

are, and which house the trustees are also assigning to the petitioner William Hodge Coats. The said Mrs Helen Elizabeth Coats or Chichester and Miss Evelyn Dudley Coats, who is claiming her legitim out of the estate of the testator, have, however, represented to the petitioners that the best way to ensure that said pictures shall realise their fair value is to sell them by public roup. Looking to these representations the petitioners deem it proper that at any rate all the more valuable of said pictures should be sold by public roup. The petitioner William Hodge Coats, however, desires an opportunity to bid for and purchase at the sale such of said pictures as he may see fit.

“8. The petitioners, the said John Alexander Spens and Ernest Symington Coats are satisfied that it is not in conformity with the intentions and wishes of the testator that the petitioner William Hodge Coats should be debarred from acquiring said pictures or such of them as he desires, and they believe it to be in the interest of the trust estate that if said pictures be sold by public roup the petitioner William Hodge Coats should have the right to bid for them at a sale thereof. The petitioner William Hodge Coats concurs in these views.”

The petitioners prayed the Court “to authorise said pictures to be sold by public roup by the petitioners as trustees foresaid, on such terms as they consider to be most beneficial to the trust estate, under the express condition that the said William Hodge Coats as an individual is to be entitled to bid at said sale for all of said pictures, or such of them as he may desire, or alternatively, to authorise said pictures to be sold by public roup by the petitioners, the said John Alexander Spens and Ernest Symington Coats, as trustees foresaid, or by such other person as your Lordships may appoint, on such terms as they consider most beneficial to the trust estate, under the express condition that the said William Hodge Coats as an individual is to be entitled to bid as aforesaid.”

The petition was served on the only persons interested in the estate, and no answers were lodged.

Argued for the petitioners—It was to the interest of the trust estate that the prayer of the petition should be granted, and it was within the *nobile officium* of the Court to grant the prayer, especially in view of the intention of the testator, disclosed by the power given to the trustees in the fifth purpose to value and assign. Reference was made to the following authorities:—*Gillies v. Maclachlan's Representatives*, February 11, 1846, 8 D. 487; *Taylor v. Watson*, January 20, 1846, 8 D. 400, *per* Lord Mackenzie at 406; *Campbell v. Walker*, 1800, 5 Ves. 677; *Farmer v. Dean*, 1863, 32 Beav. 327; *Lewin's Law of Trusts* (12th ed.), p. 575.

The Court (LORD PRESIDENT, LORD MACKENZIE, and LORD SKERRINGTON) pronounced this interlocutor—

“Authorise the pictures specified and contained in the inventory and valuation

by Messrs Christie, Manson, & Woods, London, to be sold by public roup in London at the said Christie, Manson, & Woods' by the petitioners, as trustees of the late Archibald Coats, at prices not less than those specified in the said inventory and valuation, and under the express condition that the petitioner William Hodge Coats as an individual is to be entitled to bid at the sale for all of said pictures or such of them as he may desire, and decern: Find the petitioners entitled to expenses out of the trust estate of the said Archibald Coats, and remit,” &c.

Counsel for the Petitioners—Macmillan, K.C.—C. H. Brown. Agents—J. & J. Ross, W.S.

Thursday, May 28.

FIRST DIVISION.

[Court of Exchequer.

INLAND REVENUE v. JURIDICAL SOCIETY OF EDINBURGH.

Revenue — Income Tax — Exemption — “Literary or Scientific Institution” — Income Tax Act 1842 (5 and 6 Vict. cap. 35), sec. 61, Sched. A, Rules No. VI.

The Income Tax Act 1842, Schedule A, Rules No. VI, exempts from income tax “any building, the property of any literary or scientific institution, used solely for the purposes of such institution, and in which no payment is demanded for any instruction there afforded.”

Held that the Juridical Society of Edinburgh was not “a literary or scientific institution” within the meaning of the rule, because its main object was the professional interest of its members, and accordingly that its premises were not entitled to exemption from income tax.

