The Commissioners on 14th May 1889 unanimously refused the appeal, on the ground that the Income-Tax Acts gave no exemption to buildings used for municipal purposes from assessment under Schedule A.

The appellants having intimated dissatisfaction with the decision of the Commissioners, the present case was stated for the opinion of the Court of Exchequer, under the Taxes Management Act 1880.

Argued for the appellant — Municipal buildings were exempt from income-tax, in respect that their occupation was not beneficial but for public purposes. In any view, a deduction must be made in respect of the Burgh Court Rooms, which were occupied for the administration of public justice—*The Justices of Lancashire* v. *The Overseers of Stretford*, May 1, 1858, E. B. & E. 225; *Comber* v. *The Justices of the County of Berks*, Dec. 3, 1883, L.R., 9 H. of L. 61, in which case *Clerk* v. *Dumfries Commissioners of Supply* was disapproved.

Argued for the Surveyor of Taxes—The question of profit and loss did not fall within the scope of Schedule A. The question was whether the premises were capable of actual occupation. It was not necessary to traverse the decision in *Comber's* case, as the buildings here were not used in the service of the Crown, but primarily and mainly for the purposes of muncipal business. The Imperial Exchequer contributed nothing to the Burgh Court, nor were the Magistrates appointed by the Crown—*Clerk* v. *Dumfries Commissioners of Supply*, July 16, 1880, 7 R. 1157.

At advising—

LORD PRESIDENT—As regards this case, I think the general principle should be affirmed that a burgh court is a court for the administration of public justice, and therefore that the building or rooms which are occupied for the administration of justice in that court are part of the Government establishment, or, in other words, part of the Queen's establishment for the administration of justice, and cannot be subjected to taxation unless they were specially mentioned in the Act of Parliament as being liable. That general principle, I think, will probably enable the parties to ascertain how much of the municipal buildings are properly occupied by the Burgh Court-room, and to make a deduction from the charge which at present has been made on the whole municipal buildings,

With regard to the remainder of the buildings, I cannot see any ground for exemption at all. They seem to me to be occupied for the ordinary purposes of municipal administration, and we have no ground of exemption in the Income-Tax Act of buildings of that kind at all, and without an exemption by the statute I do not see how the case could be maintained.

LORD SHAND, LORD ADAM, and LORD M'LAREN concurred.

The Court found that the Burgh Court was exempted, and remitted to the Commissioners to give effect to that judgment.

Counsel for the Appellant—Boyd. Agent—White Millar, S.S.C.

Counsel for the Surveyor of Taxes—Sol.-Gen. Darling—Young. Agent—The Solicitor of Inland Revenue.

Friday, November 15.

FIRST DIVISION.

[Lord Trayner, Ordinary.

CALDER & COMPANY *v.* CRUIKSHANK AND RATTRAY (CRUIKSHANK'S TRUSTEES).

Cautioner—Guarantee—Custom of Trade—Reasonable Credit.

A person guaranteed A B & Company, distillers, "payment of any goods which you may sell or cash which you may advance" to C D & Company up to £5000. He subsequently granted A B & Company a second guarantee for an additional sum of £2000 "in consideration of your granting credit" to C D & Company "over and above the sum already guaranteed." A B & Company in reliance on these guarantees sold C D & Company a large quantity of whisky, and also advanced them large sums in cash to pay the corresponding duties, taking bills at five months in security of repayment. The customary credit in the whisky trade for the price of goods sold was four months. With regard to cash advances no trade custom was established.

In an action by the distillers, *held* that the guarantor was liable under the guarantees, in respect that the guarantees contained no limitation as to the length of credit to be allowed by reference to the custom of trade or otherwise, and the credit given was in the circumstances perfectly reasonable.

This action was raised by Messrs Calder & Company, distillers, St Enoch's Square, Glasgow, against Francis Cruikshank, muslin manufacturer, 91 Mitchell Street, Glasgow, for payment of £7000.

