

Saturday, January 15.

FIRST DIVISION.

[Court of Exchequer.

LIQUIDATORS OF CITY OF GLASGOW BANK  
v. COMMISSIONERS OF INLAND REVENUE.

Revenue—Stamp Act 1870 (33 and 34 Vict.  
c. 97), sec. 73.

Where an estate is conveyed subject to a burden, the amount thereof is held to be part of the purchase-money, in respect of which the purchaser is liable in an *ad valorem* stamp-duty whether he is personally liable for the burden or not.

A disposition was granted by John Dove in favour of the City of Glasgow Bank, of date 10th February 1880, in the following terms:—  
“I, John Dove, sometime bottler, Pitt Street, Glasgow, and now residing at No. 53 Pitt Street aforesaid, heritable proprietor of the subjects hereinafter disposed, considering that I am a partner of the City of Glasgow Bank, incorporated under ‘The Companies Act 1862,’ and that the said bank is now being wound up voluntarily under the supervision of the Court of Session; and further considering that I have been placed on the list of contributories of the said bank, and that the liquidators thereof have accordingly made certain calls upon me which I am unable to meet to the full extent thereof; and that as part of a compromise arranged between the said liquidators and me, and approved of by the said Court, it was agreed that I should dispoise to the said bank the said subjects, my interest in which (after deducting the principal sum contained in the bond and disposition in security hereinafter mentioned) is valued in the declaration and relative schedule lodged by me with the said liquidators with reference to the said compromise at the sum of £2350, and that in extinction to that extent of my present and future liability to the said bank: Therefore I, the said John Dove, do hereby assign and dispoise to and in favour of the City of Glasgow Bank aforesaid, incorporated as aforesaid, and to the successors, assignees, and disponees whomsoever of the said bank, heritably and irredeemably—In the first place, All and Whole, &c., with entry as at the term of Whitsunday 1879, notwithstanding the date thereof: And I assign the writs; and have delivered No. 27 of the inventory of writs annexed and subscribed by me as relative hereto, being the only writ in my possession; and in respect the writs Nos. 16 to 26, both inclusive, and Nos. 28 and 29 of said inventory, are in the custody of the creditors in the bond and disposition in security after mentioned, they are not delivered herewith, but I assign all right competent to me to have said writs made forthcoming, and on the said bond and disposition in security being paid up, to obtain delivery thereof; and in respect the remaining writs, which refer to other subjects of greater value than those hereby disposed, were not delivered to me by my authors, I assign all right competent to me to have the same forthcoming on all necessary occasions: And I assign the rents: And I bind myself to free and relieve the said disponees and their foresaids of all ground-annual, cess, annuity,

and other public burdens: And I grant warrantice, but excepting therefrom a bond and disposition in security affecting the said subjects hereby disposed, for the sum of £2400 sterling, granted by Robert Brown, commission merchant, Saint Enoch Square, Glasgow, in favour of Dr John Gibson Fleming, surgeon in Glasgow, the Rev. Dr Matthew Leishman, minister of the parish of Govan, and John Morgan, merchant in Glasgow, the surviving accepting trustees and executors, original and assumed, of the now deceased Matthew Fleming of Sawmillfield, sometime merchant in Glasgow, dated the 13th and recorded in the said Burgh Register of Sasines the 26th, both days of May 1865: And I consent to the registration hereof for preservation.—In witness whereof,” &c.

The Commissioners of Inland Revenue assessed the above disposition with *ad valorem* conveyance-on-sale duty, under section 73 of the Stamp Act 1870, on the full sum of £4750, they being of opinion that the property was conveyed in consideration of the debt or liability of the grantor to the grantees to the extent of £2350, and subject to the payment of money, to wit £2400, charged on the property, and that the said debt or liability and the said money were the consideration in respect whereof the conveyance was chargeable with the *ad valorem* conveyance-on-sale duty.

