

Tuesday, November 8.

SECOND DIVISION.

WORDIE'S TRUSTEES v. WORDIE.

Marriage Contract—Annuity—Income Tax—“Free of Income Tax”—Super Tax—Finance (1909-10) Act 1910 (10 Edw. VII, cap. 8), sec. 66.

By antenuptial contract of marriage made in 1902 a husband provided for payment to his wife in the event of her surviving him of an annuity of £1000 “free of income tax.” By his will and codicil, after providing for payment of this annuity, he made other provisions in her favour, which brought her total income above the limit at which super tax became exigible. *Held* that income tax included super tax, and that the words “free of income tax” attached to the marriage contract annuity entitled the widow to payment of that annuity free also of super tax.

Succession—Will—Annuity—Construction of Bequest of Annuity—Whether Free of Income Tax—Construction of Annuity in Will by Reference to Previous Annuity Given under Marriage Contract.

A testator who by his marriage contract had given his widow an annuity of £1000 per annum “free of income tax,” provided by his will and codicil an annuity to her of £1000, “and that in addition to the annuity” given by the marriage contract. *Held* that the terms in which the bequest of the annuity under the marriage contract was made could not be used to construe the provision under the will so as to render the latter also free of income tax and super-tax.

The Finance (1909-10) Act 1910 (10 Edw. VII, cap. 8), sec. 66, by which super tax was first imposed, provides, sub-section (1)—“In addition to the income tax charged . . . under this Act there shall be charged, levied, and paid . . . in respect of the income of any individual, the total of which from all sources exceeds [a certain amount, varied by subsequent Acts], an additional duty of income tax (in this Act referred to as a super tax) at the rate of . . .”

George Buchanan of Gask, Perthshire, and others, the testamentary trustees of Peter Wordie, who died on 27th June 1913, *first parties*, and Mrs Mary Storey M'Gregor or Wordie, his wife, *second party*, presented a Special Case for the opinion and judgment of the Court. The questions with which the Special Case dealt were, *inter alia* (*first*) Whether a certain annuity, which was to be paid to the second party under Mr and Mrs Wordie's antenuptial marriage contract free of income tax, was to be paid free of super tax, and (*second*) whether an annuity given under Mr Wordie's will and codicil in addition to the annuity under the marriage contract was payable free of income tax and super tax.

The antenuptial contract of marriage in question was dated 16th August 1902, and

in terms thereof Mr Wordie, in the event of Mrs Wordie surviving him, bound himself and his heirs, executors, and representatives, “to pay during her life after his death, and for her behoof as after mentioned, to the trustees hereinafter named, a free life rent annuity or yearly sum of £1000, free of income tax.” By his trust-disposition and settlement, dated 28th February 1911, Mr Wordie directed his trustees, in the event of his wife surviving him, to implement the provisions of the antenuptial contract as regards this annuity. By the same deed he directed his trustees to pay to his wife “during all the days of her life so long as she remains my widow, a yearly annuity of five hundred pounds sterling, and that in addition to the annuity conceived in her favour under said marriage contract.” By a subsequent codicil, dated 18th January 1913, he provided—“I increase the annuity to her to one thousand pounds instead of five hundred pounds as mentioned in the foregoing settlement.”

The contentions of parties as stated in the case were as follows:—“With regard to the payment of super tax upon the annuity of £1000 payable under the antenuptial contract of marriage, the first parties contend that the direction to pay that free of income tax does not extend to super tax, and that they are not bound to pay any super tax to which the second party may be assessed. With regard to the annuity of £1000 payable under the trust-disposition and settlement and codicil, the first parties contend that it is not payable free of income tax, and the direction with reference to the annuity payable under the antenuptial contract does not attach to that payable under the trust-disposition and settlement and codicil.”

The following *questions of law* were, *inter alia*, stated—“6. Is the second party entitled to payment of the annuity of £1000 under the antenuptial contract of marriage, free of super tax? 7. Is the second party entitled to payment of the annuity of £1000 under the trust-disposition and settlement and codicil, free of (a) income tax, and (b) super-tax?”

Argued for the first parties—The annuity was conferred by a contract entered into long before the imposition of super tax, and it must therefore be read as applying only to income tax—*In re Crawshaw*, [1915] W.N. 412. The annuities in the present case were contained in separate deeds, and it was impossible to infer any intention to treat the two funds together—*Urquhart's Trustees v. Gordon*, 1900, 3 F. 242, 38 S.L.R. 148. *Oldham v. Crosse*, [1920] 1 Ch. 240, founded on by the second party, was not in point, because in that case this will was made after super tax came into existence, and the whole provision was contained in the one deed.