The pursuers founded on two letters of guarantee granted by the defender to them for Messrs M'Laren & Company, merchants in Dublin and Glasgow. The first letter, dated 15th September 1887, was in these terms:—"I hereby guarantee payment of any goods which you may sell or cash which you may advance to Messrs M'Laren & Company, Dublin and Glasgow. This guarantee being limited to five thousand pounds stg.—F. J. CRUIKSHANK." The second letter was dated 18th December 1887, and was in the following terms:—"Gentn.—In consideration of your granting credit to Messrs M'Laren & Company to the extent of £2000 (two thousand pounds sterling), over and above the sum already guaranteed by me, I hereby guarantee you

full payment of the said two thousand stg., and remain, yours respectfully, F. J. CRUIKSHANKS."

The pursuers also produced an account showing that there was as at 3rd July 1889 due to them by M'Laren & Company, for goods sold and cash advanced, in reliance on the guarantees given by the defender, the sum of £8406, 4s. 7d., which sum M'Laren & Company, whose estates had been sequestrated, had failed to pay.

After the action had been raised the defender's estate was sequestrated, and David Rattray, the trustee in the sequestration, was sisted as defender in the action.

The defender in answer averred—"That the bills referred to in the account produced were taken from the debtor by the pursuers without the consent of the defender. Further, the bills for goods sold were taken at a currency exceeding the usual period of credit in the whisky trade. Several of the said bills were renewed by the pursuers when they became due, and they allowed M'Laren & Company time to pay others. It is not customary in the whisky trade to accept and renew bills for the price of goods sold under the circumstances alleged by the pursuers."

The defender pleaded—"(2) The pursuers having, without the defender's knowledge and consent, given time to the debtor, have thereby liberated the defender from his obligations under the said letter of guarantee. (3) In so far as regards items in the account produced for goods supplied or cash advanced prior to the dates of the said letter of guarantee, the defender should be assoilzied."

Proof was led before the Lord Ordinary (TRAYNER) on 16th December 1888, from which the following facts appeared:—The pursuers began to do business with M'Laren & Company in 1885; they sold goods to that firm, and advanced cash to pay the corresponding duties. Cruikshank began to give guarantees for M'Laren & Company in March 1886. He received a commission of from 7½ to 10 per cent. on the amount of the guarantees. Down to the close of 1886 the usual credit granted by the pursuers to M'Laren & Company for the price of goods sold and for the amount of cash advanced was four months, but thereafter they generally took five months' bills from M'Laren & Company in security of repayment. This extension of credit was granted at the request of Patrick Rattray, an accountant employed by Cruikshank to audit M'Laren & Company's books, and was granted for the convenience of M'Laren & Company, who had to give their customers four months' credit, and so found it difficult to get their money in in time to meet the bills due to the pursuers. In July 1887 the pursuers declined to do further business with M'Laren & Company, but on the guarantees of 15th September and 19th December being given by the defender business was resumed. The pursuer James Calder stated that he had informed the defender that the currency of the bills had been extended to five months. The defender denied that he ever heard what was the currency of the bills. He, however, stated—"I was quite aware there were bill dealings. I never asked the currency of the bills. The currency would appear from M'Laren & Company's books. That was one of the things Mr Rattray would see on my behalf. (Q) Did you care what the currency was?—(A) I presumed the business would be carried on in a regular way. I never applied my mind as to what the currency would be. I knew nothing about what was the usual currency in the whisky trade. (Q) And did not think much about it?—(A) Perhaps so." The usual term of credit in the whisky trade was four months for goods sold. There was no established period of credit in respect of cash advanced for payment of duties. The defenders failed to prove that the pursuers had received bills, or with regard to others had allowed M'Laren & Company time to pay after the bills had reached maturity.

On 15th January 1889 the Lord Ordinary pronounced the following interlocutor:—"Decerns against the defender in terms of the conclusions of the summons for payment to the pursuers of the sum of £7000 sterling, with interest thereon at the rate of £5 per centum per annum from the 10th day of April 1888 until payment: Finds the defender and David Rattray, C.A., Glasgow, the trustees on the defender's sequestrated estates, liable in the expenses of the process, &c.

