

action as the present being brought. The object of the Rent Restriction Act was to give relief to the tenant—that is to say, if the landlord brought an action which otherwise he was quite entitled to do, the tenant might successfully defend against his action by pleading the provisions of the Rent Restriction Act. That, I think, is what has been done in this case, and the answer was put in by the landlord—“That is perfectly true, but I have a reply to your defence, and that is that I am wanting possession of my own property under the statute.” May I say that in such a case as that it would be eminently desirable that there should not merely be a summary application but also a statement by the defender of the grounds upon which she maintained that the landlord was not entitled to get the house which belonged to her, and a reply by the landlord to that statement. That is what happened in the present case. Proof has been allowed. But it is a matter greatly to be deplored, in consequence of the protracted discussions that have taken place over the preliminary point involved in this case, that the inquiry which ought to have concluded long ago is not yet started.

LORD ANDERSON did not hear the case.

The Court adhered.

Counsel for the Defender and Appellant—MacRobert, K.C.—Macgregor. Agents—Ross Smith & Company, S.S.C.

Counsel for the Pursuer and Respondent—Mackay, K.C.—Garson. Agents—Purves, Neilson, & Oliver, S.S.C.

Wednesday, March 5.

SECOND DIVISION.

SMITH'S TRUSTEES v. SMITH.

Succession — Testament — Construction — Annuity — “Free of All Income Tax, Government Duties (if any), and All other Deductions” — Whether Super Tax Included — Finance (1909-10) Act 1910 (10 Edw. VII, cap. 8), sec. 66 — Income Tax Act 1918 (8 and 9 Geo. V, cap. 40), sec. 4 — Finance Act 1920 (10 and 11 Geo. V, cap. 18), sec. 15 (1).

By trust-disposition and settlement, executed on 11th April 1914, a testator directed his trustees to pay to his wife during all the days of her life an annuity of £2000, free of all income tax, Government duties (if any), and all other deductions. Her total income exceeded £2000 and was accordingly liable to super tax. Held that the trustees were bound to relieve the widow of her liability to super tax in respect of the annuity.

Mrs Florence May Wimble or Smith, widow of Joseph James Smith, and others, the testamentary trustees of the said Joseph James Smith, *first parties*, and the said Mrs Florence May Wimble or Smith, *second party*, presented a Special Case for the opinion and judgment of the Court.

The Case stated—“1. The said Joseph James Smith died on 14th March 1914 leaving a trust-disposition and settlement whereby he conveyed his whole estate to the trustees therein mentioned in trust for the purpose therein set forth. . . . The testator was survived by his wife and a son, . . . who died on 13th January 1915. . . . The second party thus survived her son. 2. . . . By the fifth purpose of the said trust-disposition and settlement the testator directed his trustees to make payment to his said wife during all the days of her life of an annuity of £2000, such annuity to be payable free of all income tax, Government duties (if any), and all other deductions. . . . By the seventh purpose of the said trust-disposition and settlement the testator directed his trustees to pay to his said son, should he survive the testator, during all the days of his life, the free annual income of the residue and remainder of the trust estate after satisfying the said annuity; and by the eighth purpose thereof the testator directed that in the event of his said son predeceasing his (the testator's) said wife (the event which happened) and of the free income of said residue exceeding the said annuity of £2000, his trustees should in lieu of the said annuity pay to his (the testator's) said wife during all the days of her life the free annual income of said residue. . . . 4. . . . Since the commencement of the trust administration the free annual income of the residue of the estate has varied from year to year. In the first year of the trust, ending 14th March 1915, the second party received payment of the fixed annuity of £2000 per annum; thereafter (the testator's son having died as already stated in January 1915) she received payment for each of the three years up to the year ending 14th March 1918 of the available free income which was in excess of the fixed annuity. For the years from 14th March 1918 to 14th March 1921 the second party received payment of the said fixed annuity, and for the following year the free income was less than the amount of the annuity free of income tax and super tax. 5. In addition to the annuity or free income which the second party has thus received from the first parties in terms of the said trust-disposition and settlement, she has a private income which is at the present time approximately £700 per annum, and thus the second party is in respect of her total income liable to the Inland Revenue for super tax in respect that her income exceeds £2000. Super tax is collected from the second party direct, and has not formed a deduction or payment in any of the first parties' trust accounts. The second party, however, claims that the first parties should pay either in whole or in part the super tax for which she is liable when she is in receipt of the said annuity, or when the free annual income payable to her, although in excess of the said annuity, falls short of the said annuity and super tax effecting thereto. In the circumstances of the present case and in virtue of the terms of the said trust-disposition and settlement, the first parties do not feel themselves free to do so without the judi-

cial determination of the Court. In any event they consider it necessary to have judicial guidance as to the proportion for which they would be liable in the event of it being held that the second party is entitled to relief of super tax."

