

on the regulations printed in the appendix taken from the Railway Company's timetable. But in the case of *Handon* the special stipulation was part of the contract itself. Here the mere reference to a scale of rates shown in the company's time-tables and indicated in the conditions printed on the back of the ticket cannot be held to make them part of the contract. The case does not fall under the case of *Handon*, but, as your Lordships have said, under the case of *Harris* (1 Q.B.D. 515).

LORD M'LAREN and LORD PEARSON were sitting in the Extra Division.

The Court pronounced this interlocutor—

“Sustain the appeal: Recal the interlocutor of the Sheriff-Substitute dated 10th August 1908: Also recal the interlocutor of the Sheriff dated 24th March 1908, in so far as it finds the defenders liable in expenses: Find in fact [*in terms of the findings in fact quoted supra*]: Find in law (1) that the pursuers are bound by the conduct of the said R. H. Lyons as their agent and are precluded from denying that the goods in question were deposited with the defenders on the terms contained on the ticket delivered to him; and (2), that the defenders accepted the said goods on deposit subject to the conditions above specified and are not responsible for any loss or damage suffered by the pursuer from the loss of the same: Therefore assolvie the defenders from the conclusions of the action, and decern.”

Counsel for the Pursuers (Respondents) — Morton — Kirkland. Agent — Norman M. Macpherson, S.S.C.

Counsel for the Defenders (Appellants) — Morison, K.C. — Wark. Agents — Hope, Todd, & Kirk, W.S.

Friday, June 18.

FIRST DIVISION.

[Court of Exchequer.

DUNCAN'S EXECUTORS v. INLAND REVENUE.

Revenue—Income Tax—Annuity—Profit Accruing by Reason of Office—Grant of Annuity by Aged and Infirm Ministers' Fund—Income Tax Act 1842 (5 and 6 Vict. cap. 35), secs. 102 and 105—Income Tax Act 1853 (16 and 17 Vict. cap. 34), Schedules D and E, and sec. 5.

The Income Tax Act 1853 enacts that income tax shall be paid, Schedule (D) “. . . For and in respect of all interest of money, annuities, and other annual profits and gains not charged by virtue of any of the other schedules in this Act. . . .” Schedule (E)—“For and in respect of every public office or employment of profit, and upon every annuity, pension, or stipend payable by Her

Majesty or out of the public revenue of the United Kingdom, except annuities charged to the duties under the said schedule (C) . . .” Section 5 enacts that the regulations of the Income Tax Act 1842 shall apply. The Income Tax Act 1842, sections 102 and 105, exempts charitable institutions from the duties on annual payments chargeable under Schedule D.

The minister of a parish tendered his resignation, and at the same time applied to the committee on the Aged and Infirm Ministers' Fund of the Church of Scotland for a grant. The committee voted him an annuity of £100 a-year, a condition of the grant being his complete resignation of the parish. During his lifetime thereafter he paid income tax upon the £100, but at the date of his death there was £80 due to him for the current year, and his executors maintained that this sum was not chargeable either under Schedule E or Schedule D. The Aged and Infirm Ministers' Fund was admittedly a charitable institution in the sense of section 105 of the Act of 1842, and as a matter of fact was in the habit of having returned to it the income tax deducted from its investments.

Held (1) that income tax was not chargeable under Schedule E, but (2) that it was chargeable under Schedule D.

Turner v. Cuxon, 22 Q.B.D. 150, distinguished.

The Income Tax Act 1842 (5 and 6 Vict. cap. 35), section 88, gives the rules for assessing under Schedule C, and these rules contain an exemption to “Third—The stock or dividends of any corporation, fraternity, or society of persons, or of any trust established for charitable purposes only, or which, according to the rules or regulations established by Act of Parliament, charter, decree, deed of trust or will, shall be applicable by the said corporation, fraternity, or society, or by any trustee, to charitable purposes only, and in so far as the same shall be applied to charitable purposes only. . . .”

Section 105—“Provided always and be it enacted that any corporation, fraternity, or society of persons, and any trustee for charitable purposes only, shall be entitled to the same exemption in respect of any yearly interest or other annual payment chargeable under Schedule D of this Act, in so far as the same shall be applied to charitable purposes only, as is hereinbefore granted to such corporation, fraternity, society, and trustee respectively, in respect of any stock or dividends chargeable under Schedule C of this Act, and applied to the like purposes; and such exemption shall be allowed by the commissioners for special purposes, on due proof before them; and the amount of the duties which shall have been paid by such corporation, fraternity, society, or trustee, in respect of such interest or yearly payment, either by deduction from the same or otherwise, shall be repaid under the

order of the said commissioners for special purposes. . . .”