"*Opinion.*— . . . The argument which was chiefly urged by the defender, however, was not founded on the alleged renewal of bills, or allowing bills to lie over after maturity. It was this, that the pursuers by taking bills at all had given to M'Laren & Company time to pay their debt, and had, for the duration of the currency of the bills, precluded themselves from demanding payment, and consequently had precluded themselves from putting the defender in a position to operate his relief. In illustration of this argument the defender put the case that if at any moment he had gone to the pursuers and withdrawn his guarantee, offering instant payment of all that he was liable for under the same, and asking an assignation to the pursuers' claims against M'Laren & Company the pursuers could not have given him a right which would have enabled him to demand instant payment from M'Laren & Company, who were not under obligation to pay until their bills fell due, say, five months after the date when the guarantee was withdrawn.

"This argument appears to me to be more ingenious than sound. The guarantees granted by the defender were not for any specific supply of goods or advance of money; they prescribed no particular course of dealing, were not limited as to time, or indeed limited in any way, except as regards the amount for which the defender would be liable. They undoubtedly contemplated a certain amount of credit, for goods which were to be paid for in cash needed no guarantee, and cash advances to be instantly repaid would not be cash advances at all in any reasonable sense. If there-

fore some period of credit was contemplated the defender would not have been entitled at any moment he chose to demand such an assignation from the pursuers as would enable him at once to proceed against the principal debtor. The period of credit granted by the pursuers to their debtors would be a limitation upon the defender's right to demand instant payment, and it would make no difference whether the period of credit stood upon an open account or upon the currency of a bill. The mere taking of a bill with a currency of four or five months would no more free the defender from his guarantee (on the ground of time having been given to the debtor) than would the supply of goods or an advance of cash to be paid or repaid four or five months after the delivery of the goods or the date of the advance.

"Now, as regards the period of credit, it is to be observed that the guarantees make no stipulation, and therefore the pursuers were in my opinion left a good deal to their own discretion as to the credit they should give, provided that any such credit was not extravagant or excessive. Could the credit which the pursuers did give be so characterised? I think not. It is proved that the ordinary credit for goods in the Irish trade is four months, and that there is no usual or recognised period for credit as to cash advances. The pursuers gave credit for five months, which I cannot regard as excessive and unreasonable, or such as the defender can object to. But even if it were such a credit as the defender might be held not to have contemplated (that is, five months' credit instead of four), I am of opinion that he knew of the period of credit actually being given. Rattray undoubtedly knew of it, and Rattray was acting on behalf and on the employment of the defender. The defender admits that he was quite aware of 'bill dealings' between the pursuers and M'Laren & Company; and adds, 'I never asked the currency of the bills. The currency would appear from M'Laren & Company's books. That was one of the things Mr Rattray would see on my behalf.' In these circumstances Mr Rattray's knowledge must be held to be the knowledge of the defender. Mr Calder indeed distinctly states that before he began to give five months' credit he went to the defender and told him of it, and that the defender replied he did not care a brass farthing what was the currency of the bills provided that the limit of his liability was not increased. This the defender as distinctly denies. In this conflict I am inclined to accept Mr Calder's statement rather than that of the defender. I can believe that the defender has forgotten the interview spoken to by Mr Calder more readily than I can believe that Mr Calder invented it. For invention it must be, if not true, when one considers the details given by Mr Calder as to where the interview took place, and the reply he got from the defender. I am therefore of opinion that the credit given by the pursuers was not such as to amount to giving time to the debtor; and further, that the defender knew of the credit being given, either by direct personal communication from Mr Calder, or at all events through his agent Mr Rattray."

The defender reclaimed to the First Division, and after the case had been partly heard he was allowed to amend his defences by the introduction of the words "in so far as drawn for the price of whisky sold" after the word "bills" (the second time that word occurs in the averment by the defender given above), and to add the following plea-in-law—"(4) In respect that the transactions set forth in the account sued on do not fall within the obligation undertaken by the said letters of guarantee, the defender is entitled to absolvitor."

