

the letting of country houses, and there cannot be a more unsatisfactory kind of business, nor could an investment more troublesome in its character or more uncertain and unreliable in its returns be imagined. The Accountant in his report proceeds solely on the assumption that a steady return of £110 a-year will be got from the property. This assumption is, in my opinion, wholly unwarranted, and almost certain to turn out fallacious. I am of opinion that in the interests of the estate the property should be sold as soon as possible. I proceed both on the report of Messrs Binnie, who are very skilled valuers, and on my own knowledge and experience. In my opinion it is highly expedient that leave to sell the subjects in question should be granted."

The following interlocutor was accordingly pronounced:—"The Lord Ordinary officiating on the Bills having resumed consideration of the petition and proceedings with the report by the Accountant of Court and heard counsel for the petitioner thereon, authorises and empowers the judicial factor, James Watson Stewart, to sell the property of Garail, Dunoon, described in the first place in the prayer of the petition, by public roup, after due advertisement, at the upset price of £1200, and if not sold at or above said upset price to re-expose the same at such reduced upset price as may be fixed by the Accountant, and on a sale and payment of the price to grant a disposition thereof, containing the usual and necessary clauses, and to grant all other deeds requisite and necessary for rendering such sale effectual, and decerns: Finds the petitioners entitled to the expenses of this application and all procedure following thereon; allows an account of said expenses to be given into process."

Counsel for the Petitioners—J. G. Jameson. Agent—T. J. Martin, W.S.

Tuesday, December 5.

OUTER HOUSE.

[EXCHEQUER CAUSE.]

[Lord Pearson, Ordinary.]

INLAND REVENUE v. IRVINE AND DISTRICT WATER BOARD.

*Revenue—Stamp Duty*—"Conveyance or Transfer on Sale"—*Water Undertaking—Compulsory Statutory Transfer of Undertaking—Stamp Act 1891 (54 and 55 Vict. cap. 39), secs. 1, 57, and First Sched.—Finance Act 1895 (58 Vict. cap. 16), sec. 12.*

The Corporation of a burgh constructed water-works for the supply of their own area, and also entered into agreements with neighbouring outlying districts by which they undertook to supply them with water for a money payment fixed on the basis of the assess-

able rental of the different districts. It was not entitled to make a profit. Subsequently the Corporation promoted a Provisional Order for powers to bring in additional water. This was opposed by the outlying districts, and eventually a new Provisional Order was promoted and passed providing for the transference of the water undertaking from the Corporation to a new joint Board representing both burgh and districts on certain terms, which included (1) a cash payment to the burgh; (2) relief from all expenses incurred by the burgh in connection with the Parliamentary proceedings; and (3) a transference of the whole debts and liabilities of the undertaking. The Inland Revenue claimed payment of conveyance on sale duty in respect of this transference to the Board. *Held* (1) that the transaction was a conveyance on sale upon which duty was payable, and (2) that the cash payment, the relief from Parliamentary expenses, and the amount of the debts and liabilities taken over were parts of the consideration for the transfer and together formed the *cumulo* sum upon which the duty fell to be calculated, without any deduction being made on the ground of the interest which the Corporation had in the Board.

The Stamp Act 1891 (54 and 55 Vict. cap. 39) enacts—section 1—"From and after the commencement of this Act the stamp duties to be charged for the use of Her Majesty upon the several instruments specified in the first schedule to this Act shall be the several duties in said schedule specified, which duties shall be in substitution for the duties theretofore chargeable under the enactments repealed by this Act, and shall be subject to the exceptions contained in this Act and in any other Act for the time being in force."

Under the heading "Conveyance or Transfer on Sale" in the first schedule, duty is imposed according to the amount or value of the consideration for the sale.

Section 57—"Where any property is conveyed to any person in consideration, wholly or in 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."

The Finance Act 1895 (58 Vict. cap. 16), sec. 12, enacts—"Where, after the passing of this Act, by virtue of any Act, whether passed before or after this Act, . . . (a) any property is vested by way of sale in any person, . . . such person shall, within three months after the passing of the Act, or the date of vesting, whichever is later . . . produce to the Commissioners of Inland Revenue a copy of the Act printed by the Queen's printer of Acts of Parliament or some instrument relating to

the vesting . . . duly stamped with an *ad valorem* duty payable upon a conveyance on sale of the property; and in default of such production, the duty with interest thereon at the rate of five per cent. per annum from the passing of the Act, date of vesting . . . as the case may be, shall be a debt to Her Majesty from such person."