The Income Tax Act 1853 (16 and 17 Vict. cap. 34), section 1, imposes income tax, and section 2 divides amongst different schedules the various subjects in respect of which the tax is assessable, and *inter alia*—

Schedule D—“For and in respect of the annual profits or gains arising or accruing to any person residing in the United Kingdom from any kind of property whatever and for and in respect of the annual profits or gains arising or accruing to any person residing in the United Kingdom from any profession, trade, employment, or vocation and for and in respect of all interest of money, annuities, or other annual profits and gains not charged by virtue of any of the other schedules contained in this Act. . . .”

Schedule E—“For and in respect of every public office or employment of profit, and upon every annuity, pension, or stipend payable by Her Majesty or out of the public revenue of the United Kingdom. . . .”

Section 5—“The said duties hereby granted shall be assessed, raised, levied, and collected under the regulations and provisions of the Act passed in the Session of Parliament held in the 5th and 6th years of Her Majesty, chapter 35. . . .”

Mrs Duncan and others, executors of the deceased Rev. Henry Duncan, Edinburgh, were dissatisfied with a decision of the Commissioners for the General Purposes of the Income Tax Acts for the County of Edinburgh, at a meeting on 6th February 1908, whereby there was confirmed an assessment (at the rate of 1s. per £) for the year ending 5th April 1908, made on the Rev. Henry Duncan, and took an appeal by way of Stated Case.

The case stated, *inter alia*—“The following facts were admitted or proved:—(1) The assessment was made on Rev. Henry Duncan in respect of £100 paid to him by the Committee on the Aged and Infirm Ministers' Fund of the Church of Scotland (hereinafter referred to as the fund). He died on 2nd October 1907. Payment of the annuity having ceased as at 11th November 1907, the assessment was by agreement restricted to £60, being the proportion for the period to 11th November 1907. No objection was raised to assessment under Schedule E if liability to assessment exists under Schedule D or Schedule E.

“(2) The constitution of the fund is as follows—“The fund shall consist of two distinct branches—the first applicable to cases where a complete severance between the minister and the parish is to take place; the second applicable to cases where the minister is to retain his connection with the parish, and have an assistant and successor; also where, owing to local circumstances or otherwise, it may appear to be desirable to allow the minister to retain a portion of the emoluments of the parish, although his retirement from all management of his spiritual affairs shall be as complete as if a total severance had occurred. . . .”

“(4) The fund is an essential portion of

the equipment of the Church of Scotland for the performance of her ordinary parochial work, and the object sought to be attained through its establishment was the more efficient discharge of the functions of the ministry in places where the minister had become incapacitated through old age or infirmity. Once granted, the annuity is for life. The question of the minister's legal right to be paid for life has never arisen in practice, and the committee has had no occasion to consider it. Ministers are not required to subscribe to the fund. If a minister subscribes it is entirely *ex gratia* on his part, and constitutes no right in his favour. The convener of the fund made inquiries of Mr Duncan as to his private income before his application was dealt with.

“(5) Mr Duncan was a minister of the Church of Scotland. He was minister of the parish of Crichton, in the presbytery of Dalkeith, for thirty years. On 27th September 1894, in consequence of the state of his health, he tendered his resignation of the pastoral charge of the parish to the presbytery, and at same time applied to the said committee for a grant from the fund. On 23rd October 1894 the committee agreed to vote an annuity of £100 to Mr Duncan out of the first branch of the fund, on condition of his complete resignation of the parish. A complete severance took place between Mr Duncan and the parish, and he gave up the manse and glebe and the whole stipend to his successor in the charge. Apart from the annuity, Mr Duncan had an income of £360 from private sources. On 7th November 1894 the presbytery formally accepted his resignation. . . .”

“(6) The income derived from the investments of the fund is exempt from income tax, under section 105 of the Income Tax Act 1842, on the ground that it is applied to charitable purposes within the meaning of that section. The income tax paid on its investments is repaid to the fund by the Inland Revenue Department.

“(7) During the whole period (1894-1907) that Mr Duncan received the annuity he was assessed for income tax thereon, under Schedule E, and paid the same.”

Argued for the appellants—(1) The annual payment to Mr Duncan was not paid to him as the holder of any office, but was a voluntary gift or allowance from a charitable fund. It accordingly was not liable to assessment under Schedule E—*Turner v. Cuxon*, 22 Q.B.D. 150. (2) Nor was it chargeable under Schedule D, for it had already been, as it were, through the mill in the hands of the holders of the fund. Reference was made to *Curtis v. Old Monkland Conservative Association*, December 19, 1905, 8 F. (H.L.) 9, 43 S.L.R. 119.

