

Friday, October 25.

FIRST DIVISION.

[Lord Stormonth Darling,
 Ordinary.

LORD ADVOCATE v. NORTH
 BRITISH RAILWAY COMPANY.

*Revenue—Conveyance on Sale Duty—Bad
 Debt Due to Purchaser as Consideration
 —Stamp Act 1891 (54 and 55 Vict. c. 39),
 sec. 57.*

By agreement confirmed by and embodied in a private Act a railway company purchased the undertaking of certain harbour commissioners. The consideration for the purchase was expressed to be, *inter alia*, that the railway company should “free and relieve the harbour commissioners of the whole debts, liabilities, contracts, obligations, and engagements of the harbour commissioners.” It was declared that the commissioners should be “wholly freed and relieved” from the said debts and obligations. At the date of the sale the whole liabilities of the commissioners practically consisted of (1) a certain sum due to the holders of harbour mortgages, and (2) a sum of over £300,000 due to the railway company, which had arisen from the company having been guarantors of the interest on the said mortgages, and having been obliged to pay the greater part thereof under their guarantee, the harbour revenues having all along been insufficient to meet it. In an action for stamp duty on a “conveyance or transfer on sale” calculated on the whole indebtedness of the harbour commissioners, the company, while admitting liability for duty on the sum due on the harbour mortgages, maintained that no duty was payable on the debt due to themselves, which, as they averred and offered to prove, was of no value and could never have been paid, and which, as they contended, formed no part of the consideration paid for the transference of the harbour. *Held* (*aff. judgment of Lord Stormonth Darling, Ordinary*) that the company were liable under section 57 of the Stamp Act 1891 for stamp duty on the whole indebtedness of the Commissioners.

By agreement between the North British Railway Company and the Bo’ness Harbour Commissioners the company purchased the whole undertaking of the Commissioners, with entry as at the date of the passing of an Act of Parliament confirming the agreement. By the second article of the agreement it was stipulated as the consideration for the sale and transfer that the defenders should, as from the date of entry, free and relieve the Harbour Commissioners of their whole debts, liabilities, obligations, and engagements, and should in addition pay to the Burgh Commissioners at the date of entry the sum of £1000, and also pay the further sum of £1000 per annum from 1st August 1899 until the completion

and opening of the new dock in course of construction at Grangemouth. This agreement was confirmed by the North British Railway (General Powers) Act 1900 (63 and 64 Vict. c. ccix.), and was set forth in the First Schedule thereof.

At the date of entry the debts of the Harbour Commissioners consisted of a capital debt of £266,458, 17s. 7d. due to various third parties as holders of harbour mortgages, a sum of £65, 8s. 8d. being interest due to a bank, and a sum of £303,376, 19s. due to the North British Railway Company in respect of payments made by them under a guarantee by which they had guaranteed the interest on the said harbour mortgages.

In the preamble to the North British Railway (General Powers) Act 1900 these several liabilities were narrated, and by section 64 of the Act it was provided that on and after the passing of the Act the whole mortgage debt and all other debts and liabilities, contracts, and engagements of the Bo’ness Harbour Commissioners should be taken over and assumed by the company, and that the Commissioners should be and were thereby wholly freed and relieved therefrom. The words of the section, so far as material, are quoted in the opinion of the Lord Ordinary, *infra*.

The Stamp Act 1891 (Schedule I.) imposes an *ad valorem* duty on a “conveyance or transfer on sale.” Section 57 provides—“Where any property is conveyed to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or encumbrance upon the property or not, the debt, money, or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the conveyance is chargeable with *ad valorem* duty.”

The Lord Advocate, on behalf of the Inland Revenue, brought an action against the North British Railway Company, concluding for payment of £3963, 10s. as *ad valorem* stamp duty on the conveyance or transfer on sale to them of the undertaking of the Bo’ness Harbour Commissioners, and certain other undertakings mentioned in the Special Act.

The company admitted liability for £1103, 15s., being the *ad valorem* stamp duty claimed on the transfer of the other undertakings last mentioned. They also admitted liability for *ad valorem* stamp duty on the amount of the harbour mortgages, and on the sum of £65, 8s. 8d. due to the bank. They refused payment of £1517, the *ad valorem* duty claimed on the debt due by the Harbour Commissioners to themselves.