The Income Tax Act 1842 (5 and 6 Vict. cap. 35), Schedule A, Rules No. VI, provides for exemption, *inter alia*, in the following case—“For the duties charged on . . . any building, the property of any literary or scientific institution, used solely for the purposes of such institution, and in which no payment is made or demanded for any instruction there afforded by lectures or otherwise; provided also that the said building be not occupied by any officer of such institution nor by any person paying rent for the same.”

The Juridical Society of Edinburgh (hereinafter referred to as the “Society”) appealed to the Commissioners for the General Purposes of the Income Tax Acts, and for executing the Acts relating to the Inhabited House Duties for the County of Edinburgh, against an assessment made upon it for the year ending 5th April 1911 of £5, 5s. of duty, being income tax at the rate of 1s. 2d. in the £ on £90, the net annual value of the premises at 40 Charlotte Square, Edin-

burgh, owned and occupied by the Society. The assessment was made under the Acts 5 and 6 Vict. cap. 35, sec. 60, Sched. A, No. 1 General Rule; 16 and 17 Vict. cap. 34, sec. 2; and 10 Edw. VII and 1 Geo. V, cap. 35, sec. 3; and the question was whether the Society was exempted as a literary or scientific institution in the sense of the Income Tax Act 1842, Sched. A, rule 6. The Commissioners granted relief to the Society on the ground of exemption, and reduced the assessment to 2s. 11d., being duty on £2, 10s., the annual feu-duty payable by the Society. Whereupon the Surveyor of Taxes expressed his dissatisfaction with the determination of the Commissioners as being erroneous in point of law, and required the Commissioners to state a Case for the opinion of the Court.

The Case stated—“1. The annual value of the premises entered in the valuation roll was £120, but for purposes of assessment that value was reduced to £90 by an allowance of £10 for owner's rates and of £20 for repairs.

“2. The premises are owned and occupied by the Society, and are used solely for the purposes of the Society, to which purpose they are legally appropriated and applied by virtue of the disposition of the property to the trustees for the Society and of the rules of the Society.

“3. The premises consist of two main rooms, one being a hall in which the Society's meetings are held, the other containing a library mainly but not exclusively of law books. The use of the library is confined to members of the Society, and the books may not be borrowed out. There are also five rooms on an upper floor inhabited by the Society's caretaker and his family free of rent. There is also an upper room which members in lesser numbers than a full meeting of the Society may use for law debates, or for reading and hearing essays. The caretaker is employed to protect and clean the premises. He performs no other duties for the Society.

“4. The Society was formed on 27th February 1773 by twelve gentlemen, who, from a consideration of the advantages resulting from societies for the cultivation of any science, associated themselves into a society for the study of law and approved of rules for its regulation. The members of the Society were at first drawn almost exclusively from apprentices to Writers to the Signet.

“5. From its institution the Society's procedure was by way of compulsory weekly meetings during the session of the Supreme Court to consider subjects suitable to its purposes or objects. The subjects considered by the Society at its institution were purely legal, but a few years later there was introduced the practice of hearing literary essays read and of the discussion of speculative questions. After a few years these discussions ceased to be part of the syllabus, but the periodical debates and essays on subjects of general legal interest were maintained. Formal pleadings upon hypothetical cases were afterwards introduced. Attendance at meetings was at first

compulsory on all members under sanction of expulsion. In or about 1784 the sanction of expulsion ceased, and thereafter three years' attendance earned the privilege of 'extraordinary membership,' whereby attendance became voluntary. Up till 1904, when attendance became voluntary, ordinary members of the Society were bound to attend all the weekly meetings for the purposes mentioned under sanction of substantial fines.

“6. Besides the duties above mentioned, the early members undertook two matters. The one was the conception and execution of the system of styles, and the other was the formation of a library. The Society from its institution was anxious to be possessed of such books and papers as might be of use to the members in their studies, but having no premises of its own it had no convenience for the formation of an extensive library. In 1775 the Society recommended the treasurer to purchase a copy of Erskine's Principles for the use of members present at the meetings. This formed the foundation of the library, which was gradually augmented, and in 1797 it received an addition, consisting of the books belonging to the Logical Society, with which the Juridical Society then formed a union, and which was founded in 1793 for purposes similar to those of the Juridical Society.

