ceedings of the co-partnery are proof of what they have done—the insurance here was kept up out of co-partnery funds. The company created it, and any accidental profit belongs to the company. I think this policy is the property, and must be dealt with as an asset, of the company.

LORD ORMIDALE—I concur. There are only two questions of any moment. First, of evidence whether the proof is excluded by the Trust Act? I think not. It is established that Robson was a partner of Forrester. Then the object of the policy was to enable the firms to obtain a loan; and how can Robson maintain that because the policy was in his name it is his property? Robson is not a trustee holding the policy for others, but the agent of the co-partners, and proof *prout de jure* is quite admissible. Looking to the evidence, it is clear that this policy never belonged to Robson but to the joint adventurers. As to the surplus proceeds, I am clear it must go to the company like any other asset.

LORD GIFFORD—I have a difficulty about the application of the Trust Act, but I think we have here evidence, which is in Robson's writing, sufficient to show that this policy formed part of a loan effected for behoof of the joint adventurers, and that it is not the property of Robson individually.

The Court pronounced the following interlocutor:—

"The Lords having heard counsel on the reclaiming-note for Mrs Robson and others against Lord Young's interlocutor of 3d February 1875, Adhere to the said interlocutor, except as to the finding for expenses; recall that finding, and, of consent, find neither party entitled to expenses in the cause, and decern."

Counsel for Forrester and Others — Solicitor-General (Watson) and Johnstone. Agent—T. J. Gordon, W.S.

Counsel for Robson's Trustees — Asher and Lorimer. Agents—Ronald, Ritchie, & Ellis, W.S.

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*Tuesday, May* 18.

## FIRST DIVISION.

### CASE FOR THE COMMISSIONERS OF INLAND REVENUE AND THE GLASGOW CORPORATION WATER COMMISSIONERS.

*Assessment—Income Tax—Profit.*

*Held* that the revenue of the Glasgow Corporation Water Commissioners was not profit, assessable under schedule D. of the Income Tax Act—any excess of revenue over expenditure being devoted to the reduction of assessment.

The question raised by this case was whether the income of the Glasgow Water Commissioners was assessable under schedule D. of the Income Tax Act. The facts, concerning which there was no dispute, appear from the Lord President's opinion.

At advising—

LORD PRESIDENT—This is a case stated for the opinion of the Court by the Commissioners of Property and Income-tax of the City of Glasgow. The Glasgow Corporation Water Commissioners were charged, under schedule D of the Income-tax Act, with duty upon profits to the amount o £17,032, 15s., arising for the year 1872-3, upon their undertaking; and they maintain that sum of £17,032. 15s. does not consist of profits arising upon their undertaking, and is not assessable to Income-tax under schedule D. For the purpose of answering this case, it is necessary to attend very particularly to the constitution of this Water Corporation Commission, and to the clauses of the statute by which it was brought into existence. It is a local Act—18 and 19 Victoria, chap. 18—an Act which was obtained by the citizens of Glasgow for the purpose of obtaining a liberal supply of good water for the city, as we all know, by the importation into the city of the water of Loch Katrine. The Commissioners for executing the Act are the Municipal Corporation; but in so far as this question is concerned, and in so far as regards their powers as Water Commissioners, they are a separate corporation. The first step that was necessary in prosecution of the design of that statute was to buy up two old companies who had been in the habit of supplying the town with water, one on the north side and the other on the south side of the Clyde; and accordingly, the new corporation not only bought up the whole works of these two companies, but they also bought up the stock of the companies, and paid for this acquisition in the form of annuities to the shareholders of the two companies. It became necessary also to provide money for the purpose of executing the necessary works for bringing in the water of Loch Katrine, and it seems to have been estimated that that would cost somewhere about £700,000; and accordingly a power is given to the Commissioners to borrow money to that extent. The old companies were bought up, the annuities were granted, the money was borrowed, and the works have now been executed for several years, and are in active operation. The next question to attend to is what is the revenue of the Commissioners under this statute. They are required by the Act of Parliament to meet once a year, and make up an estimate of the probable expense for the year of the whole undertaking; and for the purpose of meeting that, they are empowered to levy a rate, which is called the Domestic Water Rate, from the occupiers of all dwelling-houses within the municipal boundary, which is otherwise called in the statute the limits of compulsory supply. That rate is laid on according to the rental of the dwelling-houses. Besides that, they are empowered also to impose a public water rate not exceeding a penny in the pound on the full annual value of all premises whatever—not dwelling-houses only, but every kind of premises within the same limits; and as regards what are called the limits of compulsory supply, these rates are payable whether the inhabitants of the district within these limits choose to use the water or no. In addition to that, the Water Commissioners are entitled also to deal with the inhabitants of a certain district beyond the limits of compulsory supply, and to give them water if they choose to have it; and if they choose to have it, hey are also empowered to lay on a rate upon

