

K.C.)—Young, Agent—Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for the Respondent—Lorimer, K.C.—Crurie Steuart. Agents—Mackenzie & Kermack, W.S.

Tuesday, November 22.

FIRST DIVISION.

[Exchequer Cause.]

INLAND REVENUE v. OLD MONKLAND CONSERVATIVE ASSOCIATION.

Revenue—Income-Tax—Claim of Exemption from Income-Tax by Unincorporated Society—Income-Tax Act 1842 (5 and 6 Vict. c. 35), secs. 40, 163, and 192.

Although in the Income-Tax Acts unincorporated societies are in the statutory provisions laying on income-tax expressly mentioned as being chargeable with the tax, while in the statutory provisions relative to claims for exemption from income-tax, such societies are not expressly referred to, nevertheless an unincorporated society whose aggregate annual income is less than £160 is exempt from income-tax.

The Income-Tax Act 1842 (5 and 6 Vict. c. 35) enacts as follows:—Section 40—“All bodies politic, corporate, or collegiate, companies, fraternities, fellowships, or societies of persons whether corporate or not corporate, shall be chargeable with such and the like duties as any person will under and by virtue of this Act be chargeable with.” . . . Section 163—“That any person charged or chargeable to the duties granted by this Act either by assessment or by way of deduction from any rent, annuity, interest, or other annual payment to which he may be entitled, who shall prove before the Commissioners for general purposes in the manner hereinafter mentioned that the aggregate annual amount of his income, estimated according to the several rules and directions of this Act, is less than £150, shall be exempted from the said duties.” . . . [The Finance Act 1894 (57 and 58 Vict. c. 30), sec. 34, extends the exemption to “persons whose respective incomes do not exceed £160 a-year.”] Section 192—“Wherever in this Act, with reference to any person, matter, or thing, any word or words is or are used importing the singular number or the masculine gender only, yet such word or words shall be understood to include several persons as well as one person, females as well as males, bodies politic or corporate as well as individuals, and several matters or things as well as one matter or thing unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction.” . . .

This was an appeal under section 59 of the Taxes Management Act 1880 (43 and 44 Vict. c. 19) by Frederick James Curtis, Surveyor of Taxes, Glasgow, from a determination of the Commissioners of Income-Tax for the Middle Ward of Lanarkshire at a

meeting held at Hamilton on 25th February 1904. At this meeting the Old Monkland Conservative Association had appealed against an assessment of £65 for the year 1903-4 made upon it in respect of premises situated at Nos. 20-22 Church Street.

In the case for the opinion of the Court of Exchequer the Commissioners stated—“The following facts were found or admitted—1. The Association is constituted under certain rules and bye-laws. . . . 2. The Association is the owner and occupier of the premises at No. 20-2 Church Street aforesaid. The premises are occupied by the Association as reading and recreation rooms, offices, &c. 3. The feu-duty (£2, 15s. 5d.) paid by the Association for its premises, and the interest (£31) paid by it on a bond over its premises, amount to £33, 15s. 5d., from which the Association deducted income-tax amounting to £1, 10s. 11d. 4. For the year of assessment the Association had no excess of income over expenditure. The Association claimed total exemption from income-tax (except in respect of the feu-duty and interest referred to in No. 3) for the year 1903-04, on the ground that its income from all sources did not exceed £160, and in support of this claim founded on the following enactments”—(These are quoted *supra*.)

“On behalf of the Association it was contended that the constitution of the Association is defined by and embraced in section 40 of 5 and 6 Vict. c. 35, under which section it is therefore entitled to rank: and alternatively under section 192 of said Act it was further argued that section 40 applied not only for the purpose of ‘charging’ any body of persons, but also for the purpose of relieving them under section 163 of the same Act, and that otherwise the word ‘wherever’ at the opening of section 192 would have to be wholly disregarded.

“On behalf of the Crown it was contended that section 40 was a charging section; that section 163 granted exemption to ‘any person’ with a certain limited aggregate annual amount of income; that the words ‘any person’ could not be held to include an association, as the wording of section 163 was repugnant to such construction, and that the Association was not a body politic or corporate. A club as a body though a distinct entity has no position recognised in law; it is not a company or a corporation but an unincorporated society—*per* Day, J., *Steele v. Gourley*, 1886, 3 T.L.R. 119.”

The Commissioners sustained the appeal. The Surveyor of Taxes being of opinion that the determination of the Commissioners was erroneous in point of law, appealed to the Court of Exchequer. The case was appointed to be heard before the First Division.

Argued for the appellant—Under section 40 of the Act of 1842 an unincorporated society such as the respondents was declared in the most comprehensive terms to be chargeable with income-tax. But under section 163, providing for exemption, the words were that “any person” whose income is less than £150 “shall be exempted from” the duties. The word “person” could not include an association such as the re-

spondents, who did not constitute a legal person. The expression "several persons" in the interpreting section (section 192 of the Act of 1842) referred simply to the plural number and not to an unincorporated society.

Argued for the respondents—It was an unreasonable construction of the Income-Tax Acts to hold that while the charging section applied to unincorporated societies, the exempting section did not apply to such societies. Further, such a construction was not rendered necessary by the terms of the statutory provisions. In the interpreting section (section 192 of the Act of 1842) the word "person" was defined as meaning "several persons" as well as one person, and so the word "any person" in the exempting section of the Act covered a group of persons such as the respondents.

At advising—

LORD PRESIDENT—The question in this case is whether the Old Monkland Conservative Association is liable in an assessment of £65 for the year 1903-1904, under Schedule A of the Income Tax Act, made upon it in respect of premises situated in Church Street, Coatbridge.

The Association, which is constituted under certain rules and bye-laws, is the owner and occupier of the premises in Church Street, and these premises are used by it as reading and recreation rooms, and for other analogous purposes.

A feu-duty of £2, 15s. 5d. is paid by the Association in respect of the premises, and it also pays £31 of interest annually on a bond over them. From the aggregate of these two sums, amounting together to £33, 15s. 5d., the Association deducted income tax amounting £1, 10s. 11d., and no question arises as to this.

The Association had not in the year of assessment any excess of income over expenditure, and it claims total exemption from income tax (except in respect of the feu-duty and interest already mentioned), for the year 1903-1904, on the ground that its income from all sources did not exceed £160.

The following are the leading statutory provisions upon which the question depends.

[His Lordship quoted the Acts as set forth *supra*].

It was maintained on behalf of the Crown that section 40 of the Act of 5 and 6 Vict. cap. 35, was the charging section, and that although section 163 provided for exemption of "any person" having a specified limited aggregate annual income, the words "any person" could not be held to include the Association, as the wording of section 163 was repugnant to such a construction, and that the Association was not "a body politic or corporate."

It is, however, to be observed with reference to this contention, that by section 40 of the Act, not only corporations and other proper legal persons are rendered liable, but also "fraternities, fellowships, or societies of persons, whether corporate or not corporate," and it is under these

words that the Association becomes chargeable, although it is not a corporate