

the society, unanimously appointed him to be a trustee in the room and stead of Mr Alexander Currie." It is stated in the answers that "the respondent ceased to be a director at the meeting referred to, and did not attend any further meetings of the directors."

Now, the result of these transactions clearly is this—On the one hand, Mr Broadfoot claimed that he was a matured member. The interest which fell to be added to the amount at his credit with the society was somewhat more than was required to mature his shares, and these shares were matured if the interest was added. And on the other hand, the directors acknowledged at the meeting to which I have referred that the shares were matured. That transaction terminated his membership as at the date of the transaction so as to make him a creditor *inter socios*, and he must therefore be treated as a matured member, and his trustees are entitled to obtain the amount at his credit with the society from the liquidator.

It is said that the directors had an optional power to treat interest as profits in the maturing of shares, and that Broadfoot might have been paid out by profits, but I do not think that argument can have place, as the directors and Broadfoot were at one about the addition of interest to the sum at the latter's credit, and there can be no question that after the meeting of the 10th December his shares were matured.

The case of Mr Lyle is different in its circumstances, but in principle is the same. He claims a right to be paid out as a withdrawing member who had "ceased to be a member of the society before it went into liquidation," and he ought to be dealt with as a creditor of the company, or at all events a creditor *inter socios*. The facts of the case are given in the answers lodged for Lyle, and they are shortly these—The rule applicable to the case is the same rule 9, and it provides—"Members who have not received an advance of money from the society may withdraw at the end of twelve months from the date of their entry, or at any time thereafter, by giving one month's previous notice, when the whole instalments shall be repaid with a proportion of profits effecting thereto, as at the date of the last annual balance." Now, Lyle was the holder of 10 shares of £25 each, conform to certificate dated 3rd December 1877. Before 12th November 1883 he had paid up contributions amounting to £72, which with a sum of accumulated profits added thereto made a total sum of £81, 15s. He was an investing member, and no advances had been made to him. He resolved to withdraw from the society, and intimated his wish in a letter to the manager of the society dated 13th November 1883, which was in these terms—"Dear Sir,—I have 10 shares in the Building Society (£72 paid), and I wish to withdraw them. Would you let me know when I can do so?" The answer of the manager dated the next day was as follows—"Dear Sir,—One month's notice requires to be given before payment

of shares withdrawn is made. Please call for payment of your shares on 13th December next." It is clear that by that letter a contract or arrangement was made by which it was recognised that Lyle had a right to withdraw from the society, which would emerge on 13th December 1883. On 13th December accordingly I think Lyle called on the manager to obtain payment of his shares. Not only so, but a cheque would have been ready for payment of the shares unless the manager had omitted to bring the matter under the notice of the directors at the meeting of 10th December. I think therefore the contract by which Lyle withdrew from the society was concluded in time, and that he also is entitled to payment of the amount of his shares preferably to the other members of the society.

LORD M'LAREN and the LORD PRESIDENT concurred.

LORD ADAM was absent.

The Court found that James Broadfoot's trustees and John Lyle were creditors *inter socios*, and entitled to a preference over the other contributories for the amount standing at the credit respectively of the shares of the said James Broadfoot's trustees and John Lyle, being for the said James Broadfoot's trustees the sum of £500, with interest at the rate of 4 per cent. per annum thereon from 30th November 1883 until payment, and being for the said John Lyle the sum of £81, 15s., with interest at the rate fore-said thereon from 13th December 1883 until payment.

Counsel for the Liquidator—Vary Campbell. Agent—William B. Glen, S.S.C.

Counsel for the Respondents Broadfoot's Trustees and Lyle—Guthrie—Salvesen. Agents—Smith & Mason, S.S.C.

Thursday, July 10.

## FIRST DIVISION.

[Court of Exchequer.]

### MAGISTRATES OF PORTOBELLO v. SURVEYOR OF TAXES.

*Revenue—Income-Tax—Cemetery—Income-Tax Act 1842 (5 and 6 Vict. cap. 35), sec. 60, Schedule A, No. 3, Rule 3.*

*Held* that where the magistrates and town council of a burgh in fulfilling their duty to provide a burial ground for the burgh have been obliged to borrow money, they are not entitled to deduct from the profits derived from the cemetery before being assessed in income-tax the amount of the interest due on the borrowed money, but are liable to be assessed on such profits after deduction only of working expenses under Schedule A, No. 3, rule 3, of the Income-Tax Act 1842.

