retired as after mentioned, informed David Peebles Scott, the defender's agent at their said branch office, that said bill had been accepted by the said Adam Gatherer as an accommodation bill, and not for value; (3) that on 13th March 1895 the said John M'Laren was insolvent, and issued a circular calling a meeting of his creditors to be held on 19th March thereafter, and that he was rendered notour bankrupt on 4th May 1895; (4) that on 15th March the said John M'Laren retired the foresaid bill, there being yet thirty-seven days of its currency to run, by paying in cash to the defenders at their said branch office the full amount of said bill less the amount of 1s. 5d., being the rebate to which he was entitled on account of retiring said bill before maturity, and that said bill was then delivered to him; (5) that when said bill was retired as aforesaid no notice had been given to the defenders or their agent, Mr Scott, of the circular which had been issued calling a meeting of M'Laren's creditors, and that neither the defenders nor their agent Mr Scott were aware that M'Laren was insolvent, nor had reasonable grounds for thinking that he was insolvent; (6) that the retiring of a bill before maturity either by the drawer or acceptor thereof by payment of its contents, is well known in banking business and of not infrequent occurrence, and is a transaction within the ordinary course of a banker's business: Find in law (1) that the pursuer William Stiven, as trustee under a voluntary trust-deed granted by the said John M'Laren, has no title to sue this action; (2) that the pursuer George Willsher, as an individual creditor of the said John M'Laren, has no title to sue or insist in this action to the effect of obtaining decree in terms of the petitory conclusions of the petition; (3) that the payment of £70, 10s. to the defenders by the said John M'Laren as aforesaid was not an illegal preference within the meaning of the Act 1696, cap. 5, and that such payment was not a fraudulent preference at common law: Therefore assoilzie the defenders from the conclusions of the action, and decern."

Counsel for the Pursuers—Kincaid Mackenzie—W. Thomson. Agents—J. Douglas Gardiner & Mill, S.S.C.

Counsel for the Defenders — Sol.-Gen. Dickson, Q.C.—John Wilson. Agents—Mackenzie, Innes, & Logan, W.S.

---

*Wednesday, June* 16.

## FIRST DIVISION.

## WINGATE & COMPANY *v.* INLAND REVENUE.

*Revenue—Income Tax—Company Resident Abroad Exercising Trade in Scotland—Form of Assessment—Income-Tax Act* 1842 (5 *and* 6 *Vict. c.* 35), *sec.* 41—*Income Tax Act* 1853 (16 *and* 17 *Vict. c.* 34), *Schedule D.*

A shipping company, which was formed "for the purpose of carrying on trade," and was the owner of one ship, was incorporated and registered in Norway, where the registered office of the company was situated and the books of the company kept. The whole of the contracts of affreightment were effected by Messrs W. & Company of Glasgow who kept the accounts—which they transmitted to Norway for the purpose of making up the books — intromitted with the whole funds, and paid over dividends to the shareholders on behalf of the management. Ninety-three of the shares of the company were held by shareholders resident in Scotland, and two by the managers in Norway. Messrs W. & Company were assessed under Schedule D of the Income-Tax Acts in respect of the profits made by the ship, the form of assessment being "Messrs W. & Company for barque 'Chanaral.'" *Held* (1) that the company was resident abroad but exercised its trade in Glasgow, and accordingly was assessable, through Messrs W. & Company as its agents, under sec. 41 of the Income-Tax Act 1842; (2) that the form of assessment was not invalid, it being unnecessary to designate Messrs W. & Company expressly as agents.

At a meeting of the Income-Tax Commissioners for the city of Glasgow held at Glasgow on 12th November 1896, Messrs James Wingate & Company of Glasgow appealed against an assessment made upon them under Schedule D of the Income Tax Acts for the year ending 5th April 1896 in the sum of £505 in respect of the profits of the barque "Chanaral." The assessment bore to be upon "James Wingate & Company, North Court Royal Exchange, for barque 'Chanaral,' Income-Tax, Schedule D, £505—Amount payable £16, 16s. 8d." The Commissioners having refused the appeal, Messrs Wingate & Company required them to state a case. The following facts were stated in the case:—"(1) The barque 'Chanaral' is owned by a limited liability company registered in Christiania formed in 1894, and is not on the register of any port in the United Kingdom. . . . (3) The share list is kept in Christiania, whence all share certificates are issued; but these are not valid until confirmed by the signature of James Wingate & Company, who own twenty-three of the ninety-five shares into

