

him which he might let. That which could be converted into money might reasonably be regarded as money, but that is not the case before us.

Although the question raised on this occasion is on a claim for abatement I think it would equally arise on an assessment under either of the Schedules D and E. For the reasons given by Lord Adam I am of opinion that the occupation of this house does not fall within the description of "salaries, fees, wages, payments, profits, or emoluments," in the sense in which these words are used in the Act.

I think therefore that the judgment appealed from should be reversed, and that of the Commissioners affirmed.

The House ordered and adjudged that the interlocutor appealed from be reversed, with expenses in both Courts.

Counsel for Appellant—Sir H. Davey, Q.C.—Guthrie. Agents—Loch & Goodhart, for Tods, Murray, & Jamieson, W.S.

Counsel for the Respondent—The Lord Advocate—Solicitor-General for Scotland. Agent—W. H. Melvill, Solicitor for England of the Board of Inland Revenue, for David Crole, Solicitor for Scotland of the Board of Inland Revenue.

## COURT OF SESSION.

Tuesday, March 15.

### FIRST DIVISION.

[Lord Wellwood, Ordinary

#### COUNTY COUNCIL OF THE COUNTY OF LANARK v. INLAND REVENUE.

*Valuation Roll—Expenses Connected with Printing Valuation Roll — Valuation Act 1854 (17 and 18 Vict. c. 91), secs. 3, 18 — Valuation Act 1857 (20 and 21 Vict. c. 58), sec. 1 — Registration Amendment (Scotland) Act 1885 (48 Vict. c. 16), sec. 12 — Local Government (Scotland) Act 1889 (52 and 53 Vict. c. 50), sec. 83, sub-sec. 3.*

*Held* that the expenses connected with printing a county valuation roll where the Land Valuation Assessor is the Surveyor of Taxes, fall to be borne by the Inland Revenue.

Since the passing of the Act 20 and 21 Vict. c. 58 (1857) the valuation roll of the county of Lanark has been made up by the Surveyors of Inland Revenue, and the expenses of making up the roll have been defrayed by the Board of Inland Revenue. On October 21, 1890, the County Council of the county of Lanark—to whom the powers and the duties of the Commissioners of Supply have been transferred under the Local Government (Scotland) Act 1889—resolved, in virtue of the provisions of the Registration Amendment (Scotland) Act 1885 (48 Vict. c. 16), sec. 12, that the valuation roll of the county should be printed for such a period of years, not exceeding

ten, as their finance committee might decide upon. The finance committee fixed five years. Arrangements for having the roll printed were accordingly made, when the controller of Inland Revenue forbade the Surveyors of Taxes as Land Valuation Assessors to furnish the printers with MS. copy of the roll for 1891-92 until the said County Council should make payment to the Inland Revenue of £80 for the extra work and expense connected with the correction of the proofs and revision of the first printed roll. The matter being urgent the County Council paid the sum demanded under protest, and afterwards brought an action against the Lord Advocate as representing the Inland Revenue for repayment of the same.

The Acts relied upon in support of the action are fully set forth and the appropriate clauses quoted in the opinion of the Lord Ordinary.

The pursuers pleaded—“(1) The Surveyors of Taxes for the county of Lanark, as Lands Valuation Assessors for said county, being bound, in terms of the Acts 17 and 18 Vict. c. 91, and 20 and 21 Vict. c. 58, to make up the valuation roll of the county, the Commissioners of Inland Revenue were not entitled to require payment of the sum sued for as a condition of their doing so. (2) The pursuers having resolved that the valuation roll should be printed, the surveyors as assessors foresaid were bound to supply a MS. copy of the roll for the use of the printer, and to revise the proof print, without requiring from the pursuers the payment of the said sum.”

The defenders pleaded—“(1) The printing of the valuation roll and the work connected therewith being no part of the duty of Surveyors of Taxes as assessors in making up the roll, the payment required for their services on that account was properly and legally charged. (2) As the sum concluded for is only an adequate consideration for the work done by the assessors, the claim for repayment is not well founded. (3) The direction given by the pursuers to print the roll is subject to the approval of the Treasury, and in respect that the Treasury would insist on remuneration as a condition of their approval, the claim which is now made is untenable.”

Upon 12th February 1892 the Lord Ordinary (WELLWOOD) repelled the defences and decreed against the defender in terms of the conclusion of the summons.

“*Opinion.*—I am of opinion that the pursuers, the County Council of the county of Lanark, who are now in place of the Commissioners of Supply, are entitled to repayment of the sum of £80 sued for. That sum, which was paid under protest by the pursuers, represents, I understand, in the opinion of the Commissioners of Inland Revenue, the extra work and expense imposed upon the assessors and their clerks in connection with the first printing of a valuation roll for the county of Lanark for the year 1891-92, the assessors appointed by the pursuers being also officers of Inland Revenue.

