

Wednesday, November 3.

FIRST DIVISION.

THE SOCIETY OF WRITERS TO THE SIGNET,  
PETITIONERS.

Revenue—48 and 49 Vict. cap. 51, sec. 11—*Exemptions under sec. 11, clause 3 and clause 6.*

The 11th section of the Customs and Inland Revenue Act 1885 imposes in lieu of succession-duty a tax of 5 per cent. on all real and personal property of bodies corporate or unincorporate, after deducting “necessary outgoings, including the receiver’s remuneration,” and costs, charges, and expenses incurred in the management of such property. Exemption from such duty is granted in favour of . . . “(3) Property which, or the income or profit whereof, shall be legally appropriated and applied for any purpose connected with any religious persuasion, or for any charitable purpose, or for the promotion of education, literature, science, or the fine arts. . . . (6) Property acquired by or with funds voluntarily contributed to any body corporate or unincorporate within a period of thirty years immediately preceding.” In an appeal by the Society of Writers to the Signet against the duty imposed on them, *held* (1) that as its members joined it for the purpose of prosecuting a profession, and not merely of education or literature, its property, including its library, was not exempt as “legally appropriated to the promotion of education or literature;” (2) that the money paid by entrants was not “voluntarily contributed,” which words mean gratuitously gifted; (3) that landlord’s taxes, insurance, and repairs on the library buildings fell to be deducted as necessary outgoings, but no other taxes, nor salaries of librarians, nor insurance on the books in the library.

The Society of Writers to Her Majesty’s Signet are the owners of real and personal property consisting of the Signet Library Buildings in Edinburgh, and certain funds and investments.

By the Customs and Inland Revenue Act 1885, 48 and 49 Vict., cap. 51, section 11, it is, *inter alia*, enacted as follows:—“Whereas certain property, by reason of the same belonging to or being vested in bodies corporate or unincorporate, escapes liability to probate, legacy, or succession-duties, and it is expedient to impose a duty thereon by way of compensation to the Revenue: Be it therefore enacted that there shall be levied and paid to Her Majesty in respect of all real and personal property which shall have belonged to or been vested in any body corporate or unincorporate, during the yearly period ending on the 5th day of April 1885, or during any subsequent yearly period ending on the same day in any year, a duty at the rate of £5 per centum upon the annual value, income, or profits of such property accrued to such body corporate or unincorporate, in the same yearly period, after deducting therefrom all necessary outgoings, including the receiver’s remuneration, and costs, charges, and expenses properly incurred in the management of such property.” The same section also provides that there shall be subject to exemption

from such duty property of the description specified in various clauses thereof, and, among others, the following, viz.—Clause (3), “Property which, or the income or profits whereof, shall be legally appropriated and applied for any purpose connected with any religious persuasion, or for any charitable purpose, or for the promotion of education, literature, science, or the fine arts;” and clause (6), “Property acquired by or with funds voluntarily contributed to any body corporate or unincorporate, within a period of thirty years immediately preceding.”

By section 15 the Act provides for the giving in by bodies corporate or unincorporate liable to the duty of an account of the property in respect whereof it is payable, and of the deductions claimed. Section 17 (clause 1) provides for this course to be taken by the Commissioners if dissatisfied with the account rendered; and section 19 (clause 2) of the Act, and section 50 of the Succession Act 1853 (16 and 17 Vict. cap. 51), provide machinery for appeal, which is of the same nature as in appeals regarding succession-duty.

The Society delivered to the Commissioners an account, in the form supplied under the provisions of the Act, of all their property in respect of which duty imposed by The Customs and Inland Revenue Act 1885 was payable, and of the gross annual value, income, or profits thereof accrued to them for the yearly period ending on the 5th day of April 1885, and of all deductions claimed in respect thereof, whether by relation to any of the exemptions from duty mentioned in the Act or as necessary outgoings.

