VOL. XIV.—PART X.

No. 736.—Court of Session, Scotland (First Division).—16th, 21st and 22nd December, 1927.

House of Lords.—28th and 29th June and 22nd November, 1928.

The Commissioners of Inland Revenue *v.* The Forth Conservancy Board.[1]

Income Tax, Schedule A—Profits derived by a Conservancy Board from shipping dues—Income Tax Act, 1918 (8 & 9 *Geo.* V, *c.* 40), *Schedule A, No.* III, *Rule* 3.

The Respondents carried out under powers vested in them by statute the customary duties of conservators, but did not own any heritable subjects other than a derelict harbour not used by shipping and a portion of foreshore purchased with a view to possible reclamation. No income arose from these properties and the Respondents' sole revenue consisted of shipping dues which they were authorised to levy on tonnage using the waters under their jurisdiction and on goods and passengers shipped or unshipped.

The General Commissioners found that the Respondents were not assessable under No. III *of Schedule A in respect of their income from shipping dues.*

Held, *that the shipping dues levied by the Board were not moneys arising from any of the property specified in Schedule A, and were therefore not assessable under No.* III *of Schedule A.*

Case.

At a meeting of the Commissioners for the General Purposes of the Income Tax for the District of Stirling, in the County of Stirling, held at Stirling, on 23rd July, 1926, the Forth Conservancy Board (hereinafter referred to as The Board) appealed against the undernoted assessments made upon it under the Income Tax Act, 1918, Schedule A, No. III, Rule 3 :—

Year.	*Assessment.*
1921–22	£2,841
1922–23	4,083
1923–24	4,083
1924–25	7,624
1925–26	5,294

[1] Reported (C.S.) 1928 S.C. 286 and (H.L.) [1929] A.C. 213.

I. The following facts were admitted or proved :—

1. The Board was constituted under the Forth Conservancy Order, 1920, as confirmed by the Forth Conservancy Order Confirmation Act, 1921 (11 and 12 Geo. V, c. 5). A print of the Order(1) is appended and forms part of this case. The Board exercises jurisdiction over that part of the river and Firth of Forth between Stirling and an imaginary line drawn across the Forth approximately a mile east of the Forth Bridge.

2. Under Section 27 of the Order there was transferred to the Board the undertaking of the Commissioners of the Forth Navigation which body had been previously constituted for the purpose of improving and regulating the navigation of the river from Alloa to Stirling under the Forth Navigation Act of 1843 (6 and 7 Vict. c. 47). Stirling Harbour, which belonged to the said Commissioners, was included in the transfer to the Board, but the harbour was then practically derelict, and there is little prospect of its being used for shipping.

3. With the exception of the Stirling Harbour, the Board up till 5th April, 1926, did not own any heritable subjects other than a portion of foreshore which was purchased by the Board in 1925. The foreshore in question was acquired with the view to its possible reclamation at some future date.

3A. The Board has no profits from or arising out of any lands, tenements, hereditaments or heritages.

4. The sole revenues of the Board have been derived from shipping dues, which under Section 54 of the Order the Board are authorised to levy and recover in respect of vessels entering or using that part of the river and Firth of Forth within the Board's jurisdiction and in respect of goods and passengers conveyed upon or shipped or unshipped in the river, it being provided that such dues should not exceed those specified in the Third Schedule to the Order.

5. The said Third Schedule of the Order differentiates between the rates which may be levied on vessels on the river above Alloa, *i.e.*, in that part of the river which was formerly under the jurisdiction of the Forth Navigation Commissioners, and the rates which may be levied on vessels entering or departing from that part of the river below Alloa and not that part above Alloa. The rates on goods and passengers are only leviable in respect of vessels using the river above Alloa.

6. The dues receivable by the Board under Part II of the said Third Schedule of the Order were fixed by resolution of the Board at one half-penny per registered ton on vessels on each time of entering or departing from the river within the Board's jurisdiction, this being the maximum amount payable

(1) Not included in the present print.

under the said Schedule for vessels using the river below Alloa. No rate has been fixed by the Board under Part I of the said Schedule in respect of vessels using the river above Alloa, nor have any rates been fixed for the conveyance of goods or passengers in respect of this part of the river, and accordingly the Schedule Rates under Part I thereof meantime apply to the river above Alloa.

7. The dues in question have been levied and collected by the Board since October, 1921, but, owing to the fact that there has been practically no traffic on the river between Alloa and Stirling, no dues have been collected in respect of traffic on this part of the river nor in respect of Stirling Harbour.