Argued for the defender—By the law of guarantee it was only the custom of the trade in which the guarantee was given which should be read into the guarantee. It was the custom of the whisky trade to give only four months' credit in respect of goods sold. With regard to cash advances, the pursuers were in the position of bankers, and the general rule applied that money lent was payable on demand. It was incumbent on the pursuers to show that the trade custom was different. They had failed to do so. Giving "credit" merely meant putting a person into the position of debtor. The pursuers therefore had no right to take bills at five months for the price of goods sold, or to tie their hands by taking bills at all in the case of cash advances, so as to make it impossible for the guarantor if he paid up at once to operate his relief. That was such a giving of time as liberated the guarantor—Bell's Prin. 262; Bell's Comm. (7th ed.) i. 379; *Forsyth* v. *Wishart*, February 8, 1859, 21 D. 449; *Richardson* v. *Harvie*, March 29, 1853, 15 D. 628; *Cook* v. *Moffat & Houston*, June 7, 1827, 5 S. 774; *Bowie* v. *Christie & Hutchison*, March 19, 1868, 6 Macph. 642; *Stewart* v. *Brown*, May 24, 1871, 9 Macph. 763. In none of these cases was it laid down that the mere fact that the guarantor knew that obligations were being incurred outside the terms of letter of guarantee could make him liable. Consent on his part was necessary—*Polak* v. *Everitt*, 1 Q.B.D. 669; *Howell* v. *Jones*, 1 C. M. & R. 97; Grant's Law of Bankruptcy, 209. In the present case both knowledge and consent on the part of the guarantor were denied. The cases in Hume referred to by the pursuers merely went to this, that mercantile practice was made material in those cases, and the cases in Macpherson merely established what was admitted by the pursuer, that custom of trade must be read into letters of guarantee if not excluded.

Argued for the pursuers — There was here no extension of time given, and the objection of the defender came to this that the guarantor was never bound by these transactions as not being within the guarantee. What was guaranteed was the giving "credit" to M'Laren & Company. The whole amount of advance might have been made in goods, and in that case the guarantor would have his hands tied for four months by the customary credit of the trade. That fact dero-

gated from the argument by the defender that no bills should have been taken for the cash advances. The objection of the defender that time had been given did not apply to the original obligations at all unless he could maintain that credit of an unusual or unreasonable character had been given—*Griffith* v. *Wylie*, March 3, 1809, Hume's Dec. 96; *Brown* v. *Wylie*, *ibid.*; Bell's Comm. (7th ed.), i. 379, note; *Stewart* v. *Brown* and *Bowie* v. *Christie and Hutchison*, *supra*; *Stewart* v. *M'Kean*, 1855, 10 Hurl. & Gord. 675. In an open guarantee of this kind, where the guarantor made no reference to the custom of trade, such custom was not part of the contract. All that the guarantor could insist on was that the party guaranteed should act according to the rules of sense and reason—*Simpson* v. *Manley*, 1831, 2 Com. & Jervis, 12; *Young* v. *Edmonds the Elder*, 1829, 3 Moore Payne, 259. The credit given here was of the most reasonable character in the circumstances. It had been the usual credit allowed for some months under the previous guarantees by Cruikshank. It was difficult to believe that he did not know such credit was being given. At all events he knew the course of dealing and that bills were being given, and it was his duty to inquire what was the currency of these bills. In making the cash advances the pursuers were not in an analogous position to bankers at all. The necessities of banking businesses made it necessary that overdrafts on current accounts should be payable on demand. In this case it was just as necessary to give credit for the cash advanced to pay the duties as for the price of the goods sold. Indeed the duty was just part of the price of the whisky.

At advising—

LORD PRESIDENT—This action is laid on letters of guarantee. The Lord Ordinary has given judgment in favour of the pursuers for the amount sued for. The question raised is one of very considerable importance not merely as regards amount, but also because it involves important principles in the law of mercantile guarantee.

There is a broad distinction taken in all the cases between the guarantee of a particular debt of a certain amount, to be paid at a certain time, and a general guarantee for the price of goods sold or for money advanced or the like.