Argued for the second party—There was no difference other than amount between income tax and super tax. Super tax was treated as an additional income tax in the Finance (1909-10) Act 1910 (10 Edw. VII, cap. 8) and succeeding Acts—*Oldham v. Crosse*; *Brooke v. Inland Revenue Commissioners*, [1918] 1 K.B. 257, *per Swinfen Eady, L.J.*, at

p. 266; *Bowles v. Attorney-General*, [1912] 1 Ch. 123, *per Parker, J.*, at p. 134; *Doxat v. Doxat*, [1920] W.N. 262. *Wimble v. Bowring*, [1918] W.N. 265, 34 T.L.R. 575, showed the method of apportioning the super tax. The terms of the marriage contract interpreted the additional annuity conferred by the will.

At advising—

LORD JUSTICE-CLERK—The questions which fall to be decided in this Special Case depend on the construction of two deeds—(1) a marriage contract between the late Mr Wordie and his wife dated 1902, and (2) Mr Wordie's trust-disposition and settlement dated 28th February 1911, and codicil thereto dated 8th January 1913.

Mr Wordie died on 27th June 1913. The first parties are his trustees. The second party is his widow. There were no children of the marriage. [*His Lordship narrated the provisions of the deeds, and after dealing with certain of the questions for the opinion of the Court proceeded*]

The sixth question raises a point of more general importance. The provision is of a "free life rent annuity or yearly sum" free of income tax. The marriage contract was dated in 1902, when there was no super tax. But super tax is in the statute imposing it described as an additional income tax, and it must be taken that that correctly describes it. If so, it seems to me to follow that a provision of a free annuity free of income tax must be read as relieving the annuitant from liability to pay super tax, the trustees being bound to pay both super tax and income tax. In my opinion therefore this question falls to be answered in the affirmative.

In my opinion the seventh question in both its branches falls to be answered in the negative, and that on the short ground that the trust-disposition and settlement neither says nor suggests anything to the effect that this annuity is to be paid to the second party free of income tax. I do not think it is legitimate to argue that the words "in addition to the annuity payable under the marriage contract" imported from the marriage contract the conditions applicable to the annuity thereby provided so as to make them affect the further annuity provided under the trust-disposition and settlement and codicil. . . .

LORD ORMIDALE—The most important question submitted for our consideration is the sixth, for in answering it we have to determine what is a matter to some extent of general interest, viz., whether "income tax" includes super-tax. In my opinion it does. The statutory definition of super tax is "an additional duty of income tax," and it is assessed under the Income Tax Acts by the Special Commissioners of income tax. It is a tax imposed on income and nothing else. Ordinary income tax no doubt is, as a rule but not universally, deducted before, and super tax after, receipt of the income, but that does not alter the root idea of the duty but merely affects the manner of its collection. Only incomes which are above a certain amount are liable to the super tax, but at the other end of the scale incomes

below a certain amount are free even from ordinary income tax. The general words "free from income tax" appear to me therefore to cover and include super tax. In several cases in the English Courts "income tax" has been held to apply to super tax—*Bowles v. Attorney-General*, [1912] 1 Ch. 123; *Brooke v. Inland Revenue Commissioners*, [1918] 1 K.B. 257; *Oldham v. Crosse*, [1920] 1 Ch. 240; and *In re Doxat*, [1920] W.N. 262. The case of *Crawshay*, [1915] W.N. 412, is not an authority to the contrary, the decision in that case being reached on the construction of the special terms of the bequest, which were quite different from those used in Mr Wordie's marriage-contract. It is true that the super tax falling to be paid by the second party is dependent on the amount of the total income received by her, of which the annuity in question only forms a part. The adjustment of the proportion payable by the first parties to the second party should not, however, occasion any difficulty—*In re Bowring*, [1918] W.N. 265; *In re Doxat*.

The sixth question must therefore be answered in the affirmative.

I cannot, however, see any reason why we should find that the annuity of £1000 payable under the trust-disposition and settlement and codicil falls to be paid free of income tax. The testator does not say that the annuity is to be paid free of income tax, and the declaration that it is to be "in addition to the annuity" already conceived in her favour in no way warrants an inference to that effect. Moreover, the earlier annuity was under a deed of a different nature, to wit, the marriage-contract between the parties. . . .

I agree that the questions should be answered as your Lordship proposes.

LORD BLACKBURN concurred.

LORDS DUNDAS and SALVESEN did not hear the case.

The Court answered the sixth question of law in the affirmative, and the seventh question in the negative.

Counsel for the First Parties—Hon. W. Watson, K.C.—Black. Agents—Macpherson & Mackay, W.S.

Counsel for the Second Parties—D. P. Fleming, K.C.—Patrick. Agent—Peter Dowie, W.S.

Wednesday, November 9.

FIRST DIVISION.
COLQUHOUN'S TRUSTEES v.
COLQUHOUN.

Succession—Will—Bequest—"Annuity"—Whether Annuity Payable out of Capital on Income becoming Insufficient.

A testator directed his trustees, *inter alia*, to pay to his son a "free yearly annuity" of £3000, with interest on each half-year's payment during the non-payment, and one-fifth part more of each term's payment as penalty in case