Argued for the respondent—The payment made to Mr Duncan was assessable to income tax in respect (1) that it was a profit or gain within the meaning of Schedule E which accrued to him in respect of his having held the office of minister of the parish of Crichton. Reference was made to *Herbert v. M'Quade*, [1902] 2 K.B. 631;

Blakiston v. Cooper, [1909] A.C. 104; (2) or at any rate, it was liable as an annuity or annual profit or gain within the meaning of Schedule D. The exemption under section 105 was not applicable to the individual. The exemption was in favour of institutions, and had been given effect to, so that the payment had not been brought into charge—*Tennant v. Smith*, March 14, 1892, 19 R. (H.L.) 1, Lord Macnaghten at p. 9, 29 S.L.R. 492.

At advising—

LORD PRESIDENT—The late Mr Duncan was a minister of the Church of Scotland, and was minister of the parish of Crichton for thirty years. In 1894 he resigned, and at the same time he applied to a Committee, called the Committee on the Aged and Infirm Ministers' Fund of the Church of Scotland, for a grant from the fund. On the 23rd of October 1894, the Committee agreed to vote an annuity of £100 a-year to Mr Duncan on condition of his complete resignation of the parish. Accordingly Mr Duncan did resign, and thereafter he was paid the annuity. During his lifetime he paid income tax upon it, but he being dead, and there being a portion still remaining due to him for the year current when he died, the question has been raised between his executors and the Inland Revenue whether the tax is properly payable on the portion still to be received by them.

Now for the Crown it is contended that the tax is payable either in respect of its falling within Schedule E as accruing to him by virtue of his holding the office of the minister of the parish of Crichton, or else under Schedule D. The terms of Schedule E are "For and in respect of every public office or employment of profit and upon every annuity, pension, or stipend payable by Her Majesty or out of the public revenue of the United Kingdom, except annuities charged to the duties under" Schedule C. A good deal of the argument before your Lordships, and also apparently before the Commissioners, turned upon the question of whether this annuity was in respect of his office or not. I confess I have never been able to see how it could possibly be said to be in respect of his office, when the whole reason it was given to him was that he was no longer in the office. That seems to me to end the question. It therefore gets out of the category of cases of Easter offerings and others, where all the payments are made in respect of the man being a minister of the parish at the time and getting an extra payment, whatever it is, in respect of his office. But when the whole payment here is given upon the strict understanding that he is no longer in the office, I confess that I cannot follow the reasoning by which it is said to be in respect of his being in office. I do not think it can be said to be in respect of an office because the moving consideration was that sometime previously and as a historical fact he had held an office.

But while that is so, and while I think the tax is not chargeable under Schedule E,

I confess I have been equally unable to see why it is not chargeable as an ordinary annuity under Schedule D. Schedule D is "For and in respect of all interest of money, annuities, and other annual profits and gains not charged by virtue of any of the other schedules." Now this is an annuity. It bears to be so, and the only argument addressed to us on this point was an argument founded on the exemption clause in favour of charitable institutions. That exemption clause is section 105 of the Act of 1842, and it exempts charitable institutions from duty on yearly interest or other annual payment chargeable under Schedule D, and it is admitted that the Aged and Infirm Ministers' Fund is such a charitable institution, and that as a matter of fact it has returned to it income tax on any of the investments which belong to it. But Mr Duncan was not a charitable institution; he was an individual. Accordingly section 105 obviously does not apply directly to him. Where an annuity is payable out of profits or gains which have already been brought into charge, then the tax is not paid directly by the recipient of the annuity but by the payer of the annuity, who is entitled to deduct the proportion of the annuity corresponding to the tax. But if these funds are exempted this annuity cannot be said to be payable out of profits and gains brought into charge under this Act, because they have not been brought into charge under this Act. So Mr Duncan does not seem to me to get an exemption directly as a charitable institution because he is not one, nor is he entitled to say—"I am not bound to pay because this has already been brought into charge." I think the determination of the Commissioners is right.

As regards the case of *Turner v. Cuxon*, pressed on us by counsel for the executors, the distinction is that in that case it was held that the payment made was a charitable payment by a society and was not in respect of the office. That case did not go on to hold, as I have done, that the payment there fell under Schedule D, for this reason, that it was not an annuity. It was a mere donation given each year, with no certification that it would be repeated the year following, whereas here there is a regularly constituted annuity by the Society. That is the distinction between the two cases.

LORD KINNEAR—I concur.

LORD PEARSON—This case was argued alternatively as falling under Schedule D or Schedule E. I am unable to find any grounds on which Schedule E applies. That schedule only applies to public offices or employments or pensions, with an exception which is not material to the present case. No doubt Mr Duncan during his term of office was the holder of a public office of profit within the meaning of the schedule. But this schedule can have no application here. He had resigned his public office twelve years before his death. In respect of his resignation an arrange-

ment was made that he would cease to hold the office, and the income now to be charged was in respect, not of holding the office, but of his having held it. If there is to be a charge here it must be under Schedule D, the words of which apply to the case in hand. As to the provisions of section 105 of the Act exempting charitable institutions, I entirely agree with your Lordship.