The question of law was—"Are the first parties bound to relieve the second party in respect of her liability to super tax when she is in receipt of the said annuity under the fifth purpose of the said trust-disposition and settlement?"

Argued for the second party—"Income tax" included "super tax." That had been decided in *Wordie's Trustees v. Wordie*, 1922 S.C. 28, 59 S.L.R. 39. *Doxat's case*, [1920] W.N. 262, was exactly in point. There the direction was to pay "free of income tax and of all other deductions," and the Court held that the widow was "entitled to the naked amount of the annuity free from both income tax and super tax," per Sargant, J., at p. 263. Any other interpretation would have the effect of restricting the meaning of "income tax" merely because the words "all other deductions" followed. The case of *Crawshay*, [1915] W.N. 412, proceeded on a specialty. Accordingly the question of law should be answered in the affirmative.

Argued for the first parties—Super tax was not a "deduction," unless it was specifically mentioned by the testator as such—*In re Crosse*, [1920] 1 Ch. 240, per Astbury, J., at p. 246. As for *Doxat's case* the words there were different. Here *Crawshay's case* was in point, and the question of law should be answered in the negative.

LORD JUSTICE-CLERK (ALNESS)—The parties to this Special Case are the trustees of the late Joseph James Smith and his widow, the trustees being the first parties and the widow being the second party. The Special Case as it originally came before us contained a number of questions of law; but it has come before us to-day in a somewhat emasculated form, for the parties are in agreement in regard to the appropriate answers to be made to all the questions of law with the exception of the first part of the first question. The only question which we are called upon to deal with is whether the trustees are bound to relieve the second party of her liability to super tax on an annuity of £2000 which was conferred upon her under the deed under construction.

It is well settled that income tax includes super tax, and it is also clear that if the words of the bequest in this deed had stopped at "tax" the case would have been covered by and would have been indistinguishable from the decision of this Division in the case of *Wordie's Trustees*, 1922 S.C. 28. And accordingly the first parties are constrained to argue that the fact that certain words follow upon the words "income tax," namely, "Government duties (if any) and all other deductions," so far from enlarging, abridge the interpretation of the words "income tax" which precede. That appears to me to be an extravagant contention and quite disconform to the obvious intention of the testator.

But the case is not without useful analogy, because I find that in the case of *Doxat*, ([1920] W. N. 262), which was decided in England, the words used by the testator were "free of income tax and of all other deductions," and the same argument which has been urged to-day was there urged before Mr Justice Sargant, who held—as I suggest your Lordships should hold—that it would be extravagant to decide that the words "all other deductions," whether exactly correct in their application or not, diminish the force of the words which precede them. In other words, this case is indistinguishable from the case of *Doxat*.

The case is distinguishable from the case of *Crawshay* ([1915] W.N. 412), to which reference has been made in the argument. There, as was pointed out in *Wordie's Trustees* and also in *Doxat*, the language employed was quite different; and, as Mr Justice Sargant further pointed out in *Doxat's case*, *Crawshay* laid down no general principle at all. The case of *Oldham v. Crosse* ([1920] 1 Ch. 240) does not seem to impinge upon the authority of *Wordie's Trustees* or *Doxat*.

Accordingly, whether one regards this case as one for the application of common sense or as covered by authority, the result is the same, and leads to answering the question in the affirmative; and I now propose to your Lordships that we should so answer it.

LORD ORMDALE—I agree. As I said during the discussion, I am not altogether surprised that the trustees who have the duty of administering this trust should have been uncertain as to whether or not the words "free of income tax," in the context in which they are found in the deed, include super tax. And I have no doubt that difficulty was occasioned by the fact that in more than one case the word "deduction" has occurred, and that in one of them at any rate "deduction" was held to have a limiting meaning upon the generality of the clause otherwise. But even in *Doxat's case* ([1920] W.N. 262), which like the present case starts out with the words "free of income tax," the addendum of the words "all other deductions" was not held to have any such limiting effect, and I think the same view applies here.

Crawshay's case ([1915] W.N. 412) has always been considered somewhat special. It appears that owing to the context in that case it was held that the word "deductions," taking precedence of the words "income tax," and therefore as it were holding the place of first importance, was supposed to supply a gloss upon the words "income tax" which made it impossible in the view of the Court which decided *Crawshay's case* that super tax could be included, not being a deduction.

Here, however, in accordance with the decision in *Wordie's Trustees* (1922 S.C. 28) and in the cases of *Doxat* and *Crosse* ([1920] 1 Ch. 240), the words "income tax" are intended to and do in fact include super tax.

