

of facts on which the question arises. They ask in law, not whether the County Council has a personal claim against Mr Maconochie Welwood under a contract, but whether they can assess the lands in all time coming. I have no difficulty in answering that question in the negative apart altogether from the views expressed by Lord M'Laren and Lord Adam. An agreement to do what is legally impossible is void, and that seems to me a sufficient ground for determining the case. It is said that the impossibility of literally fulfilling the agreement is a material element in construing the contract, and for giving it a reasonable construction, because the parties to it cannot be held to have contracted to do what was impossible. If its construction were open I should concur with the opinions expressed by your Lordships. But the point really raised by the only question put to us in the special case is, whether the stipulation read literally, that the lands in question are included in the water district is good or bad? I think it is ineffectual.

LORD PRESIDENT concurred.

The Court answered the question in the negative.

Counsel for the First Party—Graham Murray, Q.C.—Maconochie. Agents—Maconochie & Hare, W.S.

Counsel for the Second Party—Dundas--Cullen. Agent—J. H. Balfour Melville, W.S.

Friday, November 23.

FIRST DIVISION.

SCOTTISH EQUITABLE LIFE SOCIETY v. COMMISSIONERS OF INLAND REVENUE.

Revenue—Stamp—Conveyance on Sale—Stamp Act 1891 (54 and 55 Vict. c. 39), sec. 57.

Sec. 57 of the Stamp Act 1891 provides that, "Where any property is conveyed to any person in consideration, wholly or in any part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, the debt, money, or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the conveyance is chargeable with *ad valorem* duty."

A debtor having granted a trust-disposition for behoof of his creditors, which incorporated the provisions of the Bankruptcy Acts, one of the creditors, who held a bond and disposition in security granted by the debtor, valued his security at £9500, being less than the amount of his claim. The trustee under the trust-deed

accepted this valuation as correct, and executed an instrument whereby he renounced his whole reversionary interest in the security subjects, and all right of redemption thereof competent to him, and disposed the subjects to the creditor.

Held that this instrument satisfied the description in the above section and was chargeable with *ad valorem* stamp duty on the sum of £9500.

The First Schedule of the Stamp Act 1891 provides for the payment of *ad valorem* stamp duty according to a scale there given, upon every "conveyance or transfer on sale of any property (except such stock as aforesaid)." It also provides—"Conveyance or transfer of any kind not hereinbefore described, 10s." Section 54 of the same Act provides—"For the purposes of this Act, the expression 'conveyance on sale includes every instrument, and every decree or order of any court or of 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 provides—"Where any property is conveyed to any person in consideration, wholly or in any part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, the debt, money, or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the conveyance is chargeable with *ad valorem* duty." Section 62 provides—"Every instrument, and every decree or order of any court or of any commissioners, whereby any property on any occasion, except a sale or mortgage, is transferred to or vested in any person, is to be charged with duty as a conveyance or transfer of property: Provided that a conveyance or transfer made for effectuating the appointment of a new trustee is not to be charged with any higher duty than 10s."

The late James Yeaman, Merchant, Dundee, died indebted to the Scottish Equitable Life Assurance Society in the sum of £20,000, conform to bond and disposition in security granted by him in their favour in the year 1881. In 1885 Yeaman granted a trust-disposition for behoof of his creditors. By the end of 1893 the trustee under the trust-disposition had, by the sale of some of the security-subjects, reduced the sum due under the bond to £10,971, 15s. 7d., with interest from Whitsunday 1893. The trustee having thereafter intimated to the creditors on the estate that he intended to divide the same, the said Society lodged a claim for this amount under deduction of £9500, being the value put by them upon the security subjects which they still held. The trustee admitted the claim and the correctness of the valuation.