The liquidators of the bank paid the full assessment demanded, but being dissatisfied with the determination of the Commissioners they craved a Case for the opinion of the Court, on the ground that duty was only exigible on the sum of £2350, which was the value of the grantor's interest in the subjects conveyed, the extinction to that extent of his liability to the grantees being the consideration in respect of which the said disposition was granted.

By the Schedule of the Stamp Act 1870 (33 and 34 Vict. cap. 97) there are charged the following stamp-duties, viz.:—

“Conveyance or transfer on sale of any property (except such stock or debenture-stock or funded debt as aforesaid),

“Where the amount or value of the consideration for the sale does not exceed £5, . . . £0 0 6”

and so on.

“Conveyance or transfer of any kind not hereinbefore described, . . . 0 10 0”

Section 70 of the same Act is as follows:—

“The term ‘Conveyance on Sale’ includes every instrument, and every decree or order of any Court or of any commissioners, whereby any property upon the sale thereof is legally or equitably transferred to or vested in the purchaser, or any other person on his behalf or by his direction.”

Section 73 of the same Act is as follows:—

“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, such 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.”

Section 78 of the same Act is as follows:—  
“Every instrument, and every decree or order of any Court or of any commissioners, whereby any property on any occasion, except a sale or mortgage, is transferred to or vested in any person, is chargeable with duty as a conveyance or transfer of property: Provided that a conveyance or transfer made for effectuating the appointment of a new trustee is not to be charged with any higher duty than ten shillings.”

The case was argued before the First Division.

Authority cited—*Mortimore v. Commissioners of Inland Revenue*, 1864, 33 L.J. Exch. 263.

At advising—

LORD PRESIDENT—This is a Case stated by the Commissioners of Inland Revenue with regard to the proper stamp to be impressed upon a deed the terms of which are set forth in the Case. By that deed a person of the name of William Dove, who is described as “heritable proprietor of the subjects hereinafter disposed,” sets out that he was a contributory in the liquidation of the City of Glasgow Bank, and that certain calls were made upon him which he was unable to meet; that a compromise had been arranged between him and the liquidators; and that as part of that compromise it was agreed that “I should dispose to the said bank the said subjects, my interest in which (after deducting the principal sum contained in the bond and disposition in security hereinafter mentioned) is valued in the declaration and relative schedule lodged by me with the said liquidators with reference to the said compromise, and that in extinction to that extent of my present and future liability to the said bank.” Therefore he proceeds to dispose the subjects in question in the usual form of a disposition, and the clause of warrandice is thus expressed—“And I grant warrandice, but excepting therefrom a bond and disposition in security affecting the said subjects hereby disposed, for the sum of £2400 sterling,” granted by certain persons who are named, and dated in May 1865.

Now, the Commissioners are of opinion that this was a conveyance on sale, and that the property was conveyed in consideration of the debt or liability of the grantor to the grantee to the extent of £2350, and subject to the payment of money, to wit, £2400, charged on the property, and that the said debt or liability and the said money they deemed the consideration in respect whereof the conveyance was chargeable with the *ad valorem* conveyance-on-sale duty.

The liquidators, on the other hand, at whose request this Case has been stated, maintain that the *ad valorem* stamp with which the deed ought to be impressed is upon the sum of £2350, being the amount of the contributory's liability to them, the discharge of which they say is the proper and only consideration of the conveyance.

Now, the question which is raised depends upon the construction of the 73d section of the Stamp Act of 1870, being the existing Stamp Act. But a good deal of light may be thrown upon the construction of that section by the history of legislation upon this subject. There are two previous statutes in which this matter is dealt with; and the first of these is the Act 55 Geo. III. cap. 184, in the schedule of which, under the title “Conveyance,” it is provided “that