which the capital of the company is divided. Seventy of the remaining shares are held by shareholders resident in Scotland, and two by the managers in Norway. (4) By article 5 Messrs Bernard A. Ellingsen and Narve Ellingsen, of Christiania, are elected managers, with the first named as director; but chartering, and all voyage receipts and disbursements, are dealt with by Messrs James Wingate & Company. Messrs Ellingsen attend to all the requirements of the Norwegian Company law, and have power to negotiate freights in Norway. They have also appointed the captains and crew. (5) The appellants (James Wingate & Company) have effected the whole of the chartering. They also keep the accounts and intromit with the whole funds, having paid, on behalf of the management from the profits of the first voyage, direct to the shareholders the one dividend (30 per cent) yet paid. Messrs James Wingate & Company have received and retained all funds until required for payment of expenses or dividends. The books of the company are kept in Norway, and are compiled from the statements transmitted from Glasgow by Messrs James Wingate & Company, who keep the accounts here. (6) The 'Chanaral' is an old vessel, having been built in 1862, and purchased from Messrs T. R. Shallcross & Company of Liverpool. She has never been in Norway since the present owners bought her. (7) Under the freight charters which appellants entered into without consulting the management in Christiania, the first voyage began at Rotterdam, embraced London, Mauritius, Abrolthos Islands, and Queenstown, and ended at Liverpool."

By the articles of association of the Company, which formed part of the case, it was provided, *inter alia* — "1. The Shipping Company 'Chanaral,' the aim of which is to carry on trade, is a limited liability company. The share capital of the company is Kr. , divided into shares, each Kr. , which are fully paid up. 3. The management is situated in Norway, and is registered in Christiania. 4. The management consists of two Norwegian shareholders elected for one year at the time of the ordinary general meeting. The general meeting decides which of the elected managers is to act as director of the management. 6. No share is valid without being signed by the managers, and also confirmed by the signature of the firm James Wingate & Company, Glasgow. 9. The director of the management gets 1 per cent of the gross amount of every freight and has therefore to keep account and office, and pay the other manager. 10. All the chartering is done by the firm of James Wingate & Company, and in Norway by the director, for which is paid the usual full commission, &c. 12. The ordinary general meeting is held annually in Christiania, after notice being given a fortnight previous. 13. The extraordinary general meeting is held at Christiania as often as the management considers it necessary, or the owners of at least one-half of the share capital demand same, after a fortnight's previous notice."

It was further stated in the case that "After carefully considering the whole of the facts and circumstances of the case, the Commissioners were of opinion that although the management was nominally located in Norway, the vessel was really controlled and managed by the appellants in Glasgow, and accordingly refused the appeal."

Argued for appellants — (1) The facts showed that the company was neither resident in this country nor did it carry on business here. It was incorporated as Norwegian; its registered office was in Norway; the managers were Norwegian, and there was no element of residence in this country—*San Paulo Railway Company* v. *Carter*, L.R. 1896, App. Cases, 31, at p. 40. Nor could it be said that trade was exercised in this country. The chartering, it is true, was done here, but that was merely an incident of the business and not the whole business—*Grainger & Son* v. *Gough*, L.R. 1896, App. Cases, 325; *Calcutta Jute Mills Company* v. *Nicholson*, February 1, 1876, L.R. 1 Ex. Div. 428; *Sulley* v. *Attorney-General*, May 11, 1860, 5 H. & M. 711. If the Crown were right in arguing that the company was not resident in Scotland but exercised business there, then the form of assessment was wrong, for the company should, under section 41 of the 1842 Act, have been assessed as represented by the appellants, not the appellants as individuals. But if on the other hand the Crown were right in arguing that the company was resident in Scotland, then the company should have been assessed directly. So in either view the mode used was wrong.

Argued for Inland Revenue—They had the option of assessing the company either as resident here or as carrying on their business here. (1) The company was clearly not a Norwegian one, the Norwegian management being only nominal, and the whole control being exercised in Glasgow. (2) Alternatively, while the company was resident abroad, its business was carried on here—*Attorney General* v. *Borrodaile* (1814), 1 Price 148; *San Paulo Railway Company*, *supra*. On this view the form of assessment was quite correct under section 41. It was sufficient to charge the agent in his own name if he was known to be an agent, in respect of the ship, without stating that he was an agent.