This was an action at the instance of the Lord Advocate on behalf of the Commissioners of Inland Revenue against the Irvine and District Water Board, which concluded for payment of a sum of £595, 15s. as *ad valorem* conveyance on sale duty on the transfer of the water undertaking to the Board from the Corporation of Irvine, which had been effected by the Irvine and District Order Confirmation Act 1903 (3 Edw. VII, cap. cxlvii).

In defence the defenders, *inter alia*, pleaded—“(2) The defenders are not liable for conveyance on sale duty in respect (a) that the transfer operated by the Provisional Order of 1903 was simply to give effect to an administrative change in a public trust; and (b) that in any case the said transfer was not a vesting by way of sale within the meaning of the statute libelled. (3) *Esto* that the said transfer was a vesting by way of sale, the defenders are not liable to pay stamp duty on (1) the proportion of the liabilities of the undertaking which falls to be met by the Corporation of Irvine; and (2) the proportion of liabilities consisting of expenses connected with the Provisional Orders of 1901, 1902, and 1903, in respect that these were not part of the consideration for the sale.”

The facts of the case are given in the opinion of the Lord Ordinary (PEARSON), which was as follows:—“In this action the Commissioners of Inland Revenue claim payment of conveyance on sale duty in respect of the transference of the water undertaking of the Corporation of Irvine to a new corporate body known as the Irvine and District Water Board. The transfer was effected by Act of Parliament (Irvine and District Water Board Order Confirmation Act 1903), whereby the Irvine Corporation Water Undertaking was transferred to and vested in the new board, subject to certain pecuniary arrangements. These include the taking over of the debts and liabilities affecting the undertaking, the payment of certain parliamentary costs, and payment to the Corporation of Irvine of £2500 as full compensation to them for and in respect of the transfer.

“The main question raised in the case is whether by virtue of this statutory transfer the undertaking was vested in the defenders ‘by way of sale.’

“It appears that under a series of local statutes the Corporation of Irvine constructed water-works and supplied water to their own area. They also entered into agreements with three water supply districts formed in adjoining parishes to furnish these districts with a supply of water for a money payment. That money payment was in fact fixed on the basis of the assessable value of the respective districts

including Irvine. But Irvine had no assessing power beyond its own area, and this payment was truly a price paid as for the purchase of the water, just as much as if it had been fixed on any other basis, such as a price per gallon.

“In recent years the population and rental of the surrounding districts had greatly increased relatively to those of Irvine, and two police burghs (Saltcoats and Kilwinning) had been erected within the outlying special water supply districts. In these circumstances the Corporation of Irvine in 1902 promoted a Provisional Order to bring in an additional water supply from a new source. This Order was opposed by the outside authorities on the ground that the water undertaking, regarded as a whole, should be vested in a board representative of all interests. This could not be effected under the Order as proposed, but in order to give an opportunity for its consideration in the next session the Commissioners only passed the preamble subject to certain parts of the Order being suspended for a year. Accordingly in 1903 a Provisional Order was promoted for the constitution of a joint board, and notwithstanding opposition by the Corporation of Irvine, the Order was passed, and became the statute of 1903 to which I have already referred. The new board, which was created a body corporate under the name and style of The Irvine and District Water Board, is composed of seventeen members, seven being elected by the Corporation of Irvine, and the remaining ten being representative of the outlying districts. The whole undertaking is now transferred from the Corporation of Irvine and vested in this board on certain pecuniary terms. Shortly stated, these terms were—(1) that the new corporation should take over the debts and liabilities of the undertaking, amounting to £110,958; (2) that they should pay the parliamentary costs of all parties in promoting and opposing the Provisional Orders of 1901-3, amounting (as stated by the pursuer) to £5656; and (3) that they should pay to the Corporation of Irvine the sum of £2500 as full compensation to them for and in respect of the transfer as aforesaid. With regard to the second head there seems to be some uncertainty on the record, but I take it that the defenders who ought to know are right in saying that the sum of £5656 represents not the whole costs mentioned in section 21 of the Order, but only so much of them as was incurred by the Corporation of Irvine.

