. cap. 51), provides—“Sec. 10. There shall be levied and paid to Her Majesty in respect of every such succession as aforesaid, according to the value thereof, the following duties (that is to say) . . . Where the successor shall be in any other degree of collateral consanguinity to the predecessor than is hereinbefore described, or shall be a stranger in blood to him, a duty at the rate of £10 per centum upon such value.” Section 16 of the same Act provides further that “Where property shall become subject to a trust for any charitable or public purposes under any past or future disposition, which, if made in favour of an individual, would confer on him a succession, there shall be payable in respect of such property, upon its becoming subject to such trusts, a duty at the rate of ten pounds per centum upon the amount or principal value of such property; and it shall be lawful for the trustee of any such property to raise the amount of any duty due in respect thereof, with all reasonable expenses, upon the security of the charity property at interest, with power for him to give effectual discharges for the money so raised.” By the Customs and Inland Revenue Act of 1888 (51 Vict. c. 8), section 21, sub-section 1, it is enacted that “In addition to the duties chargeable in respect of successions under section 10 of the Succession-Duty Act 1853, there shall be levied and paid to Her Majesty in respect of every succession therein referred to, upon the death of any person dying on or after the first day of July 1888, according to the value thereof, the following duties (that is to say):—Where the successor shall be the lineal issue or lineal ancestor of the predecessor, a duty at the rate of ten shillings per centum upon the value of the interest of the successor; in all other cases mentioned in such section a duty at the

rate of one pound ten shillings per centum upon the value of the interest of the successor; provided that additional duty under this Act shall not be payable upon the interest of a successor in leaseholds passing to him by will or devolution by law, or in property included in an account according to the value whereof duty is payable under the Customs and Inland Revenue Act 1881."

The Lord Ordinary (WELLWOOD) pronounced the following interlocutor:—"Finds that on a sound construction of the statutes libelled the defenders are not liable for the additional succession-duty claimed: Therefore assoilzies the defenders from the conclusions of the summons, and decerns: Finds them entitled to expenses, &c.

"*Opinion.*—The defenders in this action are the trustees of the late Patrick Allan Fraser of Hospitalfield. It is admitted that the trust under which they act is a trust for charitable purposes. It is also admitted that they have already paid succession-duty at the rate of 10 per cent. on the succession conferred upon them. The Crown now demands an additional duty of one and a half per cent., under section 21 of the Customs and Inland Revenue Act 1888.

"This is a narrow case, but I think it is sufficiently doubtful whether the defenders' case falls under the section of the statute under which additional succession-duty is claimed to entitle the defenders to absolver.

"The claim for additional duty is made under section 21 (1) of the Customs and Inland Revenue Act 1888 (51 Vict. cap. 8), which is as follows—'In addition to the duties chargeable in respect of successions under section 10 of the Succession-Duty Act 1853, there shall be levied and paid to Her Majesty, in respect of every succession therein referred to, upon the death of any person dying on or after the first day of July One thousand eight hundred and eighty-eight, according to the value thereof, the following duties, that is to say—Where the successor shall be the lineal issue or lineal ancestor of the predecessor, a duty at the rate of ten shillings per centum upon the value of the interest of the successor. In all other cases mentioned in such section a duty at the rate of one pound ten shillings per centum upon the value of the interest of the successor.' The question which I have to decide is, whether the succession to which the defenders have become entitled is a succession chargeable with duty under section 10 of the Succession-Duty Act 1853. The defenders maintain that it falls not under section 10 but under section 16 of the Act of 1853, and that therefore they are not liable in additional succession-duty.

"By section 2 of the Succession-Duty Act of 1853 it is provided that 'every past or future disposition of property by reason whereof any person has or shall become beneficially entitled to any property or the income thereof upon the death of any person dying after the time appointed for the commencement of this Act . . . shall be deemed to have conferred or to confer

on the person entitled by reason of any such disposition or devolution a "succession," and the term "successor" shall denote the person so entitled, and the term "predecessor" shall denote the settlor, disponent, testator, obligor, ancestor, or other person from whom the interest of the successor is or shall be derived.'

"By section 10 it is provided that there shall be levied and paid to Her Majesty in respect of every such succession as aforesaid, according to the value thereof, the following duties, that is to say—Then follows a statement of the different rates to be charged according to the relationship of the 'successor' to the 'predecessor,' ranging from one per cent. in the case where the 'successor' is the lineal issue or lineal ancestor of the 'predecessor' to ten per cent. where the 'successor' is a stranger in blood to him. *Prima facie*, this charging clause deals with the cases of individuals who take a beneficial interest under a succession. The pursuer maintains that the 10th section is the only charging section, and that those which follow, including the 16th, are simply ancillary to it. I assent to the argument for the Crown to this extent, that I agree that several of the sections which follow the 10th section are executory clauses, framed to apply and give effect to the charging clause in certain exceptional cases which fall under it, and to prescribe the way in which the value is to be ascertained in various cases which are covered by that section. Such, for instance, are the 11th to the 15th sections, and the 27th section, which deals with corporations. If the 16th section had been of the same character I should have held that the succession conferred upon the defenders was sufficiently described as chargeable under the 10th section of the Act of 1853, but I do not so construe it.