At a meeting of the Commissioners for the

General Purposes of the Income-Tax Acts for the county of Edinburgh, held at Edinburgh on 31st March 1890, Mr Robert P. Stevenson, Town-Clerk of the burgh of Portobello, appealed against an assessment made upon the Magistrates and Council of the burgh of Portobello, as "the Parochial Board of the Statutory Parish of Portobello, under the Burial Grounds (Scotland) Act 1855," under the Income-Tax Acts, on the sum of £185, being excess of income over expenditure, as shown in their cemetery account, and brought out as follows:—

Burial Stances and Lairs sold . . . . .	£253	0	0
Interment dues received . . . . .	96	10	0
Sums received for borders, monuments, and plants . . . . .	52	12	6
Total Receipts.	£402	2	6
Less, Salaries and fees . . . . .	£85	0	0
Labourer's wages . . . . .	86	6	0
Taxes, insurance, &c. . . . .	45	14	0
	217	0	0
	£185	2	6

The Commissioners refused the appeal and confirmed the assessment, and at the appellants' request the present case was stated for the opinion of the Court of Exchequer. The case stated—The Portobello Cemetery was provided by the appellants under the Burial Grounds Act of 1855 in the year 1877 in consequence of the Parish Burial Ground at Duddingston Church and the burial ground at the *quoad sacra* Parish Church of Portobello being fully used and closed against the public.

In order to implement the obligation imposed on them by the said Burial Grounds (Scotland) Act to provide a public burial ground for the burgh of Portobello, one-half of which should be free ground for the parishioners, the appellants purchased from the Benhar Coal Company a piece of ground measuring three and a-half acres or thereby, at the price of £2977 (with a nominal feu-duty), which was enclosed and laid out as a burial ground or cemetery at a cost of £3772.

The appellants having no means of making these outlays except by assessing the ratepayers and mortgaging the assessment, borrowed from the Standard Insurance Company, on the security of the rate, the sums of £6300 and £450.

The assessing and borrowing powers are contained in the 26th and 27th sections of the said Act, which provide that the expenses incurred by the parochial board in carrying the Act into execution, in so far as the sums received for exclusive right of burial, or as fees or other payments in respect of interments shall be insufficient, shall be raised by assessment to be levied in the same way as the rate for relief of the poor; and that it shall be lawful for the parochial board to borrow any money required for providing and laying out any burial ground under the Act, and to charge the future assessments under the Act with the payment of such money, and the interest thereon, provided that there shall be paid in every year in addition to the

interest of the money borrowed and unpaid, not less than one-twentieth of the principal sum borrowed, until the whole is discharged.

The appellants have assessed the ratepayers every year since 1877 to provide for the amount of the annual deficiency, the rate being for six years 4d. per £, for four years 3½d. per £, for two years 2½d. per £. The balance of the debt is now £2768.

The appellants contended that their case is distinguishable from the cases of *The Paddington Burial Board* and *The Edinburgh Southern Cemetery Company* on the following grounds—(1) In the *Paddington* case the money required for the purchase of the ground was borrowed from the Public Works Loan Commissioners and was repaid, and there was no income-tax imposed until after the loan had been repaid, and then it was held by the Court that the cemetery was carried on for the benefit of the ratepayers. But in the present case that stage has not yet been arrived at, and the appellants conceive that so long as there is a necessity to tax the ratepayers, the decision in the *Paddington* case does not apply. (2) In *The Edinburgh Southern Cemetery* case the Court dealt with a commercial company trading in the lairs for profit to the shareholders; but in the present case the appellants are acting without regard to profit under compulsion of an Act of Parliament, which requires them to provide a public burial ground and to assess the ratepayers for that purpose, and until they attain the position of not requiring to assess it cannot be maintained that there is any pecuniary benefit. When the time comes that the ratepayers are relieved from taxation it may be better contended by the assessor that the *Paddington* case should apply.

The Surveyor of Taxes, Mr Philip Sulley, maintained in support of the assessment that the Corporation of Portobello carry on an actual business as proprietors of the cemetery, and that the result of their trading for the year to Whitsunday 1889 was an excess of income over all expenditure of £185, 2s. 6d., and that the assessment was rightly made on this amount, in addition to the assessment separately made upon the interest paid out of the rate. He referred to the case of *The Mersey Docks and Harbour Board v. Lucas*, No. 64 Tax Cases, as showing that surplus income was assessable as profit, without reference to the manner in which such surplus income was applied. Further, that the distinction sought to be established between the present case and that of *The Paddington Burial Board v. Commissioners of Inland Revenue*, No. 66 Tax Cases, and 15 Q. B. D. 9, was not real or effective. In that case the profit earned by the burial board was applied to the relief of the poor rates; here to the relief of the actual cemetery rate, which must be levied at a considerably higher rate were it not for the profit earned in the working of the cemetery.

The Commissioners were of opinion that the appeal fell to be decided in conformity with the above decisions.