In their defences they made the following averment:—“Explained that the sum of £303,442, 7s. 8d., upon which duty is also claimed, is (except to the extent of £65, 8s. 8d. as aforesaid) arrears of interest due by the Harbour Commissioners to the defenders as at 31st July 1900, and that the effect of the Act of Parliament and the transfer to the defenders of the harbour undertaking was to cancel that debt of £303,376, 19s. The defenders for many years

have been guarantors of the interest payable upon the harbour mortgages, and as the harbour revenues have all along been insufficient to pay the interest on the mortgages, the defenders have had to pay it or the greater part of it. The said interest paid by the defenders under their guarantee, accumulated with 5 per cent. compound interest, amounted at 31st July 1900 to £303,376, 19s., and formed a claim at the instance of the defenders against the Harbour Commissioners. The Harbour Commissioners, at the date of the passing of the Act of Parliament, were hopelessly insolvent, and the defenders' claim of £303,376, 19s. was of no value, and could never have been paid, and will not and cannot be paid. The Act of Parliament cancelled it. Payment by the defenders to themselves of the said sum of £303,376, 19s. formed no part of the consideration paid for the transfer of the harbour, and no *ad valorem* conveyance duty is due by the defenders on the said sum of £303,376, 19s."

They pleaded—" (1) As the sum of £303,376, 19s. condescended on formed no part of the consideration paid by the defenders for the transfer of the harbour, they are not liable for conveyance-duty in respect thereof. (2) Conveyance-duty not being due in respect of the said £303,376, 19s., the defenders are entitled to absolvitor *quoad* the duty sued for applicable to that sum."

On 10th July 1901 the Lord Ordinary (STORMONTH DARLING) pronounced the following interlocutor—" Repels the defences: Finds that the amount of the consideration on which *ad valorem* conveyance on sale stamp duty is chargeable is £792,605, 10s. 7d. sterling, and that the amount of such duty is £3963, 5s. sterling: Decerns against the defenders for payment of the said sum of £3963, 5s. sterling, with interest thereon at 5 per cent. per annum from 6th August 1900 till payment: Finds the pursuer entitled to expenses."

Opinion.—" This summons concludes for the sum of £3963, 10s., being the whole amount of stamp-duty claimed under the Stamp Act of 1891, in respect of the 'conveyance or transfer on sale' of the various properties acquired by the defenders under their General Powers Act of 1900. But the real dispute between the Crown and the defenders relates only to the sum of £1517, and that depends on the question whether a sum of £303,376, 19s. forms part of the consideration for the transfer of the undertaking of the Borrowstouness Harbour Commissioners. There is no dispute that the transfer of the harbour to the defenders effected by the Special Act was a 'conveyance or transfer on sale,' and therefore the English cases to which I was referred are of no real assistance. The only relevant proposition to be extracted from them is, that in all questions of liability for this kind of stamp duty, the substance of the transaction is the thing to be looked at. But, of course, the substance of the transaction must be ascertained from the deed of conveyance, or, as in this case, from the Act of Parliament which takes its place,

with the aid of such documents as are imported by reference into the one or the other.

" Now, the minute of agreement between the Harbour Commissioners and the Railway Company forms the first schedule to the Special Act. After providing that the Commissioners agree to sell and transfer, and that the Company agree to purchase and take over, upon the terms and conditions hereinafter set forth, the whole undertaking of the Commissioners, the agreement goes on to provide that 'as the consideration for such sale and transfer the company shall undertake, as from the date of entry, and shall free and relieve the Harbour Commissioners of the whole debts, liabilities, contracts, obligations, and engagements of the Harbour Commissioners,' and shall in addition pay to the Burgh Commissioners of Bo'ness two comparatively small sums about which there is no dispute. What the Act itself does is by section 54 to confirm this agreement, and to vest the undertaking in the defenders accordingly. This clause is followed by others framed for the purpose of carrying out the agreement. In particular, section 60 provides that all persons who immediately before the transfer owed moneys to the Commissioners shall after the transfer pay the same to the company, and that all debts and moneys which immediately before the transfer were due or recoverable from the Commissioners, or for the payment of which the Commissioners were, or but for this Act would be, liable shall be paid by or be recoverable from the company. Section 63 provides that on the completion of the transfer the Commissioners shall *ipso facto* be dissolved, and section 64 provides that on and after the passing of the Act the whole mortgage debt and all other debts, liabilities, contracts, and engagements of the Commissioners shall be taken over and assumed by the company, and that the Commissioners shall be, and they are hereby, 'wholly freed and relieved therefrom.' In the preamble of the Act there is a recital that the liabilities of the Commissioners as at 31st July 1899 consisted of a mortgage debt of £235,000, and for temporary loans and interest due to the company (*i.e.*, the defenders) and other debts a further sum of £310,584, 4s. 9d., making a total of £545,584, 4s. 9d. It appears that these liabilities, so far as consisting of indebtedness to the defenders, arose from the defenders having been for many years guarantors of the interest payable on the harbour mortgages, and having been called upon to pay the greater part of that interest.