In the former case if a creditor innovates or alters the relation of debtor or creditor in any essential point he liberates the cautioner. In the latter case that result by no means follows. Many general guarantees are intended to extend far beyond the guarantee of a particular debt. This case, I think, belongs to the latter category. The words of the guarantee are these—"I hereby guarantee payment of any goods which you may advance to Messrs M'Laren & Company, Dublin and Glasgow." The original guarantee was limited to £5000, but was extended by a subsequent letter to £7000. The payment guaranteed was the "payment of goods"—that is, the price of goods "which you may sell" or "cash which you may advance."

Of course it is out of the question to read this guarantee without reference to the trade in respect to which it was granted, and the circumstances in which the parties stood to one another. The persons who received the letter of guarantee are distillers in Glasgow, and the persons guaranteed are merchants in Ireland, who dealt largely in whisky. Apparently this was not the first time the defender had interposed on behalf of M'Laren & Company by giving a guarantee to the pursuers. Under the previous guarantee no call to pay was made on the defender, but the business relations under that guarantee stopped, and the guarantee came to an end. M'Laren & Company it seems were not at that time in quite such good credit in the opinion of the pursuers as before, and they declined to go on making advances to that firm, but on a new guarantee being tendered they consented to renew their relations, and the trade between the pursuers and M'Laren & Company was resumed on the same terms and conditions as before, as is shown by the evidence.

In these circumstances we cannot listen to the defender when he says that he did not know the course of dealing between the pursuers and M'Laren & Company. He must have known, for example, that one party was a distiller and the other a purchaser of whisky. He may not have known the precise terms upon which they dealt, or as to the length of credit allowed, but as to the nature of the general course of dealing it cannot be taken from him that he was ignorant of it, more especially as the particular defender here is not a mere private person coming forward in order to help his friend, but may without impropriety be called a professional guarantor, as he got a commission on the amount advanced by the pursuers to M'Laren & Company under the letters of guarantee. It is therefore very apparent that he must have known the relation between the pursuers and M'Laren & Company, and consequently the general course of dealing between them. And accordingly when he says that he guarantees the "payment of any goods which you may sell," he means the price of whisky to be sold by the pursuers to M'Laren & Company. There is no appeal in the letter of guarantee to the custom of trade or usage of parties, and in these circumstances I hold the rule of law to be that if the credit given is not unreasonable in the circumstances, then the guarantor is not relieved from liability.

The credit given is described by Mr Calder and also by Thomson, his salesman, in their evidence, and it is important to observe not only the amount of credit given, but the reason why it was given. The credit given extended to five months—that is, bills for goods sold were taken at five months—and it is explained by Calder and Thomson that the reason why that amount of credit was required by M'Laren & Company was that they could not get their money from their customers under four months. That

being so, it was difficult for them to get their money in to meet bills for the price under five months. So far, therefore, from its being unreasonable, I think it was a perfectly reasonable arrangement to allow that amount of credit, and this is a sufficient answer to the complaint that the period of credit was unduly extended. It may be quite true that it is the usual practice of the whisky trade to deal in three or four months' bills, but if credit is given beyond that period that will not liberate the cautioner if the length of the credit given is not unreasonable.

With regard to the advances of money, the case is, I think, still more clear. Here also I take leave to observe that the defender cannot be listened to when he says he did not know the purpose for which these advances were made. He must have known that the money was advanced for the purpose of enabling M'Laren & Company to take the whisky sold to them out of bond. For these cash advances bills were granted in the same manner as was done in the case of the price of goods. If the period of credit is not extended to a time altogether unknown or irregular, that will not take parties out of the obligation in the letter of guarantee to guarantee the cash which might be advanced. It has been contended no doubt that what was meant by advances of cash was merely the giving money on the credit of M'Laren & Company, which might be called up at any time, on the same terms as a bank allows its customers an overdraft on current account. I cannot accede to that view. No doubt in the case of a current bank account that is the case, but such is not the nature of the business here. Loans of money for the purpose of paying duties may be secured by bills and promissory-notes. There is also nothing in the guarantee itself or in the practice of the trade to confine bills to a certain number of months, provided they are not extended beyond what are fairly negotiable instruments. Six months, I think, would be a reasonable credit to give. No doubt if bills for goods sold or for cash advanced were granted for a year or for two years that would be irregular, but in granting bills at five months there is nothing so irregular as to enable the guarantor to say that these are not advances made within the obligation contained in the letters of guarantee.