II. It was contended on behalf of the Board that it was not liable to be assessed under Schedule A, as tax under that Schedule was only chargeable in respect of profits from or arising out of property in lands, tenements, hereditaments and heritages, and the Board was not the proprietor of any heritable subjects in respect of which the dues in question were exigible.

III. H.M. Inspector of Taxes, Mr. J. A. Aitken, on behalf of the Commissioners of Inland Revenue contended :—

1. That No. III, Rule 3 of Schedule A was not confined to lands, tenements, hereditaments or heritages but covered streams of water or inland navigations or tolls ; and

2. That the assessments were properly made to include the surplus of receipts over expenses, such receipts being the shipping dues charged by the Board in terms of its Order.

IV. Having considered the whole facts and arguments the Commissioners found that the Board was not assessable to Income Tax under Schedule A, No. III, Rule 3 in respect of its income from shipping dues for the years in question, sustained the appeal and discharged the assessments.

V. Whereupon Mr. J. A. Aitken, H.M. Inspector of Taxes, on behalf of the Commissioners of Inland Revenue, expressed his dissatisfaction with the determination of the Commissioners as being erroneous in point of law, and having duly required the Commissioners to state and sign a case for the opinion of the Court of Session as the Court of Exchequer in Scotland, this case is stated and signed accordingly.

J. DEAN LESLIE,
ROBT D. FRASER,
J. TOD,
} Commissioners.

Stirling, 3rd November, 1927.

(41088) Wt. 26272/895/2071 4500 4/30 Harrow G. 14 A 2

The case came before the First Division of the Court of Session (the Lord President and Lords Sands, Blackburn and Ashmore) on the 16th, 21st and 22nd December, 1927, and on the last date judgment was given against the Crown (Lord Sands dissenting), with expenses.

The Solicitor-General (Mr. A. M. MacRobert, K.C.) and Mr. A. N. Skelton appeared as Counsel for the Crown, and Mr. Graham Robertson, K.C., Mr. T. M. Cooper, K.C., and Mr. G. A. Montgomery for the Respondents.

I.—INTERLOCUTOR.

Edinburgh, 22nd December, 1927. The Lords having considered the Case and heard Counsel for the parties, Affirm the determination of the Commissioners; Refuse the Appeal, and Decern; Find the Appellants liable to the Respondents in expenses, and remit the Account thereof when lodged to the Auditor to tax and to report.

(*Signed*) J. A. CLYDE, I.P.D.

II. OPINIONS.

The Lord President (Clyde).—The question is whether the Respondents have been rightly assessed to Income Tax under Rule 3 of No. III of Schedule A of the Income Tax Act, 1918, in respect of the balance of shipping dues collected by them during the five years ended 1925–26 under Section 54 of the Forth Conservancy Order Confirmation Act, 1921.

No. III of Schedule A is entituled "Rules for estimating the "annual value of certain other Lands . . . . . or Heritages "which are not to be charged according to the preceding General "Rule", that is to say the Rule set out in No. I of Schedule A headed "General Rule for estimating the annual value of Lands . "." . . . . . or Heritages" and applying to all lands and heritages "capable of actual occupation, of whatever nature, and for "whatever purpose occupied or enjoyed". Nos. II and III prescribe different rules for estimating the annual value of certain lands or heritages therein respectively described. No. II deals with English tithes and Scottish teinds, with manors and royalties, with fines charged in consideration of the demise of lands, and lastly with other profits "arising from lands . . . . . or "heritages not being in the actual possession or occupation of "the person to be charged". No. III deals with a somewhat miscellaneous class of lands or heritages, namely, quarries, mines, and a number of other subjects grouped together in Rule 3.

(The Lord President (Clyde).)

It follows, in my opinion, (1) from the fact that Schedule A is wholly concerned with tax "in respect of the property in all "lands, tenements, hereditaments, and heritages in the United "Kingdom", and (2) from the titles of Nos. I, II and III of the Schedule, that nothing but property in what the law knows as "lands and heritages" can come within the operation of the Schedule; and that consequently Rule 3 of No. III must be interpreted and construed as referring to subjects known to the law as lands or heritages and to none other. The contention of the Revenue is that one of the objects and effects of Rule 3 is to include in the description of "property in lands . . . . and "heritages" with which Schedule A is concerned certain properties which are not known to the law as lands or heritages, but which are for the purposes of the Rule to be deemed to be lands or heritages. I think this construction is inadmissible in view alike of the specialised character of the Schedule and of the explicit terms of the titles of Nos. I, II and III—and particularly of No. III—thereof. It will be observed that the titles in question are just as much parts of the Act as the text of the Schedule and of the Rules themselves.