"The 16th section is as follows:—'Where property shall become subject to a trust for any charitable or public purposes, under any past or future disposition which if made in favour of an individual would confer on him a succession, there shall be payable in respect of such property upon its becoming subject to such trusts, a duty at the rate of ten pounds per centum upon the amount of principal value of such property; and it shall be lawful for the trustee of any such property to raise the amount of any duty due in respect thereof, with all reasonable expenses, upon the security of the charity property at interest, with power for him to give effectual discharges for the money so raised.' It seems to me that this section differs from the other sections to which I have referred in two material respects—First, it does not speak of a trust for charitable or public purposes as a succession which is chargeable under any of the earlier sections. It makes special and complete provision for such a case, viz., that it shall be treated as if it were a succession conferred upon an individual, if the disposition, if made in favour of an individual, would have conferred a succession on him. Secondly, instead of leaving the rate of duty to be ascertained by reference to the 10th section,

a duty at the rate of ten per cent. upon the principal value of the property is expressly imposed. In these particulars the section differs sharply from the others to which I have alluded, and in particular from the 27th section to which the pursuer tried to assimilate it. That section simply provides for the way in which a succession conferred on a body corporate, company or society, shall be valued, the necessity for the provision being that the interest in real property of a body corporate which never dies could not be capitalised in the manner provided in section 21. But the section does not prescribe the rate of duty chargeable, and instead of saying that a property disposed to a body corporate shall be dealt with in the same way as if it had been disposed to an individual, the words used are, 'Where any body corporate shall become entitled as successors to any real property,' their character as successors being already fixed by earlier sections, 'the duty in respect thereof,' that is, duty already fixed by the 10th section 'shall be assessed' etc. All which implies that such bodies had already been well charged under the 10th section of the Act. As confirming this I may point out that in the interpretation clause it is provided that the term 'person' shall include 'body corporate,' 'company,' and 'society,' which besides are therefore dealt with as individuals beneficially interested.

"The case of trusts for charitable and public purposes might perhaps have been dealt with in such a way as to leave or bring them under the 10th section of the Act. But the 16th section is so worded as to warrant the view that it was intended to operate as a separate charging clause to meet the particular case of such trusts, as to which in regard to their liability for legacy-duty it appears there had previously been some doubts. See *in re Wilkinson*, 1 C. R., Nice & Rose, 142, affirmed in *The Attorney-General v. Nash* 1 M. & W. 237.

"The argument which was successful in those cases furnishes an explanation for charitable trusts being separately dealt with in the Act of 1853. Mr Wilkinson's executors resisted the Crown's claim for legacy-duty under the Act 55 Geo. III. c. 184, Schedule 3, part 2, on the ground that by that statute legacy-duty was leviable not upon the fund but upon individuals, in respect of their beneficial interest in the succession, and according to their relationship to the deceased, that the executors took no beneficial interest, and that the only persons who did were the objects of charity selected by the executors. It was therefore maintained that the executors could not be charged as beneficial legatees. It is important to observe that the Court had fully in view the case of bodies corporate or societies, and that they distinguished between them and trustees or executors acting under trusts for charitable purposes, holding that bodies corporate or societies might not improperly be regarded as persons or individuals who take a beneficial interest in legacies bequeathed to them, and that they are therefore liable to pay duty as such. The grounds of judgment

afford a sufficient explanation of the distinction between the clause in the Act of 1853 which deals with charitable trusts and that dealing with bodies corporate, companies, or societies.

"In deciding this case two somewhat conflicting rules in the interpretation of statutes have to be considered and weighed against each other. One is that an Act imposing a tax or burden must be strictly construed, and the party charged will be free unless the statute clearly and unambiguously imposes the obligation. On the other hand, exceptional exemption from a general tax is not to be readily inferred. In the present case I think I should be unduly straining the latter and not giving fair effect to the former rule if I were to hold that additional succession-duty is well imposed on the defenders by the 21st section of the Act of 1888.

"It may be that the framers of the Act of 1888 did not intend that charitable trusts should be exempted. Perhaps they intended otherwise. Be that as it may, I think the language used does not clearly and unambiguously fix such trusts with the additional succession-duty imposed. The defenders will therefore be assoiized."

Counsel for the Pursuer—Comrie Thomson—Young. Agent—P. J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for the Defenders—Guthrie Smith—Burnet. Agents—Macrae, Flett, & Rennie, W.S.

HIGH COURT OF JUSTICIARY.

Monday, February 20.

(Before the Lord Justice-Clerk, Lord M'Laren, and Lord Low.)

LEES v. MACDONALD.

Justiciary Cases—Day Trespass—Title to Prosecute—Evidence.

In a prosecution under the Day Trespass Act at the instance of a shooting tenant, one witness to the facts was adduced who also deponed that the prosecutor was tenant of the lands in question. The accused, after the case for the prosecution was closed, objected that the title of the prosecutor had not been proved. *Held* that the objection was bad.

William Macdonald was charged in the Sheriff Court of Inverness, Elgin, and Nairn, at the instance of Joseph Lees of Werneth Grange, Oldham, England, tenant and occupier of shootings in the parish of Duthil, Inverness-shire, the property of the Right Honourable Caroline, Countess Dowager of Seafield, residing at Cullen House, Banffshire, upon a complaint which set forth that he did, on 6th January 1893, commit a trespass by entering or being in the daytime, without leave of the said