LORD HUNTER—I agree. The decision in this case appears to me to be covered by the decision in this Court in the case of *Wordie's Trustees*, 1922 S.C. 28. In that case and in one or two other cases the English case called *Crawshay* ([1915] W.N. 412) was referred to. The language in *Crawshay's* case was "clear of all deductions including income tax." That language, to my mind, was to all intents and purposes the same as the language used in the case of *Doxat* ([1920] W.N. 262), to which your Lordship has referred. But in *Doxat's* case and also in *Wordie's Trustees* distinctions were drawn by the Judges between the language used in these cases and the language used in *Crawshay's* case. For my own part I fail to appreciate any real difference in the language of the deeds. It may be that the decision in *Crawshay* stands because of specialties which it possessed in some part of the deed; but if I were called upon to construe the expression "free of all deductions" without assistance from any other part of the deed, I should follow the decision in *Wordie's Trustees* and *Doxat*, and hold that the expression included super tax as well as income tax.

LORD ANDERSON did not hear the case.

The Court answered the question of law in the affirmative.

Counsel for the First Parties—Hon. W. Watson, K.C.—Crawford. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for the Second Party—Henderson, K.C.—Macdonald. Agents—J. & J. Galletly, S.S.C.

HIGH COURT OF JUSTICIARY.

Thursday, March 6.

(Before the Lord Justice-Clerk, Lord Hunter, and Lord Anderson.)

[Sheriff Court at Kirkcudbright.]

WAUGH v. PATERSON.

Justiciary Cases—Procedure—Summary Complaint—Relevancy—No Objection Taken to Relevancy of Complaint—Charge Dismissed by Sheriff—Substitute without Hearing—Argument on Question of Relevancy—Competency.

In a summary prosecution in the Sheriff Court, in which the complaint specified two charges in connection with the contravention of the Regulations regarding the use of limited trade licences for motor vehicles, no objection was taken by the accused, who was represented by an agent, to the relevancy of the charge. The accused pleaded guilty to one of the charges and not guilty to the other. The Sheriff-Substitute, after having made *avizandum*, dismissed both charges as irrelevant without hearing any argument as to whether they were relevant or not. Held that the Sheriff-Substi-

tute was not entitled to dismiss the charges without hearing the prosecutor on the question of relevancy.

Justiciary Cases—Statutory Offence—Motor Car—Limited Trade Licence—Contravention of Terms of Licence—Application of Regulations to Persons other than the Licensee—Roads Act 1920 (10 and 11 Geo. V, cap. 72), sec. 12—Road Vehicles (Trade Licences) Regulations 1922, No. 3, Article C.

The Road Vehicles (Trade Licences) Regulations 1922, No. 3, Article C, provides—"A general trade licence shall not be used by any person other than the person to whom the same is issued." *Opinions per* the Lord Justice-Clerk (Alness) and Lord Hunter that a complaint for using a limited trade licence and relative plates on a motor car constructed for use by more than one person was relevantly brought against a person other than the licensee.

Henry Herbert Orr Paterson, Ellenbank, Kirkcudbright, *respondent*, and John James Aitken, Tongland, Kirkcudbright, were charged in the Sheriff Court at Kirkcudbright at the instance of Robert Waugh, Procurator-Fiscal at Kirkcudbright, *appellant*, upon a summary complaint in the following terms:—"You are charged at the instance of the complainer that between 28th July and 14th August 1923, both dates inclusive, on the public highways in the stewardry of Kirkcudbright between Tongland garage aforesaid and the burgh of Kirkcudbright, and in said burgh and elsewhere in said stewardry and between the bounds thereof and Edinburgh, you Henry Herbert Orr Paterson, who are not a person *bona fide* in the employ and acting under the authority of the said John James Aitken or his said firm, did use on a motor car constructed for use by more than one person the limited trade licence No. 0010 S.W. and relative plates issued to the said J. J. Aitken & Coy. by the County Council of the Stewardry of Kirkcudbright under the provisions of the Road Vehicles (Trade Licences) Regulations 1922; and you John James Aitken did allow and suffer the said licence and plates to be used as aforesaid by the said Henry Herbert Orr Paterson, contrary to Article C of No. 3 of said Regulations, and you John James Aitken did, said motor car being used on public roads as aforesaid, fail to complete in duplicate in the book supplied to your said firm for the purpose in terms of Article C (1) of No. 4 of said Regulations and kept at Tongland garage aforesaid, the entries for which provision is therein made as to time of departure, description of the vehicle, the destination or route, and the description of the persons carried on said vehicle, contrary to Article C (1) of No. 4 of said Regulations; and you Henry Herbert Orr Paterson did on 28th July 1923, in St Cuthbert Street, Kirkcudbright, use said vehicle under said limited trade licence and did fail to observe provision (a) of Article B of No. 4 of said Regulations, and did carry more than two persons therein in addition to yourself the driver thereof, contrary to Article B (ii) of No. 4 of said Regulations, whereby in respect of