Upon 22nd November 1893 he executed an instrument in favour of the Society,

which—[after narrating the facts above stated]—proceeded—“And considering that I am desirous of being discharged from the trust constituted by the said trust-disposition, and that it is necessary that I should, in accordance with the said Bankruptcy Statutes, reserve to the said Society the full benefit of said security, and it has therefore been arranged that I shall renounce in favour of said Society any reversionary interest in or right of redemption of said subjects, and that I shall convey the same to them, which it is right and proper I should do: Therefore I, as trustee foresaid, do hereby for ever renounce and give up in favour of the said Society all my and the said James Yeaman's reversionary right and interest in said subjects, and all right of redemption thereof competent to me as trustee foresaid, or to the representatives of the said James Yeaman in virtue of the clause of redemption contained in the said bond and disposition in security or otherwise: And further, I as trustee foresaid do hereby dispoise to the said Scottish Equitable Life Assurance Society, incorporated as aforesaid, and the assignees whomsoever of the said Society, heritably and irredeemably, All and Whole”—[a description of the security-subjects followed].

The Commissioners of Inland Revenue were of opinion that the property was conveyed to the said Society in consideration wholly of the debt to them, and that, in terms of section 57 of the Stamp Act 1891, the instrument was chargeable with *ad valorem* duty as a conveyance on sale, and that the sum to be deemed the consideration in respect of which it was so chargeable was the said sum of £9500, being as set forth in the instrument the value put by the said Society upon the property in their claim upon the estate of the said James Yeaman, and admitted by the trustee.

The Commissioners accordingly assessed the *ad valorem* conveyance on sale duty of £47, 10s. upon the instrument in respect of this sum of £9500.

At the request of the Scottish Equitable Life Assurance Society, who were dissatisfied with their determination, the Commissioners stated a case for the opinion of the Court upon the question “Whether the said instrument, in the circumstances above set forth, is liable to be assessed or charged with the said *ad valorem* conveyance on sale stamp duty in respect of the sum of £9500 in terms of the foresaid Act; or, if not, what other duty it is liable to be assessed and charged with?”

Argued for the appellant—Whatever it might be in form, the instrument was in substance not a conveyance on sale, but a renunciation of any right of redemption. The property had already been conveyed. The instrument merely reserved to the Society the full benefit of their security in terms of the Bankruptcy Act, and enabled the Society to

sell and realise their security. The £9500 was not a consideration paid. The deed was a conveyance of property chargeable only with a 10s. stamp duty.

Argued for the respondents—The Commissioners were right. Both in form and substance this was a conveyance of property upon payment of £9500. In consideration of remitting a debt of that amount the disponees obtained the conveyance of subjects of that value. That was a sale. Before they had only held a mortgage; now they got an absolute conveyance of property. If there were any doubt the terms of the 57th section were conclusive.

At advising—

LORD PRESIDENT—I am of opinion that the terms of section 57 apply to this conveyance, and that the determination of the Commissioners is right. By this instrument the property therein mentioned is conveyed to the appellant Society. This is so not merely in form but in substance, for the Society, although in virtue of their bond and disposition in security, they might have sold the property, could not themselves have bought it. The next question is, what was the consideration? It seems quite plain that what the trustee got was a discharge to the extent of £9500 of the debt due to the Society, and that it was in consideration of this amount of debt that the conveyance was granted. Accordingly, I cannot resist the conclusion that the instrument in question satisfies the description in the 57th section, and is chargeable accordingly.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court affirmed the determination of the Commissioners.

Counsel for Appellants—D. F. Sir Charles Pearson, Q.C.—Salvesen, Agents—J. A. Campbell & Lamond, C.S.

Counsel for Respondents—Lord Adv. Balfour, Q.C.—Sol. Gen. Shaw, Q.C.—A. J. Young, Agent—Solicitor of Inland Revenue.

Tuesday, November 27.

SECOND DIVISION.

[Lord Kincairney, Ordinary.]

WHITTAL v. CHRISTIE.

Jurisdiction — Arrestment — Arrestment jurisdictionis fundandæ causa—Insurance Policy.

By assignment dated in 1859, A, who was domiciled in England, assigned to his marriage-contract trustees, in security of an annuity of £100 provided by the marriage-contract to his wife in the event of her surviving him, a policy