"It appears that in exercise of the powers conferred upon them by section 12 of the Act 48 Vict. c. 16, which repealed and was substituted for section 10 of the Valuation Act 30 and 31 Vict. c. 80, the pursuers resolved that the valuation roll for the county should be printed. Accordingly the roll for 1891-92 was in course of being made up and printed, when on 10th July 1891 the assessors were instructed by the Comptroller of Inland Revenue not to supply a manuscript copy of the roll for 1891-92 for the use of the printers until the pursuers should make payment to the Inland Revenue of the sum of £80. The pursuers paid that sum under protest, and now demand repayment on the ground that the Inland Revenue Department had no right to exact it. It is unfortunate that a question about what appears to be a small matter should have arisen between two public departments, but having been raised it must now be decided. I think it lay on the defender to justify the interference of the Inland Revenue with the preparation of the roll, and in my opinion he has failed to do so.

"The statutory provisions which require to be considered are as follows—By the third section of the Valuation Act of 1854, 17 and 18 Vict. c. 91, the Commissioners of Supply are empowered to appoint one or more fit persons to be assessors or assessor for the purposes of the Act, and by section 18 to defray the costs and expenses of making up valuation rolls by levying assessments for the same.

"By the first section of the Valuation Act of 1857 (20 and 21 Vict. c. 53) it is enacted as follows—'1. It shall be lawful for the commissioners of supply of each county, and the magistrates of each burgh in Scotland respectively, if they shall think fit, to appoint the officer or officers of Inland Revenue having the survey of the income tax and assessed taxes within such county or burgh, to be the assessors or assessor for the purpose of the said Act; and such officer or officers when so appointed, as long as such appointments remain unrecalled, shall in all respects and for all the purposes stand in the place of, and shall have, use, exercise, and perform all the powers and duties of the person or persons whom the said commissioners and magistrates respectively are authorised to appoint for the like purposes, under or by virtue of the third section of the said Act; and in such case the expense attending the making up of valuation rolls by such officer or officers shall be defrayed by the Commissioners of Inland Revenue, or as the Commissioners of Her Majesty's Treasury shall direct in that behalf.'

"It will be observed that this section contains important and clear provisions in regard to the duties of an officer of Inland Revenue when appointed Valuation Assessor, and the mode in which the expense of making up valuation rolls shall in such a case be defrayed. The officer of Inland Revenue is to perform without qualification all the duties incumbent on any other assessor appointed by the commissioners

of supply; and the whole expense of his making up the valuation roll which would otherwise have been defrayed by assessment, is, without qualification, to be defrayed by the Commissioners of Inland Revenue or the Treasury. The arrangement thus made was advantageous to both departments, and I think it may safely be assumed that the Treasury obtained a sufficient equivalent for the expenses which they undertook.

"The next enactment to be noted is the tenth section of 30 and 31 Vict. cap. 80; but it is unnecessary to quote it, as it was repealed by the 12th section of the Registration Amendment (Scotland) Act 1885 (48 Vict. cap. 16), which was substituted for it, and runs as follows:—'12. It shall be lawful for the commissioners of supply of any county, or the magistrates of any burgh, to resolve at any meeting of their number, ordinary or special, duly called, and by a majority of those attending and voting, that the valuation roll of such county or burgh shall be printed for any period of years not exceeding ten, and it shall be lawful for such commissioners or magistrates to enter into contracts for printing the same, and the expenses of such printing shall be deemed to be part of the expenses of making up such roll, and shall be assessed for and levied accordingly: Provided always, that notice of the intention to move such resolution shall be inserted in the notice calling the meeting at which it is to be moved.'

"It was under the powers conferred by this section that the pursuers resolved that the roll should be printed.

"Two views may be taken of the expenses represented by the £80 now sued for. They may be regarded (1) as part of the expenses of printing, or (2) as representing additional expense and trouble caused by the pursuers resolving that the roll should be printed. The latter view is the more favourable to the defender, because it does not necessarily involve liability for the printer's account. I shall consider it first.

"1. If the sum sued for is not held to be part of the expense of printing, then it is simply a part of the expense of making up the valuation roll which if the assessors had not been officers of the Inland Revenue the pursuers would have had power to defray by assessment, apart from the provisions of the Act of 1867 and the Act of 1885. Having statutory authority to print the roll, they would have been entitled to order their assessors to make it up on that footing; and if necessary, they could have assessed for the additional expense, if any.

