

of compulsory supply. There is thus drawn a clear distinction between revenue derived from the compulsory rates levied within the municipal boundaries, and that derived from the sale of water for trading purposes and from non-compulsory rates levied from persons and properties beyond these boundaries. To the former kind of revenue our former judgment is of course directly applicable, but to the latter in my opinion it is not.

In so far as the Commissioners sell water either by measure or for a consideration fixed by special agreement or in return for a non-compulsory rate as the price of the water, they are in every sense of the term trading or trafficking in water, and their surplus revenue thus derived is profit or gain resulting from this trade within the meaning of Schedule D. The circumstance that these profits enure to the benefit of the citizens of Glasgow within the municipal boundaries does not affect the question, because that only shows that the citizens of Glasgow are through their representatives the Water Commissioners carrying on outside the limits of compulsory supply the trade of water merchants and deriving profits therefrom.

It is, I think, impossible to distinguish this case from *The Attorney-General v. Scott* (28 Law Times, 302), and *The Attorney-General v. Black*, decided in the English Court of Exchequer, which though not binding upon us as authorities seem to me to rest on sound legal principles, and on a just construction of Schedule D of the Income Tax Acts. And the principle and rule of construction are confirmed by the more recent case of *The Mersey Docks and Harbour Board v. Lucas*, which as a judgment of the House of Lords on the construction and effect of a British statute, though pronounced in an English appeal, is of binding authority here. I am therefore for reversing the order of the Commissioners and sustaining the assessment, and that is the opinion of the Court.

The Court reversed the judgment of the Commissioners and sustained the assessment.

Counsel for the Inland Revenue—Sol.-Gen. Robertson — Lorimer. Agents — David Crole, Solicitor for Inland Revenue.

Counsel for Glasgow Water Commissioners—D.-F. Balfour, Q.C.—Ure. Agents—Campbell & Smith, S.S.C.

Wednesday, January 13.

SECOND DIVISION.

KYD AND OTHERS, PETITIONERS.

Election Law—Parliamentary Election—Returning Officer's Expenses—Corrupt Practices Act 1883 (46 and 47 Vict. cap. 51).

Petition by election agent for authority to pay accounts of returning officer at an election, which were admittedly due, but had not been sent in within fourteen days after the poll was declared, *granted de plano*.

The Act 46 and 47 Vict. cap. 51, sec. 29, sub-sec. 2, provides—“Every claim against a candidate

at an election, or his election agent, in respect of any expenses incurred on account of or in respect of the conduct or management of such election, which is not sent in to the election agent within the time limited by this Act, shall be barred, and shall not be paid, and, subject to such exception as may be allowed in pursuance of this Act, an election agent who pays a claim in contravention of this enactment shall be guilty of an illegal practice.” And sub-section 3 provides—“Except as by this Act permitted, the time limited by this Act for sending in claims shall be fourteen days after the day on which the candidates returned are declared elected.”

Sec. 29, sub-sec. 9, provides—“On cause shown to the satisfaction of the High Court [in Scotland the Court of Session is one of its divisions], such Court, on application by the claimant, or by the candidate or his election agent, may by order give leave for the payment by a candidate or his election agent of a disputed claim, or of a claim for any such expenses as aforesaid, although sent in after the time in this section mentioned for sending in claims, or although the same was sent in to the candidate and not to the election agent.”

This petition was presented by John Proctor Kyd, solicitor, Dundee, and others, being the election agents for the several candidates at the parliamentary elections for the burgh of Dundee, Montrose district of burghs, and the county of Forfar, which took place respectively on the 26th and 28th November and 2d December 1885. All the candidates lodged sums of money with the returning officer in security of the election expenses in terms of the Act 41 and 42 Vict. cap. 41, sec. 3. The returning officers' expenses were made up by the Sheriff-Clerk, but were not sent in until after fourteen days from the respective dates of the declaration of the poll. It was considered that they would be timeously sent in if lodged with the agents within twenty-one days of the said respective dates.

In these circumstances the election agents presented this petition to the Second Division of the Court of Session. The petitioners stated that they were satisfied with the accuracy of the accounts, a statement of which was given in the petition, and that they were justly due and ought to be paid, but stated that as the conditions of the Act had not been fulfilled, they did not consider it safe to pay the accounts without the sanction of the Court. They therefore prayed the Court to dispense with the reading in the minute-book and publication on the walls, and pronounce an order giving leave for the payment by petitioners as election agents of the sums found due by each to the returning officer.

The Court issued the following order—“Grant leave for payment by the petitioners in terms of the prayer of the petition of the several sums therein specified; dispense with the reading of the petition in the minute-book and with the intimation thereof on the walls, and decern.”

Counsel for Petitioners—Dickson. Agents—Millar, Robson, & Innes, S.S.C.