“7. The formation of a collection of styles was one of the first matters that received the attention of the Society, and on 19th June 1773 a committee was appointed to make up a full style book. This compilation was not intended for publication but only for the use of the members. It, however, formed the basis of the work which was afterwards published in 1787 under the name of *A System of Conveyancing*. Various editions have from time to time been published to keep the styles up to date. The sixth edition was published in 1907 and 1908. The various editions occupied at and about their various dates a very large portion of the time and energies of the members, and these were given voluntarily by the members, and either gratuitously or in some cases for an honorarium awarded by the Society, but such honoraria were entirely incommensurate with the work and experience required.

“8. The preface to the first edition of the first volume (1786) of the Styles, *inter alia*, states—'The Juridical Society has existed for about thirteen years. The improvement of the members in the knowledge of law and conveyancing was the original design of this institution—an object which, being in itself important, has been invariably prosecuted by the Society. . . . The private convenience and benefit of the individual members suggested originally the design of the present compilation. In its progress, however, it occurred to the Society that the publication of the Styles might be attended with some degree of utility to the public. In this view they are now humbly offered.'

“9. The Society suffered considerable inconvenience from not having premises of its own, but in 1829 it purchased the pro-

perty No. 40 Charlotte Square, which it still occupies, and which forms the subject of the present case.

"10. In 1830 a committee was appointed to report whether it would be proper or expedient, *inter alia*, to establish lectures in connection with the Society on detached branches of the public law and the law of Scotland. At a special meeting of the Society the report was unanimously approved of. The conditions of the lectureship provided that the classes should be opened to students of law of every description, that a fee of £2, 5s. should be charged, and that the lecturer should receive the use of the Society's hall. No receipts of money or profits were taken by the Society for these classes. A lecturer thereafter was appointed and the first course of lectures commenced in November 1831. The class was conducted with considerable success till 1847. In the following year the lecturer resigned. No successor was appointed, and though the lectures were never formally discontinued the lectureship remained in abeyance.

"11. In 1870 it was proposed to resume the lectures which had fallen into abeyance in 1848, and after consideration a series of forty lectures by different lecturers on separate subjects was resolved on instead of a course of lectures by one person. The lectures were so well attended that it was decided to have another course in the next session, but although a series was arranged only two lectures were delivered. Since that date no lectures open to the public or to students of law outwith the Society have been delivered.

"12. At an extraordinary meeting of the Society held on 9th November 1904 the laws were revised and adopted.

"13. The laws of the Society as then adjusted (which in this respect are the same as in 1848) state the objects of the Society to be 'the advancement of the science of law and the pursuit of general literature.' The Society is strictly exclusive, and none but members are entitled to be within the premises. The Society is a voluntary one, unincorporate, and without formal registration of any kind. Membership of the Society does not confer any professional qualification or distinction.

"14. Membership of the Society is restricted to (a) members of the Faculty of Advocates; (b) Writers to the Signet; (c) gentlemen who state on honour that they intend to become members of the Faculty of Advocates, or that they are or have been apprentices to Writers to the Signet or intend to enter that profession. If any member admitted under a statement of intention under heading (c) fail within six years of admission to the Society to become a member of the Faculty of Advocates or a Writer to the Signet, he ceases to be a member unless satisfactory reasons for delay are given. Candidates for admission apply by petition addressed to the secretary. The committee, if unanimous, and if no objections have been lodged, has power to admit the petitioner after notice has been given on the notice-board in the Society's

premises. In the event of the committee not being unanimous, or if any objections have been lodged, then the election to membership is decided by vote or ballot at the next general meeting of the Society.