An examination of the description of the various subjects grouped together in Rule 3 of No. III seems to me to confirm the opinion expressed above. It was not disputed that the various kinds of works described are all such as are recognised by the law as lands or heritages. A doubt was suggested with regard to "streams of water"; but the right to a stream of water is well known to the law under the category of land or heritage, and if the owner has no opposite or lower proprietor to contend with—or if he has bought them out—he can make profits and gains out of it by selling either water-power or the water itself. "Canals, "inland navigations and docks" present familiar instances of property in "lands and heritages", and so also do the "drains "or levels" owned by (say) a body of drainage commissioners. It would not, I apprehend, be material if the land occupied by such drains and levels were held in virtue of a servitude or easement instead of by a direct title of ownership. "Fishings", wholly incorporeal as they may be, are familiar instances of property which the law stamps with the character of lands and heritages. So also are "rights of markets and fairs"—rights granted by the Crown to Royal Burghs or to Crown Tenants as pertinents of the lands of the Burgh or Baron or created by Act of Parliament in reference to a locality (either specified or left to the grantee's selection) within his territory. (See *Blackie* v. *Magistrates of Edinburgh*[1], 1884 11 R. 783, per Lord Fraser at p. 789.) The next kind of subject is described as "tolls", and as

(1) 21 S.L.R. 352.

(The Lord President (Clyde).)

the main argument for the Revenue turned on them I shall deal with them specially. But "railways and other ways, bridges, "ferries" are all examples of the class of property known to the law as lands and heritages.

The argument of the Revenue with regard to "tolls" is that the shipping dues exigible by the Respondents under Section 54 of the Forth Conservancy Order Confirmation Act, 1921, are "tolls" within the meaning of Rule 3 because chargeable "in "respect of vessels entering or using the river". Founding upon the construction of Rule 3 which I have already said I regard as inadmissible, they say that these "tolls" must be deemed to be lands or heritages, even though in themselves they would not be so regarded in law. But they also maintain, in view of other provisions of the Forth Conservancy Order Confirmation Act, that they are profits and gains arising out of lands and heritages belonging to the Conservancy. That proposition I shall consider presently. But, confining myself meanwhile to the proper interpretation of the word "tolls" as occurring in Rule 3, I do not think the shipping dues in question are "tolls" within the meaning of the Rule. They are not so described or denominated in the Conservancy Act. In Rule 3 "tolls" come immediately after "rights of markets and fairs". The right to levy tolls was a familiar incident of market rights and was commonly included in a grant of market conferred upon a Burgh as the owner of its territory or upon a Baron as the owner of his estate. I do not of course mean that a right of levying tolls can only exist in conjunction with market rights. On the contrary it may form in other ways a pertinent of lands and heritages—for example the tolls or customs levied by a Burgh under its Charter on imported merchandise (see Section 35 of the Income Tax Act, 1918) or the various exactions in name of tolls or dues which were incidents of baronies in Scotland or manors in England. In my opinion, the only reasonable and consistent construction to be put on the word "tolls" as occurring in Rule 3 is to confine its meaning to exactions which are pertinents of lands and heritages, and as such partake of the same legal character. I am confirmed in this view by the general words which follow the enumeration of specific subjects in the Rule—"other concerns of the like nature "having profits from or arising out of" lands or heritages. Schedule A is not concerned with anything but profits of that kind, as constituting the annual value of lands or heritages belonging to the owner, who is liable to Income Tax in respect of his property in them.

It remains for me to deal with the argument that having regard to the position in which the Conservancy is placed in reference to the river and firth within the statutory limits, the Conservancy

(The Lord President (Clyde).)

Board must be regarded as the virtual owner of the river and firth within those limits, or at least as having such an interest therein as the law will recognise as belonging to the category of land or heritage. The Board owns a piece of foreshore at Bo'ness, and is vested in the now abandoned harbour at Stirling; but nothing was made out of this in argument, no doubt because the Board derives, and under present circumstances can derive, no receipts from or in respect of either of these pieces of undoubted land or heritage. But it has, under Part IV of the Confirmation Act, powers to conserve and control the navigation of the river and firth of so extensive a kind as to make the argument of the Revenue on this head a formidable one. Property, for the purposes of Schedule A, may be something a long way short of anything in the nature of a vested feudal fee; and I imagine that, although powers are very different things from rights, such a body as the Conservancy Board might have so many of the powers usually associated with the capacity of *dominium* accumulated in its own person, as to convert it for the purposes of Schedule A into an owner of the lands and heritages upon which those powers are exercisable. But, large as the Board's powers are, they are all confined to the single purpose of keeping the river and firth in a condition suitable for navigation and controlling the use thereof by shipping; and while I feel the force of the argument based on the extent of those powers I do not feel myself justified in regarding the Board as proprietors, in any fair and true sense, of the lands and heritages consisting of the tidal river and estuary which remain vested in the Crown. If so, it follows that the shipping dues which the Board has statutory power to collect are not profits from or arising out of lands and heritages within the meaning of Rule 3 of No. III of Schedule A, and the assessment made upon the Board under that Schedule cannot stand.