these parties; and the rates thus raised, whether within the limits of compulsory supply or beyond them, are to be applied, in the first place, for the payment of current annual expenses of keeping up the undertaking and conducting the supply of water to the city—in short, all ordinary current expenses. They are also applicable of course to the payment of interest upon the money borrowed on mortgage, and to the payment of the annuities which have been granted to the shareholders of the Old Water Companies. There is a further provision, that after the lapse of ten years there shall be a sum at the rate of £1 per cent. upon the total amount of the money borrowed upon mortgage, paid over into a sinking fund for the redemption of that debt, and after the lapse of twenty years a sum of 30s. per cent. is to be paid over into the sinking fund for the same purpose. If, after providing for all these purposes, there is any surplus of the income for any year, the Water Commissioners are required to apply it in making a reduction on the amount of the domestic water rate for the next year; and therefore any surplus which they may have after providing for these purposes must be carried into the next year's account so to be applied.

Now the sum of £17,032, 15s., upon which the charge is made under schedule D of the Income-tax Act, comprehends the whole portion of the revenue of the Water Commissioners which is applied towards the formation of the sinking fund in redemption of the annuities and mortgages in the manner that I have already mentioned, and also the balance, if any, which is carried forward to the following year's account, to be applied as the Act directs in reducing the domestic water rate; and the question is, whether income arising from this assessment, which is appropriated to such purposes, is assessable for Income-tax under schedule D as profits of this water undertaking. I am humbly of opinion that it is not. It seems to me that this is an Act of Parliament by which the citizens of Glasgow have undertaken, through this Water Corporation as their representatives, to assess themselves for a very important public purpose—a purpose very conducive to their own comfort and well-being, to obtain a good supply of water for the city. In so assessing themselves, they had not in view certainly to make profit by the undertaking. On the contrary, what they have distinctly in view is to pay money in order to obtain this particular benefit. They are not therefore trading in any commodity, nor are they entering into any undertaking for the use of property that is to be attended by a resulting profit, or a beneficial interest accruing to any individuals, or to any corporation. The object of the assessment is to pay for bringing in the water, and when that is done the assessment and the authority to levy it come to an end. If in the progress of the operation of this Act the City of Glasgow is in so happy a condition that they can afford to reduce their assessments to a mere fraction of a penny, that must be done under the operation of the statute. If that fraction of a penny is sufficient to pay the current expenses of maintaining this Water Commission, and the works under their charge, and I suppose if by some wonderful scheme of good management they should so contrive that they would be able to get water for nothing by-and-bye, then the right to evy assessment would come to an end altogether. But one thing at least is perfectly certain, that it is made matter of absolute statutory regulation that the expense of supplying this water, including all the various items of expenditure that I have already mentioned, and the revenue, are to be kept actually commensurate and equivalent, as near as possibly can be; and that being practically impossible in every year, the way in which the same object is achieved is by carrying over any surplus of one year into the next year, and employing it in reducing the assessments, and so in reducing the revenue for the next year. Now, it seems to me that it is not within the contemplation of schedule D of the Income-tax Act to charge any portion of a local rate raised for such a purpose as profit, or as anything else falling within that schedule D. The case is entirely different from those that have been cited, which have been decided in the Court of Exchequer in England, because in those cases the statute which gave the right to levy the assessment did not impose it upon the citizens of the particular burgh or locality which obtained the Act. It was not an authority to the citizens of a particular locality to assess themselves. On the contrary, it was a right and privilege given to a particular corporation to assess everybody—the whole public who happened to import, in the one case, coals into the burgh; and, in the other case, to import something else—I forget what it was. But there, it must be observed, the corporation of the particular burgh, or the commissioners—for it does not matter in the least degree which they were—were making a profit out of a tax levied upon the lieges generally, and were applying the proceeds of that tax for the benefit of the community which they represented; and therefore they were held, most justly I think, to be making profit, no doubt not for individual benefit, but for corporate benefit, and for the benefit of the community, represented by the administrative body that levied the tax.

I have only further to say, that if any attempt had been made here to discriminate between that portion of the revenue which arises from the rates levied within the limits of compulsory supply, and that portion of the revenue which is raised in the districts beyond the limits of compulsory supply, I should have been very glad to attend to any grounds which might have been urged for such a distinction. It was said no doubt in argument, but rather by way of illustration of the general claim than anything else, that this corporation does in a certain sense trade in water, and sell it to those people who are outside the limits of compulsory supply—that it is matter of traffic with them; and what they derive from them in the shape of rates may perhaps be fairly represented as coming within the denomination of profit—of revenue derived from the use of a certain subject of which they are the administrators. But it appears to me that that question does not arise here. We have not before us the means of seeing what the result of the transactions between the Water Commissioners and the persons beyond the limits of compulsory supply are or have been. We don't know that any surplus has arisen from these transactions. Most certainly we know that the only sum which is here charged with Income-tax does not represent anything in the nature of profits derived from that special source, but, on the contrary, represents the whole part of the revenue of the Water Commission which is devoted by Parliament towards the ormation of a sinking fund, and which has been directed

*quoad ultra* to be carried forward to the next year's account. I therefore give no opinion upon any question which may arise perhaps hereafter as to the portion of the revenue of this Water Commission which may be derived from those parties who lie outside the limits of compulsory supply. But as the case stands, I am against the deliverance of the Commissioners, and I think it must be quashed, and the assessment disallowed.