"15. Members pay an entrance fee of £5, 5s., and an annual quota of £2, 2s. in each of the first four years of membership, or, alternatively, a single composition payment of £12, 12s. Any member failing to pay the dues exigible by the Society ceases to be a member, and forfeits all rights to the property of the Society, and his name is struck off the roll; but he may be reinstated by the committee on payment of arrears if he give a satisfactory explanation in writing.

"16. The business of the Society is conducted, subject to the control of the Society in general meeting, by the committee, consisting of the president, treasurer, secretary, and librarian, and five other members elected by the Society at the annual general meeting. The Society's property is now vested in the office-bearers as trustees for the Society and subject to its directions.

"17. For the year ended 31st October 1910 (which may be accepted as typical) the revenue of the Society was £97, 1s. 6d., and the expenditure £152, 1s. 4d. The deficiency of £54, 19s. 10d. was made up out of capital accumulated from previous surpluses.

"18. The members of the Society make very frequent and full use of the premises and of the library for the study of law, private study and research, the preparation of articles, lectures, text-books, etc., to be published and delivered by members and tending to advance the science of law; and the revision periodically of the juridical styles.

"19. The Society in 1863 first appointed a committee to consider and report upon a Bill then before Parliament to amend the law of procedure (which Bill ultimately led up to the Court of Session Act 1868). Since that time it has appointed committees upon Bills before Parliament affecting either judicial procedure or conveyancing.

"20. In 1843 an Act (6 and 7 Vict. cap 36) was passed exempting lands and buildings occupied by scientific and literary societies from the payment of local rates. Since 1844 till the present time the Society has enjoyed exemption from local rates. It was proved before the Commissioners that a certificate was in 1845 obtained from the Lord Advocate's Depute for certifying the rules of friendly societies (the proper authority under the said Act), to the effect that the Society was entitled to the benefit of the Act; and it was likewise proved that such certificate had been duly lodged with the Clerk of the Peace for the burgh of Edinburgh, although the principal thereof cannot now be found and produced.

"21. From the imposition of property and income tax until the year 1909-10 no assessment to tax has been made upon the Society. In the said year 1909-10 an assessment was laid on, the assessor being of opinion that the premises were liable to property tax, and that they were in past years omitted from assessments erroneously or through oversight. The tax for that year was paid, the

treasurer being at the time ill and having delegated his duties to clerks. Otherwise no property tax has ever been paid by the Society."

Argued for the appellant—The Society was not a literary or scientific society or institution within the meaning of the Income Tax Act 1842 (5 and 6 Vict. cap. 35), Schedule A, Rules No. VI, but was a professional association, formed to facilitate intercourse among its members, to provide a library for them, and to assist them in legal studies. As the primary purpose of the Society was to render assistance to its members in their profession, and not to promote the literature and science of law, it did not fall within the exemption—*Inland Revenue v. Royal College of Surgeons of Edinburgh*, March 19, 1892, 19 R. 751, 29 S.L.R. 620; *Society of Writers to the Signet v. Inland Revenue*, November 3, 1886, 14 R. 34, 24 S.L.R. 27; *in re Royal College of Surgeons of England*, [1899] 1 Q.B. 871; *Queen v. Brandt*, 1851, 16 Q.B. (Ad. & El.) 462; *Queen v. Caskell*, 1851, 16 Q.B. (Ad. & El.) 472; *Inland Revenue v. Magistrates of Dundee*, June 16, 1897, 24 R. 930, 34 S.L.R. 702. The present case was in contrast with *Inland Revenue v. Forrest*, (1890) 15 Ap. Cas. 334, and the Society was clearly not entitled to exemption if the tests stated by Lord Halsbury at p. 338 and by Lord Macnaghten at p. 354 were applied. Reference was also made to *Mayor of Manchester v. M'Adam*, [1896] A.C. 500.