The property of the Society detailed in this account as chargeable with duty under the Act was as follows:—

|  |           |
|--|-----------|
| I.— <i>Real Estate</i>   |           |
| Gross annual value, income, or profits for year to 5th April 1885, . . . . . | £241 0 0  |
| Amount of deductions, . . . . .  | 214 13 3½ |
| Net annual value, income, or profits, chargeable with duty, . . . . .        | £26 6 8½  |

|  |             |
|--|-------------|
| II.— <i>Personal Estate.</i>                       |             |
| Gross yearly income, . . . . .                     | £ 909 19 10 |
| Amount of deductions, . . . . .                    | 1,076 12 0  |
| Net annual income, chargeable with duty, . . . . . | <i>Nil.</i> |

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|--|--------------|
| <i>Summary.</i>  |              |
| Total gross annual value of real estate, . . . . .         | £241 0 0     |
| Total gross income of personal estate, . . . . .           | 909 19 10    |
|  | £1,150 19 10 |
| Total amount of deductions or outgoings claimed, . . . . . | 1,991 5 3    |
|  | <i>Nil.</i>  |

The deductions, amounting to £214, 13s. 3½d., under the first head (real estate), were made up as follows:—

|   |            |
|---|------------|
| Land tax, . . . . .                         | £ 0 15 7   |
| Insurance on buildings and books, . . . . . | 36 5 1     |
| Rates and taxes, . . . . .                  | 57 11 9½   |
| Repairs, . . . . .                          | 117 19 1   |
| Gas, . . . . .                              | 2 1 9      |
|   | £214 13 3½ |

And the deductions, amounting to £1076, 12s., under the second head, were made up as follows:—

|  |             |
|--|-------------|
| Salaries and Wages—  |             |
| Treasurer,   | £105 0 0    |
| Professor of Conveyancing in the<br>University of Edinburgh, | 105 0 0     |
| Librarians, Hall-keeper, &c.,                                | 866 12 0    |
|  | £1,076 12 0 |

The Commissioners not being satisfied with the account, made an assessment of the Society's property on the net sum of £1104, 8s. 10d., the duty on which, at the rate of 5 per cent., amounted to, and was assessed at, £55, 4s. 5d. The Commissioners explained that said assessment was arrived at in the following manner:—

|                                  |              |
|----------------------------------|--------------|
| Gross value of real estate,      | £250 0 0     |
| Dividends,                       | 909 19 10    |
|                                  | £1,159 19 10 |
| Less—                            |              |
| Insurance on buildings,          | £ 9 11 0     |
| Repairs—10 per cent.,            | 25 0 0       |
| One-fifth treasurer's<br>Salary, | 21 0 0       |
|                                  | 55 11 0      |
| Amount assessable,               | £1,104 8 10  |

The Society, feeling aggrieved by this assessment, presented this appeal.

It appeared from the admissions made during the course of the argument that the whole property of the Society had been acquired subsequently to 1862, and that it was created by the sums paid by intrants on admission to the membership of the Society. It further appeared that the Society were bound by an agreement with the Town Council to contribute to the Chair of Conveyancing. The minutes of the Society containing this agreement were incorporated in an Act of the Town Council.

Argued for the petitioners—I. *Exemptions*:—This property fell under the third clause of exemption, its use being educational so far as the library and the Chair of Conveyancing were concerned, both institutions being for the benefit of the entrants and apprentices. It fell also under the fourth exemption. The fund had been voluntarily contributed since 1862, so that the time had not arrived for the incidence of duty. It was "legally appropriated." "Legally" meant lawfully. Even if it inferred matter of obligation, the Society was bound not only to its entrants but to the Town Council. II. *Necessary Outgoings*:—The deduction of the librarians' salaries was given up. The treasurer's salary should be deducted to the extent of £50—*i.e.*, 5 per cent. on the property managed.

Argued for the respondents—A corporation possessing a library did not necessarily fall within the exception unless the funds of that body were devoted solely to the purposes of education, literature, science, or art. Here the books, like the buildings, were primarily for the convenience of members in carrying on their profession. "Legally appropriated" inferred that the appropriation be binding; and there was not sufficient evidence that there was an obligation binding on the Society to pay even the salary

of the Professor of Conveyancing. "Voluntarily" was not the converse of "compulsorily." The entrant was simply in the position of a purchaser, and his entry-money was the price to be paid.