At advising—

LORD PRESIDENT — In my opinion the facts found in this case prove to the hilt that wherever this company resides, and in whatever other places it may exercise its trade, it at least exercises that trade in Glasgow. The company is (I quote from its bye-laws) "a shipping company, the aim of which is to carry on trade." From this it might be inferred, but the laws of the company also plainly say, that its profits are made by contracts of affreightment; and it seems to own only one ship, the "Chanaral." The case succinctly states what is done in Glasgow—"The appellants

(James Wingate & Company) have effected the whole of the chartering. They also keep the accounts and intromit with the whole funds, having paid on behalf of the management, from the profits of the first voyage, direct to the shareholders, the one dividend (30 per cent.) yet paid. Messrs James Wingate & Company have received and retained all funds until required for payment of expenses or dividends." Even supposing that any show could have been made of trade exercised elsewhere, it seems to me that these facts prove affirmatively that the trade is exercised in Glasgow. But, in fact, no such operations are carried on anywhere else.

These things being so, and the company being, *prima facie*, a Norwegian Company, the Revenue authorities very naturally assessed the Messrs Wingate as the agents of a non-resident company. Their right to do so depended on the combined effect of Schedule D of the Income-Tax Act of 1853 and the 41st section of the Income-Tax Act of 1842, and was necessarily based on two propositions of fact: (1) That Wingate & Company were in receipt, as agents of the "Chanaral" Company, of profits accruing to the Company from trade exercised at Glasgow; and (2) that the "Chanaral" Company were not resident in Great Britain. It is perfectly plain that both are necessary, and that it is only if the principal is not resident in the United Kingdom that there is any warrant for assessing the agent.

Unfortunately, the Revenue authorities and the Commissioners seem to have lost sight of this, and in the debate before us the argument for the Crown at first was that the company was truly resident at Glasgow and not in Norway. I mention this untoward history merely for the purpose of saying that, while my opinion is that, on the facts stated, this company is not resident in Scotland, this question was never properly argued, except in so far as the two Crown counsel might be regarded as contradictors of one another. My opinion on this point is rested simply on these grounds—the company is constituted under Norwegian law; its registered office is in Norway; there are kept its books; there the ship is registered; and there two of its principal officers reside. It is true that the vast majority of its shareholders are British, and that its business is in the main conducted in Glasgow. But, on the other hand, Great Britain is the centre of the carrying trade of the world and the best point from which to run a vessel, however owned; and although it may well be conjectured that equally legitimate reasons might have led to the registration of the company in this country as to its registration in Norway, still I am unable to disregard the fact that, *prima facie*, this is a Norwegian company, and I do not find adequate grounds for holding that in fact it is resident in Great Britain.

It is perhaps necessary to say that, assuming the 41st section to apply, the assessment seems right enough in point of form. It might perhaps be still more correct to lay the assessment on Messrs Wingate expressly as agents for the company; but I do not think that the statute is departed from when they are assessed for the profits of the "Chanaral" without their relation to the company being expressly specified.

I am for refusing the appeal.

LORD ADAM — The appellants Messrs Wingate & Company appealed against an assessment made upon them under Schedule D of the Income-Tax Acts in the sum of £505 in respect of the barque "Chanaral."

The assessment, as I understand, was imposed under the second branch of Schedule D, which enacts that income-tax shall be payable for and in respect of the annual profits and gains arising or accruing to any person whatever, whether a subject of Her Majesty or not, although not resident within the United Kingdom, from any trade exercised within the United Kingdom.

The "person" in this case to whom the profits are said to have accrued is a limited company called the Shipping Company "Chanaral," to whom the barque "Chanaral" belonged. This company is said not to be resident in the United Kingdom, and the assessment has been imposed on Messrs Wingate & Company as being the factors or agents of the company in terms of the 41st section of the Income-Tax Act of 1842. The case seems to raise two questions of fact—(1) Whether the company has its residence out of the United Kingdom? for unless it be so there is no warrant for imposing the assessment on the Messrs Wingate & Company; (2) Whether it carries on trade within the United Kingdom?

With reference to the first of these questions, it appears that the company is a limited liability company registered at Christiania according to the law of Norway, and having its registered office there; that the share list is kept there, whence all share certificates are issued; that two gentlemen, Messrs Ellingsen of Christiania, are the managers of the company, who attend to all the requirements of Norwegian law and have power to negotiate freights in Norway, and that the books of the company are kept there. It further appears from the articles of association that the annual general meetings of the company are held at Christiania, and that extraordinary general meetings are also held there. That being so, I cannot doubt that this company has its residence in Christiania and is not resident in the United Kingdom. I think it is also clear that it carries on business or trades within the United Kingdom.

The following facts are found in the case, viz., that the "Chanaral" has never been in Norway since the company bought her; that the appellants have effected the whole of the chartering, and that the freight charters were entered into by them without consulting the management in Christiania; that they have kept the accounts and intromitted with the whole funds, and have received and retained all funds until

required for payments of expenses or dividends.