"The sums so paid by the company, with compound interest at 5 per cent., amounted as at 31st July 1900 to the figure which I have already mentioned as raising the point in dispute, *viz.*, £303,376, 19s. The defenders seek to distinguish between that sum and the capital debt of the harbour. They do not deny that the latter forms part of the consideration on which stamp duty is payable, but they say that the debt due to themselves was a bad debt and formed no

part of the consideration. Now, when a creditor takes over the property of his debtor in consideration of his debt, whether in whole or in part, section 57 of the Stamp Act provides that the debt 'is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the conveyance is charged with *ad valorem* duty,' and it is of course no answer to a demand for such duty to say that the debt is a bad debt, for that is the common case in which such a transaction takes place. The real question therefore comes to be, not whether the parties believed that the debt would never be paid, but whether the words of the Act are apt to include this debt, whatever its value, or whether, on its true construction, the Act only includes the other debts of the Commissioners, *i.e.*, the debts due to persons other than the defenders.

"Now, if that be the true question, I find it very difficult to resist the view that the debts mentioned in the agreement and in the Act are the whole debts of the Commissioners. Nothing can be wider than the phrase used in the agreement, 'the whole debts, liabilities, contracts, obligations, and engagements of the Harbour Commissioners.' It is said that the verbs which govern these comprehensive substantives are not such as would naturally be applied to debts in which the acquiring company were the creditors; and it is certainly a rather roundabout way of cancelling a debt to say that the creditor shall 'undertake it,' and shall 'free and relieve' the debtor of it. But then the defenders themselves aver that the statute did cancel the debt, and I think it would be impossible to say anything else, unless it could be shown that, notwithstanding the Act, the debt to the defenders remained in force for what it was worth. How can that be said when the Commissioners are wholly freed and relieved from all their liabilities? Nor can I understand why the debt due to the defenders should have been specifically mentioned in the preamble, unless it was meant to be included along with all the other liabilities of the Commissioners. If that be so, I think there is an end of the case. It may be that the defenders in their own minds viewed the interest which they had paid on the mortgage debt as gone past recovery, and yet were willing to undertake payment of the principal on consideration of acquiring the property of the harbour. But that circumstance by itself would not make the new obligations which they undertook the sole measure of the consideration. It cannot be assumed that the Harbour Commissioners would have agreed to the transfer unless their whole obligations had been taken off their shoulders, and it seems to me that the effect of the Act was to do this.

"I shall therefore repel the defences, and grant decree as concluded for."

The defenders reclaimed, and argued—This was an *ad valorem* duty, and therefore the real amount of the consideration should be looked at. The purchasers should not be charged on the debt due to themselves,

because it was cancelled by the transaction *confusione*. Even if in the ordinary case where a subject was transferred by debtor to creditor in satisfaction of the debt, duty might be exigible under section 57 of the Stamp Act, 1891, this was an exceptional case. The debt was one for which, as they averred and offered to prove, the reclaimers could never receive a farthing. It was therefore not a real but only a nominal part of the consideration, and duty was not exigible in respect of it—*Mortimore v. Inland Revenue* (1864), 2 Hurlstone & Coltman, 838, 33 L.J. Ex. 263; *Attorney-General v. Brown* (1849), 3 Exch. 662; *Great-Western Railway Company v. Commissioners of Inland Revenue* (1894), 1 Q.B. 507.

The respondents supported the reasoning of the Lord Ordinary.

At advising—

LORD PRESIDENT—The question in this case is whether a sum of £303,376, 19s. forms part of the consideration for the transfer of the undertaking of the Bo'ness Harbour Commissioners to the North British Railway Company, and whether stamp duty is consequently payable upon that sum under the Stamp Act 1891.

For a considerable time prior to 1900 the Railway Company had certain relations with the Bo'ness Harbour Commissioners, and had guaranteed payment of the interest on the mortgage debt due by these Commissioners.

By minute of agreement entered into between the Bo'ness Harbour Commissioners and the Railway Company, dated 10th and 15th November 1899, the Commissioners agreed to sell and transfer to the company, upon the terms and conditions therein set forth, and the company agreed to purchase and take over from the Commissioners, the harbour undertaking; and it was by the second article of that agreement stipulated that "as the consideration for such sale and transfer the company shall undertake from the date of entry, and shall free and relieve the Harbour Commissioners of, the whole debts, liabilities, contracts, obligations, and engagements of the Harbour Commissioners," and shall in addition pay two sums of £1000 each therein mentioned. This agreement was confirmed by the North British Railway (General Powers) Act 1900, and it was declared by section 54 of that Act, that on the passing of it the Bo'ness harbour undertaking should be, and that the same was thereby, transferred to and vested in the company for all the estate, rights, and interest of the Bo'ness Harbour Commissioners and the Burgh Commissioners therein. It was further declared by section 64 of the Act that on the passing of it the whole mortgage debt and all other debts and liabilities, contracts, and engagements of the Bo'ness Commissioners should be taken over and assumed by the company, and that the Bo'ness Commissioners should be, and were thereby, wholly freed and relieved therefrom. It was also declared by section 65 of the Act that the Bo'ness Commissioners should up to the date of transfer bear, pay,

