

which she was to have the liferent as a store in connection with her business. There should have been no difficulty in giving it to her at Whitsunday 1888, for her agent applied by letter on 11th January 1888, and the place was only let from year to year. But it had a window which looked out in the direction of the respondent's premises, and he made difficulties, and succeeded in getting the application postponed so that it has not yet been dealt with. He now says it is too damp for a flour store. In short, he thinks evidently that any excuse is good enough for not allowing the liferentrix what she asks.

But perhaps the most prominent of all among the evidences of the respondent's incapacity to understand his duty, and his unfitness to execute this trust, is the fact that he has insisted, and still claims as his right, that he is to administer this trust for the liferentrix without consulting her or considering her wishes in any degree. He has plainly carried to such a length his extravagant views of his independence of the rights and interests of the liferentrix as to bring the trust to a deadlock. This is nothing short of a wilful failure to administer the trust, and in my opinion amounts to a breach of trust not less intolerable and inexcusable than that which took place in the case of *Fleming v. Craig*.

I am of opinion that the condition of this trust is such as cannot be allowed to continue, and that it is necessary that the respondent should be removed and a judicial factor appointed.

As every opportunity has been given to the respondent to retire from the unreasonable position which he has taken up, and as the print now boxed shows that he still persists in maintaining it, I am also of opinion that the expenses of the present application must fall upon him.

The Court pronounced this interlocutor:—

“Remove the respondent John Latta from the office of trustee under the trust-disposition and settlement of the late Alexander M'Whirter, baker, Maybole, dated 19th December 1884: Appoint David Crawford, accountant, Ayr, to be judicial factor on the trust-estate of the said Alexander M'Whirter with the usual powers, he always finding caution before extract: Find the respondent liable in expenses to the petitioners,” &c.

Counsel for the Petitioners—H. Johnston—Ure. Agents—Sturrock & Graham, W.S.

Counsel for the Respondent—J. A. Reid—Orr. Agents—Philip, Laing, & Company, S.S.C.

Friday, November 15.

FIRST DIVISION.

[Court of Exchequer.]

ADAM v. COMMISSIONERS OF
INLAND REVENUE.

Revenue—Income-Tax—Municipal Buildings—Burgh Court—Income-Tax Act 1842 (5 and 6 Vict. cap. 35), Schedule A.

Held that from an assessment imposed on municipal buildings under Schedule A of the Income-Tax Act 1842, a deduction fell to be made in respect of the Burgh Court Rooms, which were exempt from assessment, as they were occupied for the administration of public justice.

At a meeting of the Commissioners of Income-Tax for the district of the City of Edinburgh, held on 17th April 1889, Robert Adam, City Chamberlain, as Treasurer of Police, appealed against an assessment made on the Lord Provost, Magistrates and Council of the City of Edinburgh, under Schedule A of the Income-Tax Acts for the year 1888-89. The property assessed was the City Chambers, and the nett assessed value was £332, 10s., on which the duty, at 6d. per £, amounted to £8, 6s. 3d.

The premises assessed contained various offices and rooms occupied in the management of municipal business, and included the Burgh Court Room and rooms connected therewith.

The appellants maintained that as regards the assessment on the City Chambers, these were occupied for public purposes, and for the administration of the civil government of the city, and for the administration of justice. They included the Burgh Court and the Dean of Guild Court. They were the seat of the Sheriff Court of the county of the city, with the usual offices incidental thereto. The Chambers could only be used for public purposes, and not for profit. The Government contributed towards the salaries of the officials by payments to the Clerk of Court and to the Procurator-Fiscal.

The appellants contended—(1) The occupation which would infer liability under Schedule A must be a beneficial, and not a mere official occupation; (2) the chambers were occupied for public purposes of such a character that their occupation must be taken to be of the Crown, and the Crown not being named in the Income-Tax Statutes, was not bound thereby.

The Surveyor, Mr Edward Maughan, on the other hand, contended that there was no exemption under Schedule A in favour of buildings used for municipal purposes, but that, on the contrary, section 40 of 5 and 6 Vict. cap. 35, expressly imposed the tax on “all bodies politic, corporate or collegiate, companies, fraternities, fellowships or societies of persons, whether corporate or not corporate,” and in the rules annexed to said Act, as applicable to Schedule A, no allowances were specified to be made in respect of municipal buildings.