The appellant referred to the following additional authorities at the discussion—*Glasgow Corporation Water Commissioners v. Solicitor of Inland Revenue*, May 26, 1875, 2 R. 708; *Glasgow Corporation Water Commissioners v. Miller*, January 22, 1886, 3 R. 489; *Edinburgh Southern Cemetery Company v. Surveyor of Taxes*, November 29, 1880, 17 R. 154; *Attorney-General v. Black*, January 26, 1871, 6 Exch. 78 and 308.

At advising—

LORD PRESIDENT—I think this case a very clear one. The profit is distinctly shown in the case to amount to £402 in all. It arises from moneys paid for burial stances and lairs sold; that is the first item, and that is a source of profit which is just in the same position as the profit in the case of the *Edinburgh Southern Cemetery*. And so also the interment dues—the second branch—that is also a source of profit which occurred in that case. The third item is for borders, monuments, plants. Now, the profit is earned by certain work performed by the Burial Board or its officers, and of course they are quite entitled to deduct from the amount of profits the expense of earning them, or what may be called the working expenses, which consist of salaries and fees, labour and wages, taxes, insurance, and the like. It is proposed also by the appellants that there should be deducted from the amount of profits the interest upon money borrowed. Now, I think that is founded upon an entire mistake, because if the interest upon borrowed money was to be deducted from the amount of the profits before ascertaining the assessable profits for income-tax, that would be to allow the Burial Board in paying the interest upon its debt to deduct the income-tax from that interest in a question with the creditor, and not to account for it to the Crown. That is a thing that of course nobody is entitled to do, but the proposal made on the part of the appellant would amount practically to that result, and therefore it is quite plain that, even apart from the express words of the statute, that interest cannot possibly form a proper deduction in estimating the assessable profit. That being so, it is really unnecessary to go further into the case, because the whole matter is settled by authority. Taking the *Mersey Dock* case, the *Paddington* case, and the *Edinburgh Southern Cemetery* case, I think it is quite impossible to escape from the conclusion that the whole of this profit is assessable under Schedule A, No. 3, rule 3. And therefore I am for refusing the appeal.

LORD SHAND and LORD M'LAREN concurred.

LORD ADAM was absent.

The Court affirmed the determination of the Commissioners.

Counsel for the Appellants—Lorimer, Agent—R. P. Stevenson, S.S.C.

Counsel for Surveyor of Taxes—Young, Agent—The Solicitor of Inland Revenue.

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Thursday, July 10.

## FIRST DIVISION.

[Lord Kyllachy, Ordinary.]

GODFREY v. W. & D. C. THOMSON.

*Reparation—Slander—Issue—Innuendo.*

Terms of a newspaper article which it was held would not admit of being construed as representing (1) that the pursuer had entered into a dishonest arrangement to sacrifice his political principles for the sake of pecuniary gain; (2) that he had obtained liquor by falsely and fraudulently representing himself to be a *bona fide* traveller, and had thus violated the statutes anent the sale of drink; (3) that he had drunk alcoholic liquors to such excess as to produce intoxication.

A newspaper published an article referring to certain persons who had lately held a political meeting. The article concluded with these words—“Now one of them has ‘left the town.’ Any information as to his whereabouts will be thankfully received by a sorrowing landlord, the proprietor of the hall, who now concludes that a Tory Cleon is no more profitable as a tenant than a Socialist Boanerges.”

One of the persons attacked brought an action against the proprietors and publishers of the newspaper, averring that this paragraph was meant to refer to him.

Held that the paragraph was slanderous and could be innuendoed as representing that the pursuer, being liable as tenant or otherwise to pay the rent of the hall used for said meeting, had secretly left the town without leaving any address, and without making provision for payment of said rent, for the purpose of defrauding the proprietor of the hall.

On Saturday 19th April 1890 the following article appeared in the *Dundee Weekly News*—“A few weeks ago a local ex-councillor, whose views political are well known to have a decided Conservative twist, imported from the far west the champion bantam of the Tory corner of the controversial middenhead on Glasgow Green. On such as could be induced to listen to them in our own city (fledgling city) they poured their eloquence in copious floods like the overflow of a sewage farm, and then they hied them to the country, lectured the benighted Forfarians on the error of their Gladstonian ways, and to such as dwell in Kirrie preached the glad tidings of the gospel of coercion for Irishmen only.

“Back again in Juteopolis. A commodious hall was hired in the centre of the city, and the illustrious stranger advertised to perform in public on the afternoon and evening of a certain Sunday, each performance to be preceded by an open-air ‘display’ in defiance of the ‘law and order’ which it is the object of his political creed to maintain. This latter ‘function,’ how-

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