where any property is sold and conveyed subject to any debt or sum of money to be afterwards paid by the purchaser, the same shall be deemed to be purchase or consideration-money in respect whereof the said *ad valorem* duty charged upon the sale and conveyance of property is to be paid.” Now, there is a plain distinction made there, or at least implied in that language, between a burden upon the property conveyed for the discharge of which the purchaser is personally bound, and one which constitutes a mere burden on the estate with no personal obligation against the purchaser. And it appears in the present case that the burden of £2400 upon the property in question is constituted by a bond and disposition in security granted by a previous owner of the estate, and unless there had been some mode of transferring the personal obligation against Mr Dove, the grantor of the disposition, he of course is not personally bound for payment of that debt, although he would have a very sufficient interest to pay off the debt, because it constituted a burden upon what has now become his property. But under this statute 55 Geo. III. it was, I think, very naturally held, in the case of the *Marquis of Chandos v. Commissioners of Inland Revenue*, 1851, 20 L.J. Exch. 269, by the English Court of Exchequer, that where there was no personal obligation upon the purchaser it was not intended by the Act that the amount of the burden should be taken as part of the consideration of the conveyance. And it was in consequence of the judgment so pronounced that an enactment of a very different kind was introduced into the next Stamp Act, 16 and 17 Vict. cap. 59, by the 10th section of which, after reciting that portion of the 55 Geo. III., which I have already read, and proceeding upon this further consideration, “Whereas it has been held and determined that the said *ad valorem* duty is payable in respect of any such sum or debt only where the purchaser is personally liable or bound, or undertakes or agrees, to pay the same, or to indemnify the vendor against the same, and it is expedient to alter and amend the law in this respect,” the statute proceeds to enact that “Where any lands or other property shall be held and conveyed subject to any mortgage, wadset, or bond, or other debt, or to any gross or entire sum of money, such sum of money or debt shall be deemed the purchase or consideration-money, or part of the purchase or consideration-money, as the case may be, in respect whereof the said *ad valorem* duty shall be paid, notwithstanding that the purchaser shall not be or become personally liable, or shall not undertake or agree, to pay the same, or to indemnify the vendor or any person against the same, anything in any Act or otherwise to the contrary notwithstanding.”

Now, that is a very plain alteration of the previous enactment, and provides that the burden subject to which the estate is conveyed shall be deemed to be part of the purchase-money, whether the vendee be personally liable to pay for it or not. If this case had occurred under that statute, I do not understand the liquidators to contend that the determination of the Commissioners would be wrong. But they say that the provision of the 73d section of the existing Act is very different from this, and that its true construction leads to an opposite result. Now, the

section in question is no doubt differently expressed from that which occurs in the Act 16 and 17 Vict. But the reason why it is so expressed, I apprehend, is this, that it is intended to state the matter more shortly, and at the same time, in compliance with a rule which is now very generally observed in statutes which are intended to be applicable to the whole United Kingdom, and particularly statutes of this description—Revenue Acts,—the language employed is not technical language either of the law of England or of the law of Scotland, but language of a popular character, equally intelligible in all parts of the United Kingdom.

Keeping that in view, let us see what is provided by the 73d section—"Where any property is conveyed to any person in consideration wholly or in part of any debt due to him"—that is, to the donee—"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, such 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." Now, there is one part of this enactment about which there is no dispute as applicable to the present case. The property is conveyed in consideration partly of a debt due to the purchaser—that is to say, in consideration of that debt being discharged. The liquidators admit that to that extent they are liable in *ad valorem* duty. We shall therefore eliminate that part of this clause of the statute altogether in considering this matter, and see what are the further words of the enactment applicable to this burden of £2400, subject to which the conveyance is made—"Where any property is conveyed subject to the payment or transfer of any money, whether it be a charge upon the property or not, such money is to be deemed part of the consideration in respect whereof the conveyance is chargeable." These are the words of the clause applicable to the case we have to deal with. Now, is not the amount of this bond and disposition in security a sum of money subject to which this property is conveyed? I really cannot conceive anything more simple than the answer to that question. There cannot be the least doubt that the property in the hands of the purchasers, the liquidators, is subject to this bond and disposition in security for £2400, and when they pay off that bond, if they think fit to do so, they will then be the heritable proprietors of a subject the price and value of which is £4750, and therefore it seems most reasonable, if it is necessary to look at the reason of the thing at all, that as they can put themselves to-morrow in the position of being the unburdened proprietors of this estate, upon adding to the sum that they have already given the sum contained in this bond, they will thereby become proprietors of that estate who have obtained a conveyance to that estate of the value of £4750 by means of the deed which is now to be stamped.