"If that be so, then under the first section of the Valuation Act of 1857, the officer of Inland Revenue, acting as and charged with all the duties of an assessor, would have been bound to obey such lawful orders given to him by the commissioners of supply, and the additional expense, if any, would have fallen upon the Inland Revenue Department.

"2. This may perhaps be a narrow ground

of judgment. I am prepared however, to hold, if necessary, that even if this additional expense is to be considered part of the expense of printing the roll, that expense must be borne, not by the pursuers, but by the Department of Inland Revenue, or the Treasury. This is in accordance with the express words of the statutes. Under the Act of 1854 the commissioners were empowered to defray the expenses of making up valuation rolls by assessment. The Act of 1857 throws that on the Commissioners of Inland Revenue where their officer is assessor. By the Acts of 1867 and 1885 it is provided that the expense of printing shall be deemed to be part of the expenses of making up such roll. No doubt it is added that the expense of printing shall be assessed for and levied accordingly; and it is also true that the latter enactments do not refer to the Act of 1857. But this is not material, because the first section of that Act, as I read it, simply provides, that if the commissioners appoint an officer of Inland Revenue as assessor, he shall come in the place of and perform all the duties which at the time any other assessor would have had to perform; and that the 'expense attending the making up of valuation rolls by such officer,' whatever it may be, shall be defrayed by the Commissioners of Inland Revenue or the Treasury. That enactment not having been repealed or modified, must I think, receive effect.

"If the defender's contention were correct, it would involve a double account. The department of Inland Revenue would have to pay the expenses of making up the valuation roll, in so far as they could be distinguished from the expense of printing and the additional labour rendered necessary in connection with printing, while the pursuers would have to levy an assessment for the rest. I find no warrant in the statutes for any such division of the accounts. On the contrary, the statutes contemplate that the expenses of making up the valuation roll shall be indivisible, and shall fall to be defrayed, either wholly by assessment, or wholly by the Commissioners of Inland Revenue or the Treasury.

"The defenders also founded upon section 83, sub-section 3, of the Local Government Act 1889 (52 and 53 Vict. cap. 50), which provides that "where the assessor is an officer of Inland Revenue any regulations made by the county council with respect to his duties shall be subject to the approval of the Treasury." I do not think, however, that the orders given by the pursuers in connection with the preparation of the printed roll can be regarded as a regulation in the sense of this clause. They had statutory authority to order the valuation roll to be made up and printed, and in instructing their assessors to prepare the roll and revise the proofs, they were not, I think, issuing regulations, but giving orders for the performance of certain new, it may be additional duties, which they were empowered by statute to impose on the assessors.

"If this defence were well founded, the

preparation of the roll might be stopped at any moment, until the county council succeeded in satisfying the Treasury as to terms.

"In conclusion, I would only say that I hope the matter in dispute, which is really a small one, may in the public interest be adjusted. Although the expense of printing the roll for the first time may be considerable, the advantage in future years to all concerned will be great, and will no doubt compensate for any additional work and expense which may have been rendered necessary during the first year."

The defender reclaimed, and argued—  
(1) The expenses connected with the printing of the roll were not included in the expenses of making up the roll. Section 12 of the Registration Amendment (Scotland) Act 1885 expressly provided for an assessment to cover the former expenses.  
(2) Under the Local Government (Scotland) Act 1889, section 83, sub-section 3, the county council were not entitled to give the directions to the assessors with regard to getting the roll printed and revised without the approval of the Treasury, which had not been obtained.

Counsel for the respondents were not called upon.

At advising—

LORD PRESIDENT—I think this is a perfectly clear case.

By the Valuation Act of 1854 the duty of making up the valuation roll in each county or burgh is imposed upon the local authority for the county or burgh. They are authorised for the purpose of making up the roll, to appoint an assessor whom they are to remunerate, and for whose remuneration, along with the expense of making up the roll, they are authorised to impose a rate, half on owners and half on occupiers. That valuation roll, as has been declared by judgment of this Court, was available for local taxation, and accordingly it being a roll for local taxation, was prepared by the local authority and the cost borne by local rates. But as experience grew, it was observed by the Legislature that there was an inconvenience in there being imperial rates on owners and occupiers, and local rates on owners and occupiers, and yet the machinery for the assessment being different the one from the other, and accordingly—there being a double method in existence causing double cost and creating some of the embarrassments which necessarily would arise from want of uniformity in the standard of valuation for local rates on the one hand and imperial taxes on the other—in 1857 it was provided that if any local authority thought good to appoint as their assessor the Surveyor of Taxes for the district, then by way of return for their, to a certain extent, parting with the complete latitude of their choice, they should have the expense of making up the roll borne by the Inland Revenue. The plain English of the Act of 1857 is, that if any local authority did not exercise its right of selecting a different assessor—for

