

HER MAJESTY'S ADVOCATE-GENERAL, APPELLANT.
 THE COMMISSIONERS OF SUPPLY }
 FOR THE COUNTY OF EDINBURGH } RESPONDENTS.

Commissioners of Supply—Their Obligations as to the Land Tax.—Case in which it was held by the House, agreeing with the Court of Session, that Commissioners of Supply were not bound to furnish the collector of the county land-tax with an annual assessment roll, specifying the land to be assessed, the sums payable in respect thereof, and the names of the persons liable to the charge.

1862.
 July 18th.

This case originated in a petition presented by Her Majesty's *Advocate-General* to the *Lord Ordinary* in Exchequer causes in the Court of Session on the 23rd of September 1859, against the Commissioners of Supply for the county of Edinburgh — the above Respondents.

The petition contained the following statement:—

That the Commissioners of supply for the county of Edinburgh have neglected or refused to assess the land-tax payable from the said county, and to furnish the collector appointed to levy the same with a correct roll for the year's land-tax which is payable to Her Majesty by the county on the 25th day of March 1860, and payable by the parties who are assessed on 1st January 1860, and refuse to do so in time to come.

The prayer, therefore, of the petition was that the *Lord Ordinary* would order the Respondents

To furnish within a month to the collector of land-tax for the said county, and to his successors in office, a correct and proper assessment roll of the cess or land-tax for the said county, specifying the names of the various lands and heritable subjects within the said county, and liable to be assessed with the sums of land-tax payable for such lands and heritable subjects, together with the names of the persons or parties liable in payment of the said sums respectively for the year's land-tax payable to Her

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Majesty by the said county on the 25th day of March 1860: And further to order the Respondents to furnish to the said collector such roll for each year for all time coming, the said roll to be furnished to the collector on or before the first day of September in each year. And in the event of the Respondents failing to furnish the said collector with the said roll for the tax payable on 25th March 1860, within one month, or in the event of their failing to do so on or before the first day of September in any future year, then they ought to be decerned and ordained to pay to the said Donald Ross, or the collector for the time, the sum of 1,505*l.* 1*s.* 10 $\frac{9}{12}$ *d.* for each year in which said failure is made.

Answers were put in by the Commissioners, and a record was prepared containing a statement of facts, which are very fully set forth in the current reports of the Court of Session (*a*).

The *Lord Ordinary* (*b*), on the 4th July 1860, pronounced an Interlocutor in the following terms:—

Finds that the Petitioner has not instructed that under the existing statutes an obligation rests on the Respondents to furnish to the collector of land-tax the roll of assessment demanded by the Petitioner. Therefore refuses the prayer of the Petitioner.

Upon a Reclaiming Note from the Petitioner, the First Division appointed the parties to give in minutes, explanatory of the procedure of the Commissioners of Supply, and throwing light on the practice followed in other counties as well as in the county of Edinburgh. In obedience to this requirement, minutes were accordingly lodged, giving the information, considered by the Court, at great length; and the same will be found in the report already cited.

On the 17th May 1861, the case came before the Lords of the Second Division for judgment; and the result was a unanimous decision adhering to the *Lord Ordinary's* Interlocutor. In consequence of this decision, Her Majesty's *Advocate-General* appealed to the House.

(*a*) 23 Sec. Ser. 933.

(*b*) Lord Ardmillan.

The *Lord Advocate* (a) and Mr. *Agnew* were of Counsel for the Appellant.

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Sir *Hugh Cairns* and Mr. *Mure* represented the Respondents.

The question for consideration and the grounds of the final judgment are fully examined and discussed in the following opinions delivered by the Law Peers.

The LORD CHANCELLOR (b) :

*Lord Chancellor's
opinion.*

My Lords, this Appeal is presented by the Law Officers of the Crown in Scotland; and it raises questions upon a petition presented by them to the Court below in the nature of a Writ of Mandamus.

The requisition is one of great peculiarity, seeking to enforce on the Commissioners of Supply a very serious obligation. It was incumbent, therefore, upon the Appellant to show, first, that it is the bounden legal duty of the Commissioners to do what is here required, and, secondly, that they have the means in law of performing that duty, and obeying this requisition.

The Land-tax to which the petition relates was originally imposed in mass upon the whole kingdom. It was afterwards apportioned among the different counties, each county being made liable for a certain part. The proportionate part of each county was again sub-distributed and divided according to the valued rent of the lands and tenements as they were held at the time of such valuation. These things were done by virtue of statutes passed in the years 1667 and 1690 in the Parliament of Scotland. The rating and assessment were made according to the then value of the property; but there was no power to make successive or future valuations.