The Commissioners on 14th May 1889 unanimously refused the appeal, on the ground that the Income-Tax Acts gave no exemption to buildings used for municipal purposes from assessment under Schedule A.

The appellants having intimated dissatisfaction with the decision of the Commissioners, the present case was stated for the opinion of the Court of Exchequer, under the Taxes Management Act 1880.

Argued for the appellant — Municipal buildings were exempt from income-tax, in respect that their occupation was not beneficial but for public purposes. In any view, a deduction must be made in respect of the Burgh Court Rooms, which were occupied for the administration of public justice—*The Justices of Lancashire v. The Overseers of Stretford*, May 1, 1858, E. B. & E. 225; *Comber v. The Justices of the County of Berks*, Dec. 3, 1883, L.R., 9 H. of L. 61, in which case *Clerk v. Dumfries Commissioners of Supply* was disapproved.

Argued for the Surveyor of Taxes—The question of profit and loss did not fall within the scope of Schedule A. The question was whether the premises were capable of actual occupation. It was not necessary to traverse the decision in *Comber's* case, as the buildings here were not used in the service of the Crown, but primarily and mainly for the purposes of municipal business. The Imperial Exchequer contributed nothing to the Burgh Court, nor were the Magistrates appointed by the Crown—*Clerk v. Dumfries Commissioners of Supply*, July 16, 1880, 7 R. 1157.

At advising—

LORD PRESIDENT—As regards this case, I think the general principle should be affirmed that a burgh court is a court for the administration of public justice, and therefore that the building or rooms which are occupied for the administration of justice in that court are part of the Government establishment, or, in other words, part of the Queen's establishment for the administration of justice, and cannot be subjected to taxation unless they were specially mentioned in the Act of Parliament as being liable. That general principle, I think, will probably enable the parties to ascertain how much of the municipal buildings are properly occupied by the Burgh Court-room, and to make a deduction from the charge which at present has been made on the whole municipal buildings.

With regard to the remainder of the buildings, I cannot see any ground for exemption at all. They seem to me to be occupied for the ordinary purposes of municipal administration, and we have no ground of exemption in the Income-Tax Act of buildings of that kind at all, and without an exemption by the statute I do not see how the case could be maintained.

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

The Court found that the Burgh Court
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was exempted, and remitted to the Commissioners to give effect to that judgment.

Counsel for the Appellant—Boyd. Agent—White Millar, S.S.C.

Counsel for the Surveyor of Taxes—Sol.-Gen. Darling—Young. Agent—The Solicitor of Inland Revenue.

Friday, November 15.

FIRST DIVISION.

[Lord Trayner, Ordinary.]

CALDER & COMPANY v. CRUIKSHANK AND RATTRAY (CRUIKSHANK'S TRUSTEES).

Cautioner—Guarantee—Custom of Trade—Reasonable Credit.

A person guaranteed A B & Company, distillers, "payment of any goods which you may sell or cash which you may advance" to C D & Company up to £5000. He subsequently granted A B & Company a second guarantee for an additional sum of £2000 "in consideration of your granting credit" to C D & Company "over and above the sum already guaranteed." A B & Company in reliance on these guarantees sold C D & Company a large quantity of whisky, and also advanced them large sums in cash to pay the corresponding duties, taking bills at five months in security of repayment. The customary credit in the whisky trade for the price of goods sold was four months. With regard to cash advances no trade custom was established.

In an action by the distillers, held that the guarantor was liable under the guarantees, in respect that the guarantees contained no limitation as to the length of credit to be allowed by reference to the custom of trade or otherwise, and the credit given was in the circumstances perfectly reasonable.

This action was raised by Messrs Calder & Company, distillers, St Enoch's Square, Glasgow, against Francis Cruikshank, muslin manufacturer, 91 Mitchell Street, Glasgow, for payment of £7000.

The pursuers founded on two letters of guarantee granted by the defender to them for Messrs M'Laren & Company, merchants in Dublin and Glasgow. The first letter, dated 15th September 1887, was in these terms:—"I hereby guarantee payment of any goods which you may sell or cash which you may advance to Messrs M'Laren & Company, Dublin and Glasgow. This guarantee being limited to five thousand pounds stg.—F. J. CRUIKSHANK." The second letter was dated 18th December 1887, and was in the following terms:—"Gentn.—In consideration of your granting credit to Messrs M'Laren & Company to the extent of £2000 (two thousand pounds sterling), over and above the sum already guaranteed by me, I hereby guarantee you