LORD DEAS—If there are any profits made here I think it quite clear they must be profits made by the ratepayers, because there are not two parties —the corporation on the one hand and the ratepayers on the other. The corporation is the mere trustee, hand, and instrument of the ratepayers. There is no room, therefore, for saying that the corporation can make profit. That is impossible. The whole question is, Are the ratepayers making profit? Now, as your Lordship has pointed out, if you confine your attention, as it is right to do in the first instance at least, to the bounds of compulsory supply, I do not see how it is possible to say that the ratepayers are making any profit. They are paying for the water, and once the water is paid for, even if it becomes free, there is no profit made. If that be so, the only question that could well have been raised would have been that which your Lordship has latterly alluded to, viz., Whether the ratepayers were making profit by selling water to parties beyond the compulsory bounds. Now there is no evidence that they are making profit of that kind. If they be, it is certain that this £17,000 odds does not represent that profit. That profit may be within the £17,000 for anything I can tell, but that sum certainly does not represent the profit. I entirely concur with your Lordship that questions which may be raised about assessing the profit made beyond the bounds of the compulsory supply are not before us, and I am not prepared to give any opinion as to how far that may be liable for assessment. The assessment, at all events, could not be upon the £17,000, but upon something very much smaller than that. I need hardly say that in coming to this result I would not be supposed to indicate an opinion against what was done in the Poor-law cases quoted, and more particularly in the case of *Adamson* against the *Clyde Navigation Trustees*. I see that I wrote the opinion in that case, which was substantially adopted by all the Judges with one exception, and affirmed in the House of Lords, and it would be very strange if I were to say anything against that opinion, and I certainly am not doing so. But the differences between that case and this are sufficiently clear from the explanation which your Lordship has given of the facts of this case. I entirely concur in the views stated by your Lordship, and I have nothing further to add.

LORD ARDMILLAN—I have very little to add to what your Lordships have said, for I entirely concur. I have only two observations to make. Where the area of taxation and the area of distribution exactly correspond—where a rate is raised for a public purpose, and the whole of what is collected is applied to that public purpose—I take it that that is what is meant by the English Judges when they speak of a distinct rating or assessment; and in that case there could be no income which could be chargeable with Income-tax. Further, where there is an excess of revenue over the necessary expenditure for distribution, if a company voluntarily use that excess of revenue to pay off their debt by the formation of a sinking fund, a question might very well be raised, whether, that being their voluntary use of funds which would have been profit if not so applied, they might not still be liable for Income-tax. But that is not the case here. The statute and not the will of the company applies the whole excess to the creation of the sinking fund, and the statutory result of the application of that money is the ultimate diminution and, it may be, the ultimate extinction of the assessment; for if ever it came to this, that the water could be got for nothing, there would be no assessment. The statute, therefore, charges the appropriation of the money, and that being the case I do not think that this sum of £17,000, applied under the powers of the statute and by direction of the statute to the purposes of the statute, can be considered as income. A separate question might arise, but it is not now before us, in regard to the sum raised from the non-compulsory district, as it is called—*i.e.*, the district beyond the compulsory area, it being said to be used to some extent for the benefit of those in the compulsory district. A curious question may be raised as to whether the fund raised beyond the line and used for the benefit of those within the line does not to some extent partake of the nature of income as profit. All I say now is, that that question is not raised here, and we are not at present called on to deal with it. I have formed no opinion upon it, and I reserve my opinion upon it. I think it is a nice point, but it is not now before us.

LORD MURE—I concur in the result which your Lordships have arrived at, and substantially on the same grounds, reserving, of course, my opinion on the question which may possibly some day or other be raised as to money collected or profits made beyond the compulsory boundary. That is not before us, in my view of the case, now.

The Court pronounced the following interlocutor:—

> "Reverse the determination of the Commissioners, and disallow the assessment; find the appellants entitled to expenses, and remit to the Auditor to tax the account thereof, and report."

Counsel for Inland Revenue—Solicitor-General (Watson), Q.C. and Rutherfurd. Agent—David Crole, Solicitor of Inland Revenue.

Counsel for Water Commissioners—Dean of Faculty (Clark), Q.C., and M'Laren. Agents—