it was still in their power to exercise the option allowed in the Act—by appointing the Surveyor of Taxes for the district they should be relieved of the expense of the roll. But that was optional, and accordingly, as a matter of course, the Act of 1857 left standing the whole machinery by which the local authority was provided with the power of levying rates to meet the expense of what was the primary type of case—the case where they had an assessor of their own. The Act of 1857 provides that the local authority shall be relieved of that expense where they appoint the Surveyor of Taxes for the district as assessor, and that the expense shall be defrayed by the Inland Revenue. Now, as time went on, some counties and some boroughs exercised this power and others did not. We have heard I think to-day—at least it is matter of common knowledge—that now that the system has developed, and the advantages of combining the offices are sufficiently seen, the great majority of the local bodies have the Surveyors of Taxes for their assessors, but in 1867 it was found that it was convenient and desirable that the local authorities should be authorised to have the valuation roll printed, and accordingly they are authorised by the statute to which we have been referred, in 1867, to print the valuation roll, and the expense of such printing was to form part of the expenses of making up the roll. Now, I pause at the Act of 1867 to observe that I should have thought it perfectly clear that the expense of printing the valuation roll being declared to form part of the expenses of making up the roll, was to be assessed for and defrayed in the same way as the rest of the expenses, and that in the case where the office of assessor was combined with that of Surveyor of Taxes, it was to be defrayed by the Inland Revenue. In 1885 an Act was passed which enabled local authorities to resolve that the valuation roll should be printed for a series of years, and there is, as I think the Lord Ordinary rightly points out, a specific re-enactment of the provisions arranging for the cost of the printing whether for a period of years or not. Mr Mackay has very properly called attention to the differences between the Act of 1867 and the Act of 1885. They are appreciable, but I do not think that they affect the net result, which was that in 1885, as in 1867, the expense of printing was declared to be part of the expenses of making up the roll.

Now, it seems to me that, so standing the legislation, the process of reasoning by which the pursuer is entitled to prevail in this action is of the simplest possible description. The expense of printing is said to be part of the expense of making up the roll which by statute is to be defrayed, in the case in hand, by the Inland Revenue. As printing is part of the expense, it of course is to be defrayed by the Inland Revenue. But Mr Mackay has pointed out that in the Acts which authorise printing there is a reference to the power of assessment, because these words are added, declaring that the expense of printing is to be

deemed to be part of the expenses of making up the roll, and “shall be assessed for and levied accordingly.” Well, that is a most natural provision, but it really adds nothing to the argument when it is considered that when relief was given under the Act of 1857, as regards the general expenses of the roll, there was no abrogation of the power of assessing on the part of local bodies. And so here there is not only no abrogation, but there is a confirmation of the existing powers, which of course were necessary for the cases where there was not a combination of the two offices, and where the county had to meet the expense itself. It is quite conceivable that, as printers’ bills must be paid for, a question might arise as to payment, and it was necessary that that should be provided for.

A second argument has been advanced which I think is more untenable. It is founded on the Local Government Act of 1889. In the 83rd section there are provisions which deal with the cases of local authorities exercising the power conferred on them of appointing as their assessor the Surveyor of Taxes. Such cases had become pretty frequent, and it cannot be doubted that in 1889 the burden thus imposed on the Treasury, owing to the growth of business in the assessor’s office and the various purposes which the assessor’s roll now performs, had made the bargain, so to speak, of 1857 less beneficial to the Inland Revenue than it was at that date. I discover traces of that in this enactment. There is a provision that, unless with the consent of the Inland Revenue, the assessor shall not be appointed. There is another to the effect that where the offices are combined, the amount of salary or allowance shall be subject to the approval of the Treasury. That is quite natural, because there was a danger that the new local authority might starve the office of assessor, looking for his being remunerated by the Treasury. Those were inconveniences which were very natural, and apparently they were suitably provided against. Then there is a third provision to the effect that where the assessor is an officer of the Inland Revenue, any regulations made by a county council with respect to his duties shall be subject to the approval of the Treasury. Now, can it be said that because the County Council of Lanark, in the exercise of its power under the Act of 1885, resolves to print the roll, its instruction to the assessor to get it printed is to be regarded as a regulation in the sense of this Act, so as to shift the burden which that statute had declared should go along with the other expense wherever that went? It appears to me that that is an impossible construction of the word “regulation,” or rather to force the word “regulation” into service to this extent that it would have the effect of defeating the direct provision of the statute of 1857.