Petitioners' authorities—*In re Elwes*, 1858, 28 L.J. Exch. 46; *Earl Cowley's Succession*, 1866, L.R. 1 Exch. 288.

Respondents' authorities—*The Governors of the Russell Institution v. The Vestrymen of St Giles-in-the-Fields and St George, Bloomsbury*, 1853, 18 Engl. Jur. 597; *Hanson on Probate*, 3d ed. p. 300.

At advising—

LORD PRESIDENT—The question presented by this petition involves the consideration of the 11th section of the Revenue Act of 1885, by which a duty is imposed upon property held by collective bodies, corporate or unincorporate, which escapes altogether from liability to the succession-duties. In the case of these bodies succession cannot occur, and accordingly no opportunity arises for a charge by the Commissioners of Inland Revenue exigible in that event. The object of this enactment is to prevent them from escaping from contributing their proper share, and for this purpose the Legislature has subjected these bodies to a duty which shall fairly correspond to the duty to which individuals are subjected under the provisions of the Succession Acts. That is to say, they shall pay an annual duty upon "the annual value, income, or profits" of their property, real and personal, "after deducting therefrom all necessary outgoings, including the receiver's remuneration, and costs, charges, and expenses properly incurred in the management of such property." Whether that is a fair equivalent as compared with the succession-duties we have no need to inquire; it is that which has been substituted.

But there are certain exemptions; and the first question is, whether the Society of Writers to the Signet can take the benefit of any of these exemptions?

Now, exemption is sought under the third head, *viz.*, "Property which, or the income or profits whereof, shall be legally appropriated and applied for any purpose connected with any religious persuasion, or for any charitable purpose, or for the promotion of education, literature, science, or the fine arts."

It is said that the property of this Society is "legally appropriated" to educational, literary, scientific, and artistic purposes. Leaving out of view the meaning of the words "legally appropriated," the question arises whether this property or income is so applied. There may be cases in which property or income may conduce indirectly to the advancement of education, &c., and yet certainly not fall under this exemption. Almost every institution created for the benefit of its members, of which a library formed part, would fall under that exemption if it were enough to show that indirectly the property would promote education, &c. But I apprehend the meaning of this exception to be that the property or income be, if not exclusively, at least in the main and as its chief object, devoted to those purposes. Now, can that be said to be the case with regard to this Society? Its members join it, not to study law, or for purposes of education, but for the purpose of making pecuniary gain by the exercise of a profession.

That was the object of all previous members of the Society, and everything that the Society has done in the way of creating a library was done as accessory to that one great object. Under these circumstances it is impossible to say that this property is applied to the promotion of education, &c.

Still further, it may be questioned on the very same ground whether, even if the money was so applied, it is legally appropriated to that purpose—*i.e.*, so as to be legally binding upon the parties.

The Society may be, and I think is, a customary corporation. I think it pretty well established that they are so, but that does not make much difference in the matter, for if it should be in the interest of the profession that this money should be applied to a different purpose, I doubt if they would be disabled from so applying it, and thus diverting it from its application to educational purposes.

For these reasons I am of opinion that exemption cannot be claimed, *viz.*, first, because this money is not applied to educational purposes; and 2dly, because it is not “legally appropriated or applied for the promotion of education, literature,” &c., within the true meaning of the statute.

Another ground of exemption is claimed under the sixth head, *viz.*, “Property acquired by or with funds voluntarily contributed to any body corporate or unincorporate within a period of thirty years immediately preceding.”

Now, the money which is said to be “voluntarily contributed” is the money paid by intrants as the condition of obtaining admission. A considerable part is paid by the apprentice on entering on his indenture, and the balance is paid on admission as a full member of the Society. Can this payment be said to be voluntary? In one sense, all money paid without compulsion is paid voluntarily. But that cannot be the meaning of the clause. Everything paid under a contract is paid voluntarily, unless some dispute arise as to the meaning or effect of the contract. But “voluntarily” has another meaning. When we speak of money “voluntarily” gifted, we mean “gratuitously.” Now, I think if money were presented to the Society without consideration, and if property were within a certain period of years purchased with that money, that property would fall under the exception. It would not be paid under a contract. But in the case before us the money was paid as the price of admission to the Society. When an apprentice signs his indenture, he enters into a contract not merely with his master but with the Society. The obligation under the contract is on the one hand to pay, and on the other hand to take on trials and admit if qualified. It is just as involuntary a payment as that of any money that one is obliged to pay. And what is to be said of the last instalment that falls to be paid? The intrant will not be admitted until it is paid. He has already a vested interest; but that interest he forfeits if he do not make the last payment. It is as compulsory a payment as anything can be, and accordingly I think neither of these clauses apply to this Society’s property in general. There is, however, one part of the property that stands in a different position. I refer to the money applied to the endowment of the Chair of Conveyancing. Enough evidence has been supplied to satisfy the Court that the Society is bound by agreement with the Town Council to continue its contributions. That seems very clearly to fall under the third clause of exemptions.