If any other rule were adopted, it is quite plain that the fair incidence of this tax would be altogether frustrated and defeated. A proprietor has an estate worth £20,000. There is a bond upon it for £10,000. He sells that estate, and the purchaser pays to him the difference between the amount of the bond and the value of the estate,

so that the bond is for £10,000 and he pays £10,000. The day after he obtains infestment he pays off the bond. Well, the practical result of that is that he has paid £20,000 as the purchase-money of this estate, and he has obtained a conveyance with an *ad valorem* stamp of the value of £10,000. That is a simple defeating of the purpose and intention of the Legislature as expressed in this clause, and therefore I think it very clear, upon the plain meaning of this section, that there was no intention whatever to go back upon the enactment of the 16 and 17 Vict., and to restore the enactment of the 55 Geo. III. which is what the liquidators are contending for. On the contrary, it seems to me that the 73d section plainly intended to continue the provision of the Statute 16 and 17 Vict., and therefore that the Commissioners of Inland Revenue are right.

LORD MURE—I have come to the same conclusion that the Commissioners have taken a right view of this section of the statute. There can be no doubt of this, that under the Act 16 and 17 Vict. cap. 59, sec. 10, when a property is sold subject to a mortgage or subject to a bond, the value or amount of that mortgage or bond is to be taken into consideration in fixing the *ad valorem* duty. That is the express provision of the section which your Lordship has read, and which proceeds upon a preamble of the older Act of 55 Geo. III. having made a somewhat different and more limited provision. There can be no doubt of this, that under this 10th section, when an estate is sold subject to a mortgage, the value of the mortgage is to be taken into consideration. But in that section 10, as I read it, I do not find the words which occur in the 73d section of the later Act, viz., "where any property is conveyed in consideration of any debt due to him"—that is, due to the party to whom it is conveyed. These words, I think, are not found—at all events expressly—in that 10th section of the 16 and 17 Vict., and when at first the argument was proceeding it appeared to me that, looking to the peculiar terms of the phraseology of the 73d section, there might be a point raised as to whether the debt due to him was not put alternatively as a separate thing from the payment of money, and it is that, I think, which has created a little difficulty and confusion in the argument put to us on the part of the liquidators. But on further consideration I am of opinion that that construction is not a sound one, because it appears to me that the intention of the 73d section was unquestionably to bring within the provisions of the Revenue Act the consideration of a debt due to the purchaser. It never was intended by that section to put an end to the provisions of the 16 and 17 Vict. by which a sale subject to a mortgage was to have a value put upon it with reference to the value of that mortgage. The 73d section is—"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, such 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." That is, the debt due to the

purchaser, if the property is not subject to a mortgage, will be the consideration; but if the property is subject to a mortgage at the same time when it is conveyed for a debt due to the party, then both are to be taken as making up the consideration. That, I think, is the sound construction of the statute, and I agree with your Lordship that the Commissioners are right.