In these circumstances it appears to me not doubtful that the company through their factors or agents, the appellants, have traded within the United Kingdom, and apparently hitherto within the United Kingdom only, although that is not material, and that profits or gains have accrued to them from the exercise of such trade, and that therefore they are chargeable under Schedule D in respect of such gains.

The company not being resident in the United Kingdom, section 41 of the Act of 1842 directs how the assessment shall be imposed in respect of such gains. It enacts that the company shall be chargeable in the name of any factor or agent, in the like manner and to the like amount as if the company were resident in the United Kingdom, and in the actual receipt thereof.

The assessment bears to be imposed in respect of the profits of the barque "Chanaral." It is not disputed that the appellants are factors or agents of the company. I think therefore that the company were chargeable for these profits in the names of the appellants, as was done.

On the whole matter I am of opinion that the determination of the Commissioners should be affirmed.

LORD KINNEAR concurred.

LORD M'LAREN was absent.

The Court refused the appeal and affirmed the determination of the Commissioners.

Counsel for the Appellants—H. Johnston —Deas. Agent—Thomas Liddle, S.S.C.

Counsel for Inland Revenue—Sol.-Gen. Dickson, Q.C.—A. J. Young. Agent—P. Hamilton Grierson, Solicitor of Inland Revenue.

---

*Wednesday, June* 16.

## FIRST DIVISION.

## MUSGRAVE (SURVEYOR OF TAXES) *v.* MAGISTRATES AND TOWN COUNCIL OF DUNDEE.

*Revenue—Income-Tax Exemption—Free Library—Buildings Used also for Other Purposes—Income-Tax Act* 1842 (5 *and* 6 *Vict. cap.* 35), *sec.* 61, *No.* 6.

*Held* that the buildings of a free public library, in which accommodation was given to books belonging to a private subscription society, on condition that after being thus housed for a year the books should become the property of the free library, did not fall under the exemption given by section 61 of the Income-Tax Act 1842 to any building "the property of a literary or scientific institution," inasmuch as they were not used solely for the purposes of the free library.

At a meeting of the General Commissioners of Income-Tax for the Dundee District of Forfarshire, held at Dundee on 3rd December 1896, the Magistrates and Town Council of Dundee appealed against an assessment under Schedule A of the Income-Tax Acts, for the year 1896-97, on £500 made upon them as occupiers of a portion of the buildings known as the "Albert Institute" Dundee.

The Commissioners, after hearing the parties, relieved and discharged the assessment, whereupon the Surveyor of Taxes called upon them to state a case for the opinion of the Court of Exchequer. The following facts, *inter alia*, were stated in the case—"1. The Magistrates and Town Council of Dundee are the proprietors of the property known as the Albert Institute, in the city of Dundee, which is administered under sections 18 to 27, both inclusive, of the Public Libraries Consolidation (Scotland) Act 1887. 2. The Magistrates and Town Council acquired the subjects belonging to them in virtue of three dispositions, the first of which proceeds, *inter alia*, on the preamble that the Public Libraries Acts for Scotland had been adopted by the town of Dundee, and in which there is a provision to the following effect:—'And it is further hereby expressly provided and declared that the said lands and subjects above disponed, and whole buildings erected or to be erected thereon, shall be constructed, used, and occupied as a library or libraries, reading-room or rooms, and museum and picture and sculpture gallery, and their respective pertinents, or for similar public purposes as may be agreed to by us and the said Provost, Magistrates, and Town Council of Dundee and their successors, and for no other purposes whatever;' and the subjects conveyed by the second and third dispositions are practically held for the same purposes. The Public Libraries Acts for Scotland were adopted by the town of Dundee in the year 1866, and since then the said Albert Institute buildings have been occupied (except in so far as otherwise occupied) and administered by the Free Library Committee, duly appointed annually under and for the purposes of the Public Libraries Acts. 3. In 1876 a subscription library was formed by a number of gentlemen in Dundee. The subscription is £1, 1s. per annum; and by the third rule of the rules of the Dundee Subscription Library it is provided that 'The chief librarian and clerk of the Free Library Board shall act as librarian and clerk to the Subscription Library, the books of which shall be in his custody.' Rule 4 provides that 'The Committee of Management to be elected by the subscribers at the annual meeting shall consist of thirteen persons, of whom, as stipulated in rule 1, the Provost shall be chairman, the treasurer shall be a member *ex officio*, four of the members to be elected must also be members of the Free Library Board for the time being (if they are subscribers),