I do not think there is any difficulty in arriving, by the short process of reasoning that I have referred to, at the conclusion that the Lord Ordinary is right.

LORD ADAM—I concur with your Lordship.

LORD M'LAREN—I am of the same opinion, and have no observations to make.

LORD KINNEAR—I am also of the same opinion. The 12th section of the Act of 1885, on which the argument of the reclaimer is rested, provides that the expense of printing shall be deemed part of the expenses of making up the roll, and shall be assessed for and levied accordingly. Now, that gives no specific power to assess irrespective of previous enactments, because we are referred back to previous legislation which authorises assessment for the expenses of making up the roll. When we go back to previous legislation we find that in the case where an officer of Inland Revenue, having the survey of the income-tax, is assessor, the expense of making up is not to be levied by assessment, but is to be defrayed by the Treasury. Therefore, when those two statutes are read together, it appears that the argument of the reclaimer involves this, that a reference to an existing rule of assessment implies a power to commissioners of supply, or county councils in their place, to levy an assessment for a purpose for which they were not entitled to levy any such assessment prior to the passing of the Act. It may be that in particular cases a county council may be entitled to levy assessments, as in cases existing, which would cover this expense, but they are certainly not entitled to levy assessments for the purpose of defraying expenses which the Legislature has put upon the Treasury, and that is the purpose for which the reclaimer maintains they ought to have been made. Mr Mackay said there might be circumstances involved in making contracts with printers which would not necessarily or properly fall within the enactment in the statute of 1857, which requires that the expenses attending the making up of the valuation-roll by such officer or officers shall be defrayed by the Commissioners of Inland Revenue or by the Treasury. I cannot say that I was satisfied with the illustrations that Mr Mackay gave us that such questions were likely to arise upon any such contracts as he indicated. It appears to me that it is sufficient for the purposes of this case that we have no such question involved, because the averment of the defenders upon which our judgment is challenged is, that the pursuer, while repudiating liability, paid the sum of £80 in respect of the services rendered by the assessor in printing the roll. Therefore the question that we have to consider in this case, and the only question is, whether the cost of the assessor's services in making up the roll is to fall upon the Treasury or upon the County Council? Upon that I have no doubt whatever, and I agree with your Lordship that the Lord Ordinary is right. The second point that has been put forward is also, I think, untenable for the reasons which your Lordship has indicated.

The Court adhered.

Counsel for Pursuers and Respondents—Guthrie—Dundas. Agents—Bruce & Kerr, W.S.

Counsel for Defender and Reclaimer—Mackay—Young. Agent—Solicitor of Inland Revenue.

Tuesday, March 15.

## FIRST DIVISION.

[Sheriff of Aberdeenshire.

C. & A. JOHNSTONE v. DUTHIE.

*Cautioner — Liberation — Bill — Giving Time.*

A cautioner granted a letter guaranteeing to see J "duly paid for all goods you may supply from and after this date to the order of C." When the account between J and C was closed, a considerable sum remained owing to J, for which the cautioner repudiated liability. J thereafter accepted bills at three months from C for the sum due, and C having become bankrupt before the bills were met, but after a portion of the debt had been satisfied by cash payments, J sued the cautioner for the balance. *Held* that J, by taking the bills and thereby giving time to C, had liberated the cautioner—*diss.* Lord M'Laren, who held that the cautioner having repudiated liability, J was entitled to make the best terms he could with C.

In March 1888 James Duthie, provision merchant in Aberdeen, disposed of his business to his brother-in-law John Reid Cormack, who had previously been his manager, and Cormack thereupon became tenant of Duthie's shop and took up his business. While he was in business, Duthie had been supplied with goods by Messrs C. & A. Johnstone, wholesale merchants in Aberdeen, and at the date when he transferred the business to Cormack he owed them a sum of £50.

On 2nd April 1888 Duthie granted Messrs C. & A. Johnstone the following letter of guarantee—"In addition to the account of £50 pounds due by me to you for goods supplied to my shop at 50 Summerfield Terrace, I hereby guarantee and undertake to see you duly paid for all goods you may supply from and after this date to the order of J. R. Cormack, to whom I have made over my business there." Goods were thereafter supplied to Cormack under this guarantee down to April 1890, when the account was closed.

On 19th November 1890 Cormack became bankrupt, and Messrs C. & A. Johnstone then brought an action against Duthie for payment of £137, 15s., being the balance admittedly due under the account.

The defender averred in answer in his statement of facts—"Cormack, as manager for the defender, had carried on a successful business in the Summerfield Terrace shop prior to March 1888. The grocery