and satisfy all their engagements and liabilities fairly and properly charged against revenue. I do not understand it to be disputed that the transfer of the harbour undertaking to the company, effected by the Act, was a "conveyance or transfer on sale" within the meaning of the Stamp Act 1891.

At 31st July 1900 the capital debt due by the Bo'ness Harbour Commissioners was £266,458, 17s. 7d., and the arrears of interest on that debt, which the Commissioners had been unable to pay to the creditors therein, and which the company had paid to these creditors under their guarantee, amounted at that date to £303,376, 19s. Two further sums of £1000 each were also payable by the Harbour Commissioners, as to which no question arises in this case.

The Inland Revenue authorities did not insist on payment of duty on account of one of the two sums of £1000 each, above mentioned, but they claimed duty on the amount of the capital debt and on the other sum of £1000 mentioned, and so far their claims are not disputed by the company. The Inland Revenue authorities also claimed duty on the £303,376, 19s. of arrears of interest due by the Harbour Commissioners to the company as at 31st July 1900, in respect of the company having paid that interest to the creditors in the harbour debt under a guarantee given by the company to these creditors; and the company maintains that duty is not payable upon that sum on the grounds, as I understand, (1) that that debt is not due to other creditors but to the company; (2) that the effect of the Act of Parliament and of the transfer of the harbour undertaking to the company was to cancel that debt; and (3) that the debt was of no value, inasmuch as the Harbour Commissioners could never have paid it. It does not, however, appear to me that any of these contentions are well founded. If the debt had been due by the Harbour Commissioners to anyone else than the company, I do not think that it could have been disputed that duty was payable in respect of it, even although it was bad in the sense that the debtors were unable to pay it, and it does not appear to me to make any difference that it was due to the company. The agreement scheduled to the Act makes it clear that the debt formed part of the consideration for the sale, and the circumstance that it was a bad debt in the sense already stated does not appear to me to make any difference. In this connection I may refer to section 57 of the Stamp Act 1891, which declares that "where any property is conveyed to any person in consideration wholly, or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, the debt, money, or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the conveyance is chargeable with *ad valorem* duty." The company maintains that the Act relates only to debts due by the Commissioners to

persons other than the company, but I find no warrant for such a limitation. The circumstance that the debt in question may have been regarded as a bad debt is not, in my judgment, material; and there is no reason to suppose that the Commissioners would have agreed to the transfer of the harbour undertaking unless they had been relieved of this debt, as well as of their other obligations. A liability is none the less a debt because the debtors may be unable to pay it in whole or in part. I am unable to find any ground for the contention that the debt was for the purposes of the present question cancelled by the transfer to the company.

For these reasons I am of opinion that the judgment of the Lord Ordinary is right.

LORD M'LAREN and LORD KINNEAR concurred.

LORD ADAM not having been present at the hearing gave no opinion.

The Court adhered.

Counsel for the Pursuer and Respondent—Dundas, K.C.—A. J. Young. Agent—P. J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for the Defenders and Reclaimers—Jameson, K.C.—Grierson. Agent—James Watson, S.S.C.

Friday, October 25.

FIRST DIVISION.

BROWN v. SMITH.

Revenue — Income-Tax — Exemption — Buildings Used for County and Municipal Government.

Commissioners under a private Act of Parliament were vested in certain subjects consisting of a county hall and other rooms, certain of which were used by the town-clerk of the head burgh of the county, and certain others by the procurator-fiscal of the Sheriff Court. The hall was chiefly used for meetings of the county council and other local bodies, but occasionally as a court of justice. The procurator-fiscal and the town-clerk conducted, in the rooms occupied by them respectively, not only their official business, but also private business as law-agents. For the rooms occupied by the town-clerk a rent was paid to the Commissioners. In a case stated for appeal, *held* that, as the subjects were not exclusively used for the administration of justice, the Commissioners were liable to income-tax under Schedule A.

This was a case stated for appeal by the Commissioners of Income-Tax for the Upper Ward of Lanarkshire at the instance of John Brown, Surveyor of Taxes, to determine whether the Commissioners acting under the Act 3 and 4 Will. IV. cap. cviii.,