Lord Shand—I concur in thinking that we ought to adhere to the Lord Ordinary's interlocutor. It appears from his Lordship's judgment that the defender advanced some contentions in the Outer House which have not been before us. In the first place, it was urged by him "that some of the bills were renewed by the pursuers, and that with regard to others of them the pursuers allowed M'Laren & Company time to pay after the bills had reached maturity, and had not been then retired." On that point the reclaimer has acquiesced in the Lord Ordinary's judgment, and it has not been suggested before us that he could make out a case of renewal or of giving of time to M'Laren & Company to pay bills which were past due, so as to tie up the hands of the creditors. The only question that remains in the case is, whether the original transactions between the pursuers and M'Laren & Company, with whom they dealt—the sale of goods and the advance of money on credit by the former to the latter—are or are not within the letter of guarantee?

As the case was originally presented by the defender in argument it was one of giving time, as by the renewal of a bill, or by some other method by which the hands of the creditor are tied. But, as Lord Adam pointed out in the course of the discussion—and I think that his Lordship's observation entirely changed the aspect of the case—this is not a proper case of giving time at all. The question is, upon each transaction as it is entered into, whether under the guarantee the objection of giving time would be a good one? In regard to the guarantees themselves, they are in the most general terms, and guarantee payment of goods sold and cash advanced. There is nothing on the face of the guarantees by way of limitation, to the effect that the goods shall be sold under some special condition, either as to the length of the credit or as to the nature of the obligation which is granted in order to secure repayment of the goods or cash. They are to all effects perfectly general. The rule to be deduced from the cases, and especially from the English cases, which commend themselves to my mind, is that where there is no limitation or restriction in the guarantee itself the guarantor must be held to have undertaken to guarantee the transaction as it was originally arranged between the parties, and no conditions or stipulations can be implied. This, I think, is *prima facie* the result of a guarantee of this kind. I do not say that if anything very extravagant occurred in reference to the time allowed for payment, whereby, for instance, the person making the advance or selling the goods tied up his hands for a long period, the guarantor may not object to be made liable, and say that he ought to have had notice. But in the ordinary case a guarantor ought to make inquiry in his own interest. His only protection is to make stipulations in the guarantee, and if there be anything exceptional or unreasonable in the carrying out of the transaction, he will then be able to say that he is not bound because he had no notice of it, and that if he had had notice of it he would have made a limitation. I think that if this rule be applied to the present case it is clear that the judgment of the Lord Ordinary must be adhered to.

The Lord Ordinary has to some extent proceeded upon the view that the defender had special knowledge of the currency of these bills—a knowledge which he derived from the pursuer—or at least that Rattray knew of it, and that his knowledge must be held to be the knowledge of the defender. I do not think that this is satisfactorily proved, and accordingly I do not think it is a good ground of judgment. The pursuer says there was an interview at which this knowledge was communicated to the defender, but the defender denies this. It