Lord Sands.—Under Schedule A of the Income Tax Acts tax is chargeable in respect of "the property in all lands, tenements, "hereditaments, and heritages". Property does not here necessarily imply ownership of the *solum*. In my opinion it includes a permanent right to use a portion of the *solum* for any profitable purpose, or to impose a charge upon any person using it for some purpose. The enumeration in No. III, Rule 3 of things which may fall under the Schedule includes "tolls". Now, what is a toll? It is in general a right to impose a charge upon any person using a part of the *solum* for the passage of himself or his goods. The Rule assimilates tolls to "other concerns . . . . . having "profits from or arising out of lands". It may be possible to figure something which might be termed a toll, though it had no relation to the use of land. But I do not think the framers of the

(Lord Sands.)

Rules had any such fine discrimination in view. As it appears to me, upon a fair reading of the Rule, they regarded tolls generally as concerns having profits from or arising out of lands, etc. According to the very authoritative judgment of the Court of Exchequer Chamber in *Attorney-General* v. *Black*(1), 1871, 6 Ex. 308, shipping dues, such as those here in question, are *ejusdem generis* with tolls. In the case of *The Mersey Docks* v. *Lucas*(2), 8 App. Cas. 891, Lord Blackburn refers to "harbour rates paid "by vessels entering or leaving the Mersey but not using the "appellants' docks". The right to these rates he classifies under the head of property. This right, he says, might belong to a private individual. If it did so, I hardly think it could be seriously contended that it was not property falling under Schedule A, even though the individual had no other right and no duty as regards the area within which he levied the dues. In my view it can make no difference, for the purposes of the Income Tax, whether the party having right to the dues is a private individual or a public trust, or whether the right is enjoyed under Royal Charter or Act of Parliament.

Every vessel using the sheet of water between the Forth Bridge and Stirling has to make a payment for such use to the Respondents. In my opinion the right conferred by Statute to exact these dues in respect of such use of the water is a right of property in the water within the meaning of Schedule A.

I am accordingly of opinion that if the Respondents have profits, these profits are assessable under Schedule A, No. III, Rule 3.

Lord Blackburn.—The question in this case is whether the Forth Conservancy Board is liable to be assessed for Income Tax under Schedule A of the Act in respect of its income from shipping dues, and if so whether the assessment falls to be made under Schedule A, No. III, Rule 3.

The tax under Schedule A is charged "in respect of the "property in lands, tenements, hereditaments, and heritages". The Commissioners have found that the Board does not own any right of property except in Stirling Harbour, which no longer exists, and in a portion of foreshore which the Board purchased for the purpose of reclamation at some future date. I think this finding is right. The Board is given extensive powers over the river, which is defined by Section 5 of its Act as including the bed and the foreshore thereof up to high water mark, and its powers include the right to dredge the bed of the river and to dispose of the materials obtained by dredging in any way it may think fit (Section 36—(F) and (G)). But the purpose of these powers is to enable the

(1) 1 T.C. 52. (2) 2 T.C. 25.

(Lord Blackburn.)