LORD M'LAREN was absent.

The Court remitted with instruction to assess under Schedule D.

Counsel for the Appellant—Johnston, K.C.—Hon. Wm. Watson. Agents—Hamilton, Kinnear, & Beatson, W.S.

Counsel for the Respondent—Lorimer, K.C.—Macpherson. Agent—P. J. Hamilton Grierison, Solicitor of Inland Revenue.

Thursday, June 24.

FIRST DIVISION.

[Lord Salvesen, Ordinary.]

WILSON'S TRUSTEES v. GLASGOW ROYAL INFIRMARY AND OTHERS.

Succession—Accumulations—Accumulations Act 1800 (39 and 40 Geo. III, c. 98) (Thellusson Act), sec. 1—Residue Payable at Future Time—Right to Surplus Income—Intestacy.

A testator who died in 1854 directed his trustees to accumulate the revenue of his estate (so far as not required for the payment of annuities), and therewith to pay off a bond with which his heritable estate was burdened. After the bond had been discharged the trustees were to invest the surplus accumulations in their own names, and “after the death of the last survivor of the said annuitants” to pay over “the whole surplus revenue and remainder of the said estates in their hands to the directors of the Glasgow Royal Infirmary, to whom I leave, bequest, and destine the same for the use and behoof of that valuable institution.” The bond was paid off in 1875, being twenty-one years from the testator's death, when owing to the operation of the Thellusson Act further accumulations became illegal. In 1909 (one of the annuitants being still alive) a question arose as to the right to the surplus income which had accrued since 1875, the Infirmary claiming it as residuary legatee, and the testator's heirs as undisposed of succession.

Held that as there was no present gift to the residuary legatee, but a gift emerging on the death of the last annuitant (who was still alive), the intermediate income was undisposed of and fell to the heirs as intestate succession.

Weatherall v. Thornburgh, 8 C.D. 261, followed.

The Accumulations Act 1880 (39 and 40 Geo. III, c. 98) (Thellusson Act), enacts, sec. 1—“No person or persons shall after the passing of this Act, by any deed or deeds, surrender or surrenders, will, codicil, or otherwise howsoever, settle or dispose of any real or personal property so and in such manner that the rents, issues, profits, or produce thereof shall be wholly or partially accumulated for any longer term than the life or lives of any such grantor or grantors, settler or settlers, or the term of twenty-one years from the death of any such grantor, settler, devisor, or testator, . . . and in every case where any accumulation shall be directed otherwise than as aforesaid, such direction shall be null and void, and the rents, issues, profits, and produce of such property so directed to be accumulated shall, so long as the same shall be directed to be accumulated contrary to the provisions of this Act, go to and be received by such person or persons as would have been entitled thereto if such accumulation had not been directed.”

On 13th January 1909 James D. Hedderwick and others, trustees of the late Andrew Wilson, spirit merchant, Glasgow, brought an action of multiplepounding and exoneration against (1) the Glasgow Royal Infirmary, and (2) Mrs Janet Wilson or Smith, 71 Dale Street, Glasgow, and another, the heirs *ab intestato* of the testator, both of whom claimed right to the surplus revenue of the residue of the trust estate, the further accumulation of which had, owing to the operation of the Thellusson Act, become illegal.

The circumstances in which the action was raised are given in the opinion (*infra*) of the Lord Ordinary (SALVESEN), who on 28th May 1909 found that the surplus accumulations of revenue subsequent to 26th September 1875 (being twenty-one years from the testator's death) were undisposed of and had fallen into intestacy.

Opinion.—“The late Andrew Wilson died on 26th September 1854, leaving a trust-disposition and settlement by which he conveyed his estate to certain trustees. The primary purposes of the trust were for payment of certain annuities to his children and other relatives; and the trustees were specially empowered to pay off a bond which rested on the heritable estate out of any surplus rents and interests which they might have in hand, and after the bond had been discharged, to invest any disposable accumulations of rents and interests on heritable securities in their own names. This bond was paid off so far back as 1875; and all the annuitants with the exception of one, who may survive for many years, are now dead. As it is illegal under the Thellusson Act to accumulate income for a longer time than 21 years after the death of the testator, a period which in the present case expired on 26th September 1875, the present action has been brought to determine to whom the surplus accumulations subsequent to that date fall to be paid. These accumulations are claimed on the one hand by the next-of-kin and heir-at-law of the testator, who have agreed amongst them-