Argued for the respondents—The case was indistinguishable in principle from that of the *Inland Revenue v. Forrest* (*cit. sup.*), and applying the tests proposed in that case the Society was entitled to exemption. The objects of the Society were as expressed in law I—"The advancement of the science of law and the pursuit of general literature." The Society's premises were devoted solely to the study of law, literature, and research work, and the Society had by the publication of the Juridical Styles advanced the science of law in Scotland. The decision in *Inland Revenue v. Royal College of Surgeons of Edinburgh* (*cit. sup.*) turned upon this, that the main purpose, or one of the main purposes, of the college was that membership might serve as a means of qualifying for the profession—*per* Lord M'Laren at p. 757; and the same applied to *Society of Writers to the Signet v. Inland Revenue* (*cit. sup.*) and to the *Royal College of Surgeons in England* (*cit. sup.*), but if the sole purpose of these institutions had been the provision of a library for their members the decisions would have been different—*Churchwardens of Birmingham v. Shaw*, (1849) 10 Q.B. (Ad. & El.) 868. The decision in *The Queen v. Caskill* (*cit. sup.*) and *Inland Revenue v. Magistrates of Dundee* (*cit. sup.*) depended on the meaning of the words "exclusively" and "solely."

LORD PRESIDENT—The Surveyor of Taxes in this case appeals against a determination of the Commissioners of Income-tax exempting the Juridical Society from assessment for income tax on the ground that it is a "literary or scientific institution," and if

this can be accurately predicated it is conceded that the Society ought to be exempted.

There is no definition in any of the statutes of what is meant by a "literary or scientific institution," but there is an admirable description given by Lord M'Laren in the case of *Sulley v. Royal College of Surgeons of Edinburgh*, (1892) 19 R. 751, which when examined will be found in all its branches to exclude the present respondents, and his Lordship proceeds further to draw in very accurate and scientific terms the distinction between such an institution as the Juridical Society or the Royal College of Surgeons and the Institute of Civil Engineers. Moreover, each one of the particulars which Lord Watson enumerates in his very elaborate judgment in the Institute of Civil Engineers' case (*Commissioners of Inland Revenue v. Forrest*, (1890) 15 App. Cas. 334) is distinctive of the institute but has no sort of relation, I think, to the Juridical Society. It is quite true that the rules of the Society start remarkably well, because they set out as the objects to be achieved "the advancement of the science of law and the pursuit of general literature." No doubt to some extent the science of law is advanced and the pursuit of general literature is encouraged by the Society, but when one proceeds further and finds that every student of pure law—law for its own sake—and every lover of literature or science, unless he be an Advocate or a Writer to the Signet, or a person intending to become either the one or the other, finds its doors closed against him, as he will by the 4th law, then it seems to me extremely difficult to predicate of such a society either that it is designed to achieve the objects which it purports to have in view, or that it can in any sense be called a "literary or scientific institution." We are not left to grope in the dark as to the present scope of its operations. They are very clearly set out in the 18th article of the case, which concludes with an object on which some stress was laid by Mr Mackay, to wit, the production and periodical revision of the Juridical Styles. No doubt that may be a contribution to the science of law but it is a contribution which would never have been made except by men who in making it were desirous of providing better and improved implements for the practice of their own profession. It seems to me that reading the whole of the articles of this Special Case, which sets out the objects and purposes of the Society and the mode by which it seeks to achieve its aim, you reach the conclusion which is admirably expressed in the first of the contentions for the Surveyor of Taxes, that it is "a professional association formed to facilitate intercourse among its members, to provide a library for them, and to assist them in legal studies." If that correctly summarises the aims and objects of the Society, then it appears to me that the test laid down by Lord Adam in the *Royal College of Surgeons'* case is easily applicable. You can then predicate of it that it is in the main professional and only incidentally scientific, and

not in the main scientific and only incidentally professional.

For these reasons I think that the Commissioners have come to a wrong conclusion here, that their determination ought to be recalled, and that we ought to find that the premises at 40 Charlotte Square are liable in assessment for income tax.