Board to keep the river open for navigation, and although it is authorised to interfere with the rights of the owners of the *solum* of the river for that purpose I cannot find anywhere that the Act intended to transfer to the Board the full right of property in the *solum*, which may be vested in the Crown or possibly in the proprietors adjacent to the river. Accordingly, I have come to the conclusion, not I admit without difficulty, that except for Stirling Harbour which no longer exists, and for the piece of foreshore which was acquired for a special purpose, the Board in respect of the powers under its Act has not any property in lands, tenements, hereditaments and heritages which renders it liable to assessment under Schedule A. It was, however, argued for the Inland Revenue that the Board is liable to assessment in terms of Rule 3 of No. III in respect of the shipping dues which it is entitled to charge in respect that these dues are "tolls" within the meaning of the Rule. The only purpose of this Rule is to fix how the annual value of certain subjects otherwise liable for tax is to be ascertained. The Rule contains an enumerated list which includes many subjects which are *sua natura* heritable, and others, e.g., tolls and ferries, which may or may not be heritable, and then adds "other concerns of the like nature having profits from" or arising out of any lands, tenements, hereditaments or "heritages". It is argued that the reference to "tolls" covers the shipping dues received by the Board and recognises that such dues are heritages. I agree with the argument that the word "tolls" in the Rule clearly refers to "tolls" which are heritable in the sense that the right to draw them depends on some heritable right, or "tolls" which may be described as profits arising out of lands or heritages. The question in the present case is whether the dues levied by the Board are of that nature or not. The right to levy them certainly has no connection with the defunct harbour of Stirling nor with the purchase of a portion of foreshore for the purpose of reclamation. If I am justified in thinking that the Board has no right of property in any other heritages, then it seems to me impossible to describe the shipping dues as being connected with any heritable right or as being profits arising from any lands or heritages. Deprived of any such connection I do not think that the bare right to levy such dues can itself be described as a heritable right or a right of the same character as the rights referred to in the Rule as "tolls". Accordingly, I reach the conclusion that the Inland Revenue have proceeded under the wrong Rule in attempting to levy an assessment under Schedule A, and that the Commissioners were right in so holding.

Lord Ashmore.—In this case the question for decision is whether the Forth Conservancy Board (hereinafter referred to as "the Board") is, or is not, assessable to Income Tax under

(Lord Ashmore.)

Schedule A, No. III, Rule 3, of the Income Tax Act, 1918, in respect of shipping dues received by the Board during the years in question.

The Board was constituted under the Forth Conservancy Order, 1920, and is authorised, under Section 54 of the Order, to levy and recover shipping dues in respect of vessels entering or using that part of the river and Firth of Forth under the Board's jurisdiction, and in respect of goods and passengers conveyed upon or shipped or unshipped in the river, subject to the provision that the dues so levied should not exceed those specified in the Third Schedule to the Order.

The General Commissioners of Income Tax decided that the Board was not assessable to Income Tax under Schedule A, No. III, Rule 3, in respect of the shipping dues referred to; and in my opinion that was a right decision, having regard to the provisions of the Income Tax Act, 1918, relied on by the Appellants, and the facts and circumstances disclosed in the Case.

Rule 3, under which the claim is made, provides that in the case of certain subjects including *inter alia* inland navigations, docks, tolls, railways and other ways and other concerns of the like nature "having profits from or arising out of lands, tenements, "hereditaments or heritages" the annual value shall be understood to be the profit of the preceding year.

As I read the statutory provisions of the part of the Statute with which this case is concerned, I am of opinion that it is an essential condition of the liability of the Board to assessment that it should be the owners of lands, tenements, hereditaments or heritages, or of other concerns of the like nature, having profits from or arising out of lands.

The cases founded on by Counsel for the Appellants did not, in my opinion, support their argument. In one of these cases, *Severn Fishery Board* v. *O'May*(1), [1919] 2 K.B. 484, the decision was to the effect that the Fishery Board did not carry on a business analogous to a trade, and that the penalties recovered from offenders did not constitute a profit assessable to Income Tax.

Then in the case of *Attorney-General* v. *Black*(2), 1871, 6 Ex. 308, it was held that the tolls on coal levied by the Corporation of Brighton were taxable, but for this reason, that these tolls were levied on all importers of coal, whether inhabitants of Brighton or not, whereas the benefit went solely to the taxpayers of Brighton. Moreover in *Humber Conservancy Board* v. *Bater*(3), [1914] 3 K.B. 449, that Board were lessees, for a long term of years, of certain foreshores and the bed of the river Humber.

(1) 7 T.C. 194. (2) 1 T.C. 52. (3) 6 T.C. 555.

(Lord Ashmore.)

They had receipts from shipping and registration dues, which they admitted fell to be included in the Income Tax computation of their profits, and the Court held that certain statutory contributions received by the Board from five railway companies were also liable to Income Tax as being either profits from an inland navigation within Schedule A, No. III, Rule 3, or as being annual profits or gains within Schedule D.

Now in the present case, so far as appears from the Case, subject to two unimportant exceptions, the Board has no heritable property, and the receipt of shipping dues which it obtains has nothing whatever to do with any sort of property belonging to the Board, or any kind of undertaking in connection with which the subject of profit is associated. In short, the Board is not a profit-making concern at all. I think that what I have said is borne out by these statements, made in the Case, of facts admitted or proved, viz :—(*a*) that the Board has no profits from or arising out of any lands, tenements, hereditaments or heritages, and (*b*) that the sole revenues of the Board have been derived from the shipping dues received by it.