With regard to the question of outgoings, I do not think there is any serious difference between the parties. It is plain that the account given in by the petitioners must be largely modified. They claim land-tax and insurance, of which great part is on the books in the library, and insurance will be allowed to the full amount in so far as it is on the buildings.

As to the salary of the treasurer or “receiver,” I agree with the argument of the Lord Advocate. All that the treasurer has to do as receiver is to draw the rents, if any, of heritable property and receive payment of interest and dividends on personal estate; and I should say that the allowance of 20 guineas as fixed by the Commissioners is a very fair proportion of the salary to be deducted on these grounds.

With regard to rates, all I think it necessary to say is that landlord’s rates must be deducted. As to repairs, £25 seems a fair estimate.

LOBDS MURE, SHAND, and ADAM concurred.

The Court pronounced this interlocutor:—

“Find that the real and personal property of the petitioners mentioned in the appeal, the gross annual value of which amounts to £1159, 19s. 10d. sterling, is liable to the duty on property of bodies corporate and unincorporate under the Customs and Inland Revenue Act 1885: Find that the annual value of the real property for the year ending 5th April 1885 is £250, and that the income or profits of the personal property for the same year is £909, 19s. 10d.: Find that the annual payment of £105 granted by the petitioners under contract for the perpetual endowment of the Chair of Conveyancing in the University of Edinburgh is to be allowed as legally appropriated and applied for the promotion of education: Find that there should be included in the necessary outgoings to be deducted in reference to the annual value of the real property the sum of £13, 18s. 7d., being the land-tax and the owner’s proportion of the rates chargeable in respect of such real property: Find that the sum of £21 proposed by the Commissioners of Inland Revenue to be deducted as receiver’s remuneration is reasonable: Find that the deduction for insurance and repairs is to be limited to such part of the sums claimed as is applicable to the real property, and accordingly that the sum to be deducted for insurance is £9, 11s., and that the sum of £25, being 10 per cent. on the annual value of the real property, is a reasonable allowance for repairs: Find, in accordance with the foregoing findings, that the nett annual value of the real and personal property of the petitioners for the said year liable to assessment under the said Act amounts to £985, 10s. 3d., and that the duty of 5 per cent. chargeable thereon for the year 1885–86 in terms of the said Act amounts to £49, 5s. 6d.: Ordain the respondents to repay to the petitioners the sum of £5, 18s. 11d., being the difference between the said sum of £49, 5s. 6d. and the sum of £55, 4s. 5d., which was paid by the petitioners to the respondents in respect of said duty 12th

May 1886, with the legal interest thereof from said date till paid: Find the petitioners liable to the respondents in expenses," &c.

Counsel for Petitioners—D.-F. Mackintosh, Q.C.—Graham Murray. Agent—C. B. Logan, W.S.

Counsel for Respondent—Lord Adv. Macdonald, Q.C.—A. J. Young. Agent—David Crole, Solicitor of Inland Revenue.

Friday, November 5.

## FIRST DIVISION.

### LIVINGSTONE v. LIVINGSTONE.

*Alimentary Provision — Arrestment — Restriction of Aliment to Reasonable Provision.*

An alimentary provision bequeathed to a party may, so far as exceeding the amount of a reasonable aliment for his support in his position in life, be made available to his creditors, and is therefore *quoad* the excess over a reasonable aliment subject to diligence by them.