is clear, that to be of any value whatever the pursuer's evidence ought to have been corroborated by other witnesses who have not been called. Nor do I think it has been made out that the defender must be held to have had this knowledge because Rattray had it. I think Rattray was only employed by Cruikshank (who admits that his business was to grant guarantees for a profit of from 7½ to 10 per cent.) to look generally into the affairs of M'Laren & Company, and to keep him well-advised in regard to them. Accordingly, although there is a conflict of testimony in regard to the state of the defender's knowledge, I think there is enough in the facts of the case to remove any possible difficulty about it. In the first place, I find that the defender himself admits—"I was quite aware there were bill dealings. I never asked the currency of the bills. The currency would appear from M'Laren & Company's books. That was one of the things Mr Rattray would see on my behalf." But I think this further fact is clear that at the date when the guarantees were granted, and for six months before either of them was granted, the currency of bills, both for cash advanced and for goods sold, was five months. Both cases were alike. The pursuer says this—"I find that in our dealings with M'Laren & Company there were two bills at five months in November 1886. From that period onward five months' bills were no doubt the rule." That evidence is corroborated by the evidence of the witness Thomson, who is salesman to Messrs Calder & Coy., and who says "Down to November 1886 the custom was to draw at four months, and after that at five months." Accordingly at the time when these letters were granted, it is proved there existed a course of dealing which had been going on for six months, the course of dealing being that both in regard to the goods supplied and the cash advances M'Laren & Coy. were allowed a currency of five months upon the bills which they granted, and that the slightest inquiry on the part of the defender Cruickshank would have made him aware that this was so.

But if after these letters of guarantee were granted the pursuers only continued to follow the course of dealing which had been in force between the parties before they were entered into, it is very difficult to see any grounds upon which the guarantor can get rid of the liability now sought to be enforced. I think it must be taken that he granted the letters of guarantee in question with reference to the transactions between the creditor and the debtor—between the person supplying the goods and the person getting them—and that being so I do not think that anything unusual occurred after the date of the letters of guarantee.

The guarantee for the cash advances in the present case is very different from a guarantee for cash advances by a bank where the giving money on five month bills might be rightly said to be very unusual. At any rate there is room for great distinction between the two cases, between the case of a bank making a money advance and a case where the money is plainly advanced to a trader for the supply of goods. I think the defender when granting these guarantees must be taken to have entered into a transaction of an unusual kind; in which it is proved, in the first place, that no notice was given or asked; and, in the second place, that in point of fact the goods were sold and the advances made in pursuance of a course of dealing with which the guarantor might have made himself acquainted after the slightest inquiry. I therefore think that the Lord Ordinary's interlocutor ought to be affirmed.

Lord Adam—The only question which was latterly argued to us was, whether or not certain bills fell within the letters of guarantee which were granted by Cruikshank for goods sold and cash advances made by the pursuers?

Now, the proof shows that the bills which were granted were up to November 1886 bills of both kinds, the currency being five months prior to that date, and three or four months subsequently. What was guaranteed was payment of the price of goods which the pursuers might sell to M'Laren & Company, or of the cash which they might advance, and therefore there is no doubt that these bills of both classes fall within the words and terms of the letters of guarantee. No one says that they were not bills granted either for the price of goods or for cash advances, and they were granted by M'Laren & Company to the pursuers.

But there is an objection taken to both classes of bills. As regards the bills for goods sold, it is said that we must read into the letter of guarantee a stipulation that the goods were to be sold according to the terms of credit usual in the whisky trade—the usual term of credit in this country being three or four months—three months in Scotland and four months in Ireland. Accordingly it is said that these bills, or such of them as were granted at five months' currency, do not fall within the guarantee, such a duration not being within its terms. As regards the bills for cash advances, it is not alleged that there is any usage of trade affecting them, and it is contended that it was not in contemplation of parties that the advances should be made upon any other footing than at call, so that if anyone who had undertaken liability in respect of the advance chose at any time to pay it up, he should have it in his power to do so, and then to recover from M'Laren & Company. These, as I understand, are the arguments which have been advanced by the defender in support of his contention that neither class of bills falls within the guarantees.

It is said, on the other hand, that this is not a guarantee of any particular debt, and that it is a continuing and general guarantee which is only limited as to its amount —the limit in the one case being £5000 and in the other £2000, the total limit being £7000. That is the only expressed limit, and the question is whether any further limitation is implied.