For the reasons which I have given, I think that the decision of the Commissioners is well founded and that the Board is not assessable to Income Tax under Schedule A, No. III, Rule 3, in respect of its income from shipping dues for the years in question.

Mr. Graham Robertson.—My Lord, this is a case in which the Commissioners have not stated any question at the end of the Case.

The Lord President (Clyde).—It is very wrong, it ought never to be.

Mr. Graham Robertson.—I suggest your Lordship's Interlocutor might run on the lines of paragraph IV of the Case, where the Commissioners "found that the Board was not assessable to "Income Tax under Schedule A, No. III, Rule 3, in respect of "its income from shipping dues for the years in question". If your Lordship's Interlocutor were to repeat that more or less, that would be just to the same effect as answering a question if one had been stated.

The Lord President (Clyde).—I think that would be enough.

The Solicitor-General.—I suggest that the Interlocutor should affirm the decision or determination of the Commissioners.

The Lord President (Clyde).—That would be more general.

Mr. Graham Robertson.—That would suit me equally well.

The Lord President (Clyde).—I think he is right. I think we had better affirm the determination of the Commissioners.

Mr. Graham Robertson.—I move for expenses.

The Lord President (Clyde).—Expenses.

The Crown having appealed against this decision, the case came before the House of Lords (Lord Buckmaster, Viscount Dunedin and Lord Phillimore) on the 28th and 29th June, 1928, when judgment was reserved. On the 22nd November, 1928, judgment was given unanimously against the Crown, with costs, confirming the decision of the Court below.

The Attorney-General (Sir T. Inskip, K.C.), the Solicitor-General for Scotland (Mr. A. M. MacRobert, K.C.), Mr. R. P. Hills and Mr. A. N. Skelton appeared as Counsel for the Crown, and Mr. Graham Robertson, K.C., Mr. T. M. Cooper, K.C., and Mr. G. A. Montgomery for the Respondents.

JUDGMENT.

Lord Buckmaster.—My Lords, the only question on this appeal is whether the Respondents, the Forth Conservancy Board, have been lawfully assessed to Income Tax under Schedule A, No. III, Rule 3, of the Income Tax Act, 1918. The Commissioners of Inland Revenue have deliberately elected to base their claim on this narrow foundation, and the matter for determination is whether the foundation is broad enough to support the claim.

The General Commissioners found that the Respondents were not so assessable and their Lordships of the First Division dismissed the appeal to them against this decision. The Commissioners of Inland Revenue have accordingly appealed to your Lordships' House.

The Respondent Board was constituted by The Forth Conservancy Order Confirmation Act, 1921, and by this Act there was transferred to them the undertaking of the Commissioners of the Forth Navigation constituted by the Forth Navigation Act, 1843. The main purpose of this Act was to improve the navigation of the river from Alloa to Stirling so as to facilitate vessels reaching and using the quay and harbour of the Royal Burgh of Stirling and by it power was given to levy rates and dues on ships, goods and passengers above the island of Alloa, such dues to be in lieu of the charges formerly made by the Provost, Magistrates and Town Council of Stirling; powers were also given to purchase land, construct works and place lights and tugs within the limit of the Commissioners' jurisdiction.

The powers of the Commissioners were extended by the Forth Navigation Order Confirmation Act of 1903, and a new schedule of rates was provided. The provisions of this Act need no special examination. Under the Act of 1921, the limits of the original jurisdiction were extended down the river and more extensive powers were conferred upon the Respondent Board than those formerly

(Lord Buckmaster.)

possessed by the Commissioners. Power was given to purchase land, to construct works, to dredge the river, to alter and improve the channel, to make and maintain sea walls and embankments, to provide tugs, to acquire quarries for use in connection with the authorised work, and other similar matters, and authority was also conferred to levy rates and dues in respect of vessels entering and using the river and in respect of goods and passengers conveyed upon or shipped or unshipped within defined limits. An extended area of jurisdiction was conferred and within that area rates were authorised only upon vessels. The application of the revenue is unnecessary for the purposes of this appeal; it was in respect of the balances of income derived by the Respondent Board under these powers that assessments were made upon them under Schedule A. Schedule A provides that " Tax . . . shall be " charged in respect of the property in all lands, tenements, " hereditaments, and heritages in the United Kingdom, for every " twenty shillings of the annual value thereof ", and Rules are laid down for estimating the annual value of the lands, etc., to be so charged.