(a) Mr. Moncreiff.

(b) Lord Westbury.

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The consequent state of things I take a description of, from one of the judgments in the Court below (a), which states that "the tax was imposed according to the valued rent, and the valued rent was ascertained at a distant period; and no power exists now of revising, or correcting, or altering that valuation. So that the tax is imposed according to a rental and a state of possession unsuitable to the present condition of matters. It was imposed according to the value of the subjects at the time, and with reference to the possession by the parties at the time. The value is changed, the parties are changed, and the division of property is altered. To ascertain even the names of all the parties who are, now proprietors of the several subjects, as they then existed and were valued, may be difficult and troublesome, and still more so to ascertain the proportions in which they held the subjects. The subjects remain though differently arranged or distributed, and they have proprietors though the proprietors are changed; but the relative values (as at the time of the original valuation) of the several lots into which the properties are now distributed cannot be ascertained with absolute certainty."

This account of the present position of the matter with reference to the statutory power which I have selected from one of the judgments in the Court below, tallies altogether with the statement made by the Appellant himself. For in the third article of the revised condescendence it is stated that—"By these two statutes" (the Acts of 1667 and 1690) "power was conferred on the Commissioners of Supply to rectify the original valuation, and to subdivide the assessment in cases where it is unequal. The power to rectify the original valuation has not been exercised for upwards of a century. It could not be

(a) The Lord President's Judgment, 23 Sec. Ser. 949.

exercised now (if it should still be held existing), owing to the changes in the value of property.”

It is, my Lords, in this state of things that the requisition now under consideration is made by the Crown.

Now it appears that certain officers called Commissioners of Supply were appointed by the Act of 1667. Their powers given under that statute are divisible into two classes. First, certain judicial powers, which appear to me to be directed to the rectifying of any assessment, and to the subdividing or redistributing of any existing *cumulo* assessment. I think those powers, like all judicial powers, were to be exercised on the application of parties interested. Beyond those powers I am unable to collect any further *judicial* authority.

The other class of duties of the Commissioners prescribed by the statute related to the management of the collection of the tax. They had the duty of collecting it, and the receiver or collector for that purpose was their agent or servant. The mode of proceeding by the Commissioners in the discharge of this duty, whilst it was exercised by them, is correctly described by a minute which is in process (a); and it appears from that minute that anterior to the year 1798 and down to the year 1835,—“The collection roll or collection book was prepared by and at the expense of the person employed by the Commissioners to collect, that he was occasionally directed by the Commissioners of Supply to specify in his receipts each heritor’s portion, and the quantum upon each 100*l.* of valued rent; but there was no list or roll or document prepared by or at the instance of the Commissioners of Supply, showing the names of the several parties on whom the assessments were made, with the sums

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(a) See 23 Sec. Ser. 933.

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paid by each, and the lands in respect of which the parties were assessed."

It is stated, and I have no doubt correctly stated, that the necessary information to enable the servant of the Commissioners to collect the tax, whilst the collection was their duty, was obtained by the collector himself. He was, no doubt, paid for the performance of that duty, and he took care to have that duty properly performed.

My Lords, an Act was passed in 1835, the statute of the 5th & 6th Will. 4. (a), which transferred the management of the collection of the tax from the Commissioners to the Crown. The Commissioners were no longer to be responsible for the collector; the collector was a person appointed directly by the Crown, and became the agent of the Crown.

But before I refer to the language of the Act, this I think is obvious, namely, that if there be any obligation on the Commissioners to deliver a roll to the Crown collector, such obligation must be found in the Act which took away from them the duty of collecting. Because it is plain that whilst the Commissioners themselves had the duty of collecting, and the collector was their agent or servant, it would be absurd to suppose that they were under any obligation to make up and deliver a roll to such servant, or that the servant could maintain against them any demand for that purpose. When therefore the duty was transferred, if the obligation asserted in this petition existed, we must expect to find it in the Act which transferred that obligation.

Now the language of the statute which transferred the obligation is found to be substantially this:—"That the land-tax in Scotland shall be recovered, levied,

(a) Chap. 64.

collected, and paid under the same rules, regulations, provisions, and penalties as the assessed taxes in Scotland now are or may hereafter be recovered, levied, collected, and paid; anything in the said last-recited Act or any other Act or Acts contained to the contrary thereof in anywise notwithstanding."

I have looked in vain for any enactment creating an obligation or a relative duty between the Commissioners of Supply and the Crown collector *ultra* the obligations and duties which had previously existed and were to be performed by the Commissioners.

The argument on the part of the Crown has been rested upon this, that this is a duty which is necessarily required to be done in order to the adequate collection of the tax, and that therefore if it be so, it must necessarily follow in law that that duty can be performed by the Commissioners. But I am not satisfied either with the argument itself or with the application of it to the present case. I think it abundantly sufficient to answer that argument by observing that no such duty could have existed as between the Commissioners and the collector anterior to the statute of transfer. And that from the time of the statute of transfer nothing of the kind can be collected is not only evidenced by the observations which I have already made, but by the fact that ever since that statute was passed the tax has been collected, and that no requisition of this kind has been enforced against the Commissioners.

My Lords, it would be incumbent upon this House to see that the Commissioners had plainly and indisputably the power of fulfilling the obligation before it should proceed to throw that obligation upon them. I must say that after an earnest desire to arrive at a conclusion which would terminate this unseemly controversy, and prescribe a rule by which the

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public service, and the duty of collecting this tax, might be conveniently performed, I find it impossible to arrive upon these statutes at anything like a proper and judicial deduction that that authority has been conferred upon them; nor do I see anything laid down here as to a line of conduct for the purpose of complying with the requisition of the Crown that might be plainly and safely adopted on the part of the Commissioners. If there were on the one side and on the other a disposition to approach this subject with a view to arrive at a practical and convenient mode of procedure, I dare say it would be found that the tax might be collected in the county of Edinburgh as it appears to have been collected in other counties. But we have the parties keeping each other at arm's length; the Crown insisting that the Commissioners are bound by law to do that which is required in the prayer of the petition, and that the law is clear enough and plain enough to impose upon them that obligation, and has given them the means of performing that duty. From that conclusion I altogether dissent; and I feel that I am bound to confirm the opinions that have been delivered in the Court below, and I therefore would recommend your Lordships to dismiss this Appeal.

Lord Cranworth's
opinion.

Lord CRANWORTH:

My Lords, I concur in the opinion that the Interlocutors appealed against should be affirmed. I can discover nothing in any of the Acts which imposed on the Commissioners the duty of making any roll whatever. By the Act of 1667 they had the power *proprio motu* of amending the valuation of 1660, but subject to that power the valuation of 1660 was to be their guide in assessing and levying the tax. In none of the subsequent Acts was there expressly or (as I

think) impliedly any power to alter the assessment, except on the application of parties thinking themselves aggrieved, or desiring to have a *cumulo* assessment divided where an estate had been split among different owners. When the duty of collecting the tax was taken away from the Commissioners, a roll or book was given by them to the Treasury, showing the then state of the assessment, *i.e.*, the assessment of 1667, modified by the subsequent corrections made on occasions of divisions of property or otherwise.

The Commissioners, in my opinion, still retain the power and duty of deciding on any complaints made to them of unequal assessment, and on any applications for dividing assessments where property assessed is divided; and on general principles I think they must be bound to inform the treasurer or collector of any alterations so made. This will, I should think, enable the collector to discharge his duty; but if this is not the case, application must be made to the Legislature, for I cannot discover any obligation binding the Commissioners to do more. I do not go into the question more in detail, but content myself with expressing my entire concurrence with the *Lord Chancellor* in the view which he has taken of the case.

Lord CHELMSFORD: My Lords, I was present during the greater part of the argument in this case; but on the day of the reply I was compelled to attend the Judicial Committee of the Privy Council. Therefore, as I did not hear the whole of the argument, I think it would be better for me to refrain from expressing any opinion upon the case.

Sir Hugh Cairns: Will your Lordships permit me to mention that by a special statute for Scotland (*a*),

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(a) 19 & 20 Vict. c. 56. s. 23.

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the Crown stands upon the same footing as to costs as any other suitor. We have ourselves no funds to meet the costs of this Appeal, and we trust therefore that your Lordships will dismiss it with costs.

LORD CHANCELLOR: I hope your Lordships will not listen to this suggestion. I think both parties would have done well if they had considered the question of expense before they entered upon this contest.

Interlocutors affirmed.

J. TIMM—CONNELL & HOPE.