For my part, I do not think it has been established that in a general and unlimited guarantee the usage of trade can be introduced for the purpose of interpreting its terms. Although a usage may exist in connection with a particular trade, such a general guarantee as we have in the present case cannot incorporate it. The guarantee does not bear that the goods are to be sold upon the usual credit. It does not express that, but it guarantees the price of all goods sold without reference to the period of credit. Most traders who carry on business must have many different dealings to which they assign different terms of credit. What would such a dealer's duty be in reference to a guarantee like the the present? Only this, that there should be nothing unreasonable in the terms which he allows to his customers in such transactions. That would be the only limit to be put upon such a guarantee as the present. If credit had been given for two years or for some such excessive period, I should probably have said that that was not within the contemplation of parties. But none of the bills are in that position. This dealer has been acting just as he was in use to do in the ordinary conduct of his business. It accordingly appears to me that such dealings fall within the terms of this limited guarantee.

If a person wishes to make particular terms when he grants a letter of guarantee, I think it his duty to make inquiry as to the course of dealing pursued, and if he is not satisfied with it after inquiry—if, for instance, he finds that more credit than he cares for is being given—then I think he ought to stipulate for such terms as he thinks requisite. But, so far as regards the bills for goods sold in the present case, I think they all fall within the letter of guarantee.

In regard to the bills for the money advances, I think there is no difference. If the guarantee had been granted to a dealer in money or to a banker or the like, I think there might have been a question whether it was not a condition that the money should have been advanced at call. But looking to the nature of the transaction and of the trade in question, it is idle to say that it could have been in the contemplation of the parties that credit for a reasonable time was not to be given. I am therefore clearly of opinion that the bills for cash advances fall equally within the guarantee, and that the interlocutor of the Lord Ordnary should be adhered to.

The Court adhered.

Counsel for the Reclaimer—The Lord Advocate—Ure. Agents—Dove & Lockhart, S.S.C.

Counsel for the Respondents — Sir C. Pearson — Dickson. Agent — Alexander Morison, S.S.C.

Wednesday, November 13.

FIRST DIVISION.

[Exchequer Cause.

THE EDINBURGH SOUTHERN CEMETERY COMPANY *v.* THE SOLICITOR OF INLAND REVENUE.

Revenue—Income-Tax—Receipts Applied to Redemption of Capital—Profits—Income-Tax Act (5 *and* 6 *Vict. c.* 35), *Sched. A, No.* 3, *Rule* 3.

As the land of a cemetery company became exhausted, they set aside a proportion of their receipts for rights of burial in the grounds, and applied it to the redemption of the capital expended in acquiring and preparing the ground. *Held* that such disposal of the fund did not alter its character as income, and being profits within the meaning of the Income-Tax Acts, it fell to be assessed under Schedule A, No. 3, rule 3, of 5 and 6 Vict. c. 35.

The Coltness Iron Company v. *Black*, 8 R. (H, of L.) 67, *followed*

At a meeting of the Commissioners for General Purposes, acting under the Property and Income-Tax Acts for the county of Edinburgh held on 25th April 1888, The Edinburgh Southern Cemetery Company appealed against an assessment made on them on the sum of £2734, at 7d. in the pound, duty £79, 14s. 10d., being the amount of the profits from the cemetery estimated for the year ending 5th April 1888 under rule 6, No. 2, Schedule A, of the Act 5 and 6 Vict. cap. 35, and the rules applicable to the first and second cases of Schedule D, applied under authority of section 188 of the said Act, on the ground that a "portion of the balance shown on the profit and loss account upon which this company is assessed consists of realisation of stock or assets, and not divided or treated as profits, but applied in paying off a corresponding amount of the subscribed capital. The sum so set aside this year is £1202, 17s. 6d., and this forms the amount of the overcharge."

The Commissioners refused the appeal, and stated a case for the opinion of the Court of Exchequer, from which the following narrative is taken:—The Edinburgh Southern Cemetery Company, an incorporated joint-stock company, was formed in 1845 under a contract of copartnership. The 18th article of the contract provided—"That . . . it shall be in the power of the directors to sell and dispose of the use of pieces of ground for burial places, tombs, or graves therein to any person or persons who may desire to purchase the same at such prices as the directors may think proper to fix, and that either in perpetuity or with the exclusive use of burial or interment therein for a limited period." Article 19 provided—"The expenses of the original conveyances or grants by the company of the use of such pieces of ground for burial places, . . . as may be sold by