Rules No. I and No. II are not important. It is under Rule No. III that the difficulty arises. This is headed : " Rules for " estimating the annual value of certain other Lands, Tenements, " Hereditaments, or Heritages which are not to be charged accord- " ing to the preceding General Rule ", and sub-head 3 of that Rule is in the following terms : " In the case of ironworks, gasworks, salt " springs or works, alum mines or works, waterworks, streams of " water, canals, inland navigations, docks, drains or levels, fishings, " rights of markets and fairs, tolls, railways and other ways, bridges, " ferries, and other concerns of the like nature having profits from " or arising out of any lands, tenements, hereditaments or heritages, " the annual value shall be understood to be the profits of the " preceding year ".

The argument for the Appellants is that according to the true interpretation of Rule 3 there are to be included profits arising from property, most notably tolls, and ferries, which are not necessarily within the strict meaning of the words " property in lands, tene- " ments, hereditaments or heritages ", and that therefore the controlling words must be so extended as to cover this meaning and thereby to embrace the money arising from the dues and rates which the Respondent Board are entitled to levy.

I have omitted from consideration the other classes of property such as " streams of water, canals," etc., since for the reasons given by the Lord President they are all easily capable of being made referable to property in lands and heritages and the word tolls is the one most favourable to the Appellants.

(Lord Buckmaster.)

Before, however, examining what is the nature of the property in respect of which the income to the Respondent Board arises, it is important to determine strictly the construction of the heading of Schedule A itself. It must be remembered that it is simply one Schedule in a general taxing Act. It does not follow because property is not included under this Rule that it is exempt from taxation. It may well be included under other Rules, and there is no particular reason why an extended interpretation should be given to the illustration of properties subject to the charge contained in the third sub-head. Further, the Rule itself shows that all the property included in sub-head 3 is assumed to be such examples of the enumerated items as have " profits arising out of lands, tene- " ments, hereditaments and heritages ", for otherwise there would be introduced into the middle of the Rule a class of property outside the description of the special subject of taxation and contrary to the general words which embrace properties omitted from the specific enumeration but unite them together by the provision that they come within the declared objects of the tax. The primary and governing consideration of the Schedule is that taxes should be levied " in respect of the property in all lands, tenements, hereditа- " ments, and heritages ", and tolls may well arise in connection with such property as, for example, in connection with a harbour. So also with regard to a ferry. If the landing stages on each side are owned, as in almost every case they would be, by the proprietor of the ferry, the income arising from the ferry would be properly referable to a property in the land. But if tolls or any other income arise from property not within the limitation imposed by the words of the Schedule itself they cannot be taxed under its provisions.

In the present case, it is found that Stirling Harbour, which was transferred to the Board, was practically derelict at the time of its transfer, and there is little prospect of its use for shipping, and, further, that with the exception of Stirling Harbour, the Respondents did not own any heritable subjects apart from a portion of the foreshore, purchased for possible future reclamation. The sole revenues of the Company arise from the shipping dues and the dues on passengers. Now these dues are not moneys arising from any of the property specified in Schedule A and unless, therefore, a series of judicial decisions have caused the interpretation of these words to be extended, on principle I think that the Appellants must fail.

Turning now to the authorities, it is, I think, important to notice that in no case has the actual question arisen which arises here. In *Attorney-General* v. *Black*(1), 1871, 6 Ex. 78 and 308,

(1) 1 T.C. 52.

(Lord Buckmaster.)

the point was whether money accruing to the Improvement Commissioners of Brighton from a duty of 6*d.* on every chaldron of coal landed on the beach or brought into the town was liable to tax; the real defence being that it was in the nature of a district rate payable by the inhabitants. In the Court of Exchequer, Chief Baron Kelly decided against the Commissioners on the general ground that the moneys received would be income in the hands of a private person and that neither its nature nor the purposes of its application took away the liability. Baron Martin said he thought there was reason for contending that the tax was within Schedule A but that it was unnecessary so to decide because of the wide words of Schedule D. In the Exchequer Chamber, Mr. Justice Byles said the impost was in the nature of a toll within No. III, Rule 3, of Schedule A, but discussed the matter no further. Mr. Justice Blackburn referred to both Section 60, Schedule A, and Section 100, Schedule D, and continued, " The words in this " latter section are very extensive. My Brother Martin says, ' It " ' seems impossible that any net could be extended more widely ',"
and at page 310 he continues " The mention of ' rights of markets " ' and fairs ' and ' tolls ' in Schedule A, No. III, shows the " intention of the Legislature to include in the general sweeping " words of Schedule D sources of income similar to these ", and, as I read his judgment, it was under that Schedule that he thought the tax attached. The other Judges gave brief judgments in which the point was not referred to. It is plain, therefore, that this case affords but slight assistance to the Appellants.