The younger son of a landed proprietor had an alimentary income of £860 or thereby under the settlement of a relative. *Held* that arrestments used against this income by a creditor for a debt not alimentary in character, fell to be recalled *quoad* the sum of £500 a-year, which was a reasonable aliment, but to be sustained *quoad* the remainder of the income.

The deceased William Waddell of Easter Moffat, Writer to the Signet, had an only child Christian Margaret Waddell, who married Thomas Livingstone Fenton Livingstone of West Quarter.

By the fifth purpose of his trust-disposition and settlement, dated January 1868, Mr Waddell gave directions to his trustees to convert the residue of his estate into money, invest it in certain investments, and hold it for behoof of his three younger grandchildren, John, George, and Charles Fenton Livingstone, or the survivors or survivor, equally, share and share alike, payable on their attaining the age of twenty-five, but the deed contained the following declaration—"And I do hereby declare that in case any of my said three grandsons shall marry or otherwise conduct themselves so as not to merit the approbation of my said trustees, or a majority of them accepting and surviving at the time, the provisions hereby made in favour of my said grandchildren so marrying or acting shall only belong to them in liferent for their liferent use allanarly, and to their issue or heirs in fee; but it is hereby declared that a regular minute must be entered in the sederunt-book of the trustees, expressing their disapprobation of the conduct of any of my said grandchildren to restrict them to a liferent as aforesaid, and the capital or fee of the provision or share of such of my said grandsons as shall be so restricted to a liferent shall continue to be held by my said trustees during the lifetime of the party so restricted to a liferent, the interest or annual proceeds (less the expense of management) being

only payable to the party or parties so restricted to a liferent; and it shall not be in the power of the party or parties whose shares have been so restricted to a liferent to sell, assign, dispoone, or convey away his or their said liferent, but the same shall be applied for his or their alimentary use allanarly, nor shall it be in the power of his or their creditors to attach the said liferent by arrestment, pouncing, or other legal diligence, all of which are hereby excluded."

Charles Fenton Livingstone died in minority without issue.

George Fenton Livingstone attained the age of twenty-five on 1st October 1885. Acting under the power contained in the settlement, however, Mr Waddell's trustees had, at a meeting specially convened on 21st September 1885, resolved to record their disapproval of the conduct of George Fenton Livingstone, which they then did, and by minute restricted the provisions in his favour to a liferent allanarly, the fee of his share of the residue to belong to his issue or heirs.

In January 1886 an action was raised against George Fenton Livingstone by his brother John Fenton Livingstone, concluding for payment of two sums of £500 and £5000 respectively. At the same time he had used arrestments against him on the dependence.

George Fenton Livingstone, while admitting that the first of these sums was due, and averring that he was in the course of making arrangements for its repayment, denied that the debt was of an alimentary character. As to the second, he denied any liability for it.

He presented this petition praying to have arrestments recalled *simpliciter*. He stated that his share of his grandfather's estate amounted to £26,796, 12s. 3d., the gross income being £941, and the net income £860 to £875, and he was entitled in the event of his surviving his mother to the fee of Easter Moffat.

He averred that he was desirous to pay the debt of £500, which he admitted he had owed to his brother, and that he was in the course of getting it paid off by instalments along with his other debts, which he estimated at about £800, but that he had been prevented from carrying out this arrangement by the arrestments in question, of which no notice had been given either to him or his known agent. Neither of the alleged debts to his brother was, he stated, alimentary in character. He further averred—"That on 3d March 1886 intimation was given to the trustees and to the said George M'Intosh, their agent, of an assignation in favour of Alexander P. Purves, W.S., by the petitioner of his said alimentary income for security and payment of alimentary advances agreed to be made to him periodically from the time he attained twenty-five years of age until the first payment of his said alimentary income became due; that notwithstanding said intimation, no notice was given by the trustees or their said agent either to the petitioner or to his assignee the said Alexander P. Purves of the fact that the funds assigned had already been arrested in their hands; that it was only at the term of Whitsunday 1886 that the petitioner, on demanding from the trustees through their said agent payment of the income which had accrued upon the funds held by them for his behoof, as aforesaid, from said 1st October 1885 to the said term of Whitsunday 1886,