LORD MACKENZIE—I am of the same opinion. The question that we have here to determine is whether the Juridical Society is a “literary or scientific institution” within the meaning of the Act of 1842. Unless it is, it is not entitled to the exemption contended for. The test to be applied I take from the opinion of Lord Adam in the case of *Sulley v. Royal College of Surgeons of Edinburgh*, 19 R. 751, a case which was decided under the Act with which we are here dealing. Lord Adam says—“If the main and leading object of the institution be that of advancing the interests of a profession, then the fact that it may incidentally and as a consequence promote science will not the less make it other than a professional institution, and as such not entitled to the exemption claimed.” When one turns to the rules of the Society one no doubt finds that the purpose is set out in the first rule in a manner which is favourable to the contention for the Society, because it is there stated that “The objects of the Society shall be the advancement of the science of law and the pursuit of general literature.” But of course it will not do to stop there. It is necessary to ascertain how far the rules of the Society and the practice of the Society do really carry out what may be called the preamble in this instance. As your Lordship has already pointed out the membership is strictly limited, and that has great weight with me, because although no doubt the mere fact that there is a limited membership does not necessarily debar those members from the pursuit of law as a pure science, I certainly think it does throw considerable light upon the use which is made of the Juridical Society. If the membership had been open to all the world, and if it consisted of persons who out of purely altruistic motives had desired to study law as a pure science, that might have had some effect upon our decision. The membership is strictly limited to members of the Faculty of Advocates, Writers to the Signet, and gentlemen who make a statement that they intend to become members of one or other of these branches of the profession. In regard to the lectures, these have ceased for a long number of years, since 1870. With regard to one of the matters upon which stress was laid, namely, the publication of the Juridical Styles, as being evidence of a desire on the part of the Society to benefit the profession at large, I would call attention to what is said in article 8 of the case. The original idea seems to have been that of “the private conveniency and benefit of the individual members.” It was that idea which originally suggested the design of the compilation. “In its progress, however,” it is stated,

“it occurred to the Society that the publication of the Styles might be attended with some degree of utility to the public.” This statement, I think, exactly fits Lord Adam’s test, and shows that it was merely in consequence of what was being done in the professional interests of the members that there was an indirect benefit to the public.

The facts in the present case are in marked contrast with those set out in the case upon which the respondents mainly relied, *The Commissioners of Inland Revenue v. Forrest*, 15 App. Cas. 331. It was there proved that the primary purpose of the institute was the general advancement and promotion of science; here the primary purpose of the Juridical Society is professional; and accordingly I think the Society is not entitled to exemption.

LORD SKERRINGTON—I agree with your Lordships. The case is one in which there has been a copious citation of authorities, but I think that it admits of being decided without any reference to previous cases. The question as I view it is one purely of fact. I do not think that any person who is acquainted with the ordinary use of language, and who reads this Special Case, would assert of the Juridical Society that it is either a literary or a scientific institution. I say that without the slightest disrespect to the Commissioners, who came to an opposite conclusion, because if they had felt themselves at liberty to decide this question, as I think it ought to be decided, as a question of common sense, and if they had not been embarrassed by legal authorities, they would probably have come to the same conclusion as I do. I do not attach very great importance to the exclusive character of the membership of this Society, because there is no reason why a small fraction of the legal professional men of a comparatively small country like Scotland should not band together for the laudable purposes expressed in law 1 of the rules and laws of the Juridical Society, namely, the advancement of the science of law and the pursuit of general literature. The only question before us is whether the Society as it exists at present answers the description of being a literary or scientific institution. I am disposed to think that if the Society should at some future time live up to the high ideal expressed in its first rule it may be able to come back to us and upon a different state of facts obtain a decision to the opposite effect from that which we are about to pronounce.

LORD JOHNSTON was absent.

The Court reversed the determination of the Commissioners, found that the premises in question were assessable to income tax, and remitted to them to assess the same.

Counsel for the Appellant—Solicitor-General (Morison, K.C.)—R. C. Henderson. Agent—Sir Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for the Respondents—Anderson, K.C.—A. M. Mackay. Agent—E. M. Wedderburn, W.S.