Mersey Docks v. *Lucas*(1), 8 A.C. 891, is again a case where the distinction between the Schedules was immaterial to the decision. It is true that among the sources of revenue there sought to be taxed were anchorage dues on vessels anchoring in the Mersey and rates payable by vessels entering the Mersey but not using the Appellants' docks, and these are closely allied to the duties charged in the present case. The real point argued, however, was again the general question of liability to taxation, and for the Mersey Docks it was contended that their statutory obligation to appropriate their surplus moneys to purposes essential to their undertaking relieved them of liability. Lord Selborne refers to the fact that the tax was imposed by Schedule A upon " docks ", but he nowhere considers separately the moneys arising from the sources that were not strictly speaking docks and considers only the question of the permitted deductions. Lord Blackburn distinguishes (page 907) the property from that of a private dock company and then at page 910 adds(2), " The question, therefore, is " solely whether or no the sources which produce this revenue are " among those things which are enumerated (I care not whether in

(1) 2 T.C. 25. (2) *Ibid.* at p. 34.

(Lord Buckmaster.)

" Schedule A or Schedule D) as those upon which the tax has been " granted to Her Majesty ". There was indeed no need to care. The point was immaterial to the decision.

In *The Humber Conservancy Board* v. *Bater*(1), [1914] 3 K.B. 449, the Board were lessees of the foreshore and the bed of the river but possessed no docks or wharves; their duties included dredging, lighting and buoying, and towards these services they received under statute annual payments from four Railway Companies and the Aire and Calder Navigation. It was these sums that it was sought to tax. Mr. Justice Scrutton held that the tax was properly exigible. He thought they might be an " inland " navigation " under Schedule A and concluded: " They come " within either Schedule A or Schedule D; they cannot come under " both; but I am inclined to think that they come within " Schedule A ". It is unnecessary to decide whether the balance of the learned Judge's judgment was rightly inclined since the fact that the Board were lessees of the foreshore sufficiently distinguishes that case from the present.

The cases under the Mortmain Act deal with a different subject matter, but it is at least worthy of comment that in the case of In re *Christmas*, 33 Ch.D. 332, a bond, given by Harbour Commissioners who owned the piers, jetties and docks belonging to the haven of Great Yarmouth, covering the duties they were entitled to levy on ships leaving the haven or loading or unloading in the roads, but excluding their actual real estate, was held not to be an interest in or connected with or incident to the land owned by the Commissioners. The case also of In re *David*, 43 Ch.D. 27, where a mortgage of tolls on bridges was held to be an interest in land, is instructive as showing that tolls may be of two natures, one connected with land and one not; and this is further illustrated by the case of *Vauxhall Bridge Co.* v. *Sawyer*, 6 Ex. 504, where tolls over a bridge owned and built by the Bridge Company were held to be a tenement, since in the words of Chief Baron Pollock, at page 508, " They are a profit or payment received by the Com- " pany in respect of the user by passengers of their bridge and " roads; they concern land and are annexed to land and are paid " for and in respect of the user of land ".

The Scotch cases, like the English, are not authorities upon the actual point. But the case of *Adamson* v. *Clyde Navigation Trustees*, 1 Mac. 974, is a clear decision that dues paid for navigation of the river Clyde to the Navigation Trustees could not be subject to assessment to the poor rate as lands or heritages. This case was carried to this House by the Clyde Trustees who appealed

(1) 6 T.C. 555.

(Lord Buckmaster.)

unsuccessfully against their assessment in respect of their occupation of docks and wharves, leaving the other question untouched. The case of *Leith Dock Commissioners* v. *Miles*, 4 Mac. 14, really decided only the validity of an assessment in respect of lands, quays, harbours, docks, etc., and the real question once more was whether the purposes to which the receipts were applied exempted them from liability. In my opinion, therefore, the Court of Session were right when in the case of the *Assessor for Lanarkshire* v. *Clyde Navigation Trustees*, 1908, S.C. 620, they held that the principle laid down in *Adamson's* case had not been overruled in the House of Lords.

There is, therefore, nothing in any of the authorities on which reliance can be placed by the Appellants and in my opinion the true construction of the statute is fatal to their appeal.

Viscount Dunedin.—My Lords, I concur.

Lord Buckmaster.—My Lords, my noble and learned friend Lord Phillimore concurs in this judgment.

Questions put :—

That the judgment appealed from be reversed.

The Not Contents have it.

That this appeal be dismissed with costs.

The Contents have it.

[Agents :—The Solicitor of Inland Revenue, England, for the Solicitor of Inland Revenue, Scotland; Messrs. Grahames & Co. for Messrs. Laing and Motherwell, Edinburgh.]