“In these circumstances the defenders maintain that there was here no conveyance on sale, but that the transaction was really a transfer of trust property from one set of trustees to another and larger body of trustees, the beneficiaries remaining the same. This was a public statutory undertaking out of which the Corporation of Irvine were expressly debarred by statute from making any profit; and the statutory transfer it is said amounted to no more than the vesting of the legal title in a larger and more representative body of trustees for purposes of management. It

is urged that the Provisional Order of 1902 recognised the outlying communities as having for all time an equal right to the supply, and an equal share in the liabilities; that while previous to that time the matter may have rested on terminable agreements, the basis of the relation between Irvine and the surrounding districts was shifted by the statute from mutual agreement to statutory right; and that all that was really done in 1903 was to acknowledge the right of these districts to some representation in the management, and to transfer the control to the larger and more representative body.

“I do not think this view squares with the facts. The desires of the outlying districts might possibly have been satisfied with a mere change in the control of the undertaking. But that is not what was done. It was not a mere change of one body of trustees and managers for another and larger body. It was a radical and complete change in the ownership of the *corpus* of the undertaking, which was transferred for pecuniary consideration from one corporation to another and independent corporation, whose interests were by no means identical with those of the original owners. It is not accurate in fact to say that the Corporation of Irvine was trustee for the outlying districts. On the contrary, they worked together under specific agreements for the purchase and sale of water, just as much as if there had been individual consumers outside Irvine who were supplied by meter from the main pipe on its way to Irvine. It is true that Irvine was not entitled to make any profit from the supply; and in that sense the undertaking was not strictly commercial; but I see no reason why that circumstance should make any difference in the question whether a given transaction was a conveyance on sale. Nor do I think that the defenders are well founded in their argument that the Provisional Order of 1902 having recognised the outlying inhabitants as truly beneficial owners of the works, all that the order of 1903 effected was a formal change in the nominal administrators. I think it impossible to sever the two statutes in that way seeing that the one was in large part expressly suspended in its operation in order that the other might be passed. And, taking them together, I hold that there was a real transfer of property from one legal *persona* to another for pecuniary consideration—a transaction for which I find it difficult to suggest any other name than a conveyance on sale. The interests of the two corporations concerned in the matter were in some points clearly adverse; so much so, indeed, that the Corporation of Irvine strenuously resisted the proposal of 1903 for a transfer, but maintained that if the undertaking was to be transferred, it should be on ordinary arbitration terms. That seems to me just what was done; with this difference, that instead of having the expense and delay of an arbitration, the pecuniary consideration was fixed by agreement, and was embodied in section 21 of the Act.

“The defenders claim that in any view they are not liable in the whole amount sought to be recovered. (1) They say they are not liable in stamp duty on such portion of the debts and liabilities of the undertaking as falls to be met by the Corporation of Irvine, which they state at 35 per cent. of the whole. This argument could only be successful if it were legitimate for the defenders to represent the Corporation of Irvine as being *pro tanto* purchasers as well as sellers. But the Corporation of Irvine, although it is a constituent authority within the definition of the Act, is not a constituent member of the new corporation. It has merely the right to be represented upon it by seven members elected from among their own number. And in any case the new corporation is a legal person, one and indivisible. (2) The defenders further dispute the claim for duty on such portion of the liabilities as consists of the expenses connected with the Provisional Orders, in respect these were no part of the consideration for the sale. There might have been some force in this objection if the figure of £5656 included the expenses other than those incurred by the Corporation of Irvine, as the consideration for a sale ought directly or indirectly to represent value as between the seller and the purchaser. Even then it might have been replied that the 21st and 41st sections of the statute treat the whole costs incurred by all the constituent authorities as payable by the new corporation. But the sum of £5656 is stated by the defenders to include only those charges which were incurred by the Irvine Corporation; and as to these I see no reason to doubt that the payment forms part of the consideration for the transfer.”

An interlocutor was pronounced repelling the defences and finding the pursuer entitled to the sum sued for with interest at 5 per cent. per annum from 1st January 1904.

Counsel for the Pursuer—The Solicitor-General (Clyde, K.C.)—A. J. Young. Agent—Solicitor of Inland Revenue (P. J. Hamilton Grierson).

Counsel for the Defenders—Wilson, K.C.—Constable. Agents—Morton, Smart, Macdonald, & Prosser, W.S.