**LORD SHAND**—If this question had been to be decided on the terms of the Stamp Act of 1870, without the light of the previous legislation, I should have felt it to be attended with very great difficulty, because I think there was a great deal of room for the argument maintained on behalf of the liquidators of the bank that the word “payment” occurring in sec. 73 of the statute, used in this expression “subject either certainly or contingently to the payment of any money or stock,” ought to be limited to a case in which there was a personal obligation to pay money, and would not include the case where the money or stock was a burden merely upon land without a personal obligation. But I think the difficulty is entirely removed when the previous legislation is regarded. By the Statute 16 and 17 Vict. cap. 59, passed in 1853, which amended the law as it had previously existed under the Act 55 Geo. III., it was substantially provided that where a person purchased property for a valuable consideration, subject to any mortgage or pecuniary burden, the amount of the debt or mortgage should be deemed to be a part of the consideration. The result of that statute, I think, was this, that in such a case—a case in which there was in the first place so much money paid or a debt extinguished, and in the next place the property was conveyed subject to a burden—the stamp-duty payable was to be paid upon the value of the property which the purchaser acquired, and the mode of ascertaining that value was to take, in the first place, the sum which he was paying or the amount of the debt which he was discharging, and the amount of the burden upon the property as fixed by the mortgage. That—the including of the amount of the mortgage in the consideration—was very deliberately done by the Legislature in 1853, in consequence of a decision which was pronounced, and which your Lordship has referred to; and for a period of seventeen years so stood the law. But in 1870 the statute was passed which we have now to construe, and it is to be observed that the main purpose of that statute was—while there is no doubt that to a considerable extent additional duties were given to the Crown by its provisions—its main purpose was really to consolidate the legislation in regard to the stamp-duties, with a view to the repeal of the then existing Acts, which were numerous and somewhat confusing, and which were repealed accordingly in the same session of Parliament. Now, having that in view—that this was substantially a consolidation statute, and that there is no declaration in the statute, either directly or which can be inferred from its terms, that there was any intention to go back upon that which had been done deliberately in 1853—I think, keeping that in view, there is no difficulty in the construction of the language of sec. 73. Your Lordship has fully gone over the terms of that section, and I do not

mean to go into it in detail; but it appears to me, keeping in view what the existing law was, that this was intended in briefer terms to preserve the law upon that footing. The enactment is, that where the consideration is partly the discharge of a debt and partly a payment of money or stock, whether constituting a charge upon the property or not, the amount of that charge shall be a part of the consideration, and I think the word “payment” there is intended to cover the case in which the party is under an obligation to meet the burden, or it may be to give stock in return, while the words “constituting a charge or incumbrance upon the property” are intended to cover the case where that is the only way in which the burden is mentioned, although there be no obligation to pay. On the whole matter, therefore, I agree with your Lordship in thinking that the Commissioners have come to a right decision.

**LORD DEAS** was absent.

The Court affirmed the assessment of the Commissioners.

Counsel for Liquidators of City of Glasgow Bank—Kinnear—Lorimer. Agents—Davidson & Syme, W.S.

Counsel for Inland Revenue—Dean of Faculty (Fraser, Q.C.)—Rutherford. Agents—D. Crole, Solicitor of Inland Revenue.

Saturday, January 15.

## FIRST DIVISION.

[Sheriff of Forfarshire.

### FLEMING V. KINNES.

*Process—Appeal—Competency—Judicature Act 1825 (6 Geo. IV. c. 120), sec. 40, and A. S. 11th July 1828, sec. 5.*

A Sheriff-Substitute on 2d September allowed a proof. He subsequently assigned three new diets successively, on the third occasion finding the defender liable in expenses of adjournment, and adding in a note that it was granted with difficulty, and no further indulgence would be given to him. The defender appealed to the Sheriff, who adhered. On the case coming back to the Sheriff-Substitute, he on 15th December assigned a new diet of proof. Against this interlocutor the defender appealed to the Court of Session. *Held* (1) that under the above enactments, and following the case of *Falconer v. Shiells & Co.* (July 10, 1827, 5 S. 853), the appeal was incompetent as not having been timeously presented; and (2) that the interlocutor of 15th December not being either an allowance of proof or a renewal of an allowance of proof was not appealable; and appeal *refused* accordingly.

*Observations per Lord President (Inglis) distinguishing the case of *Murphy v. M'Keand* (Feb. 15, 1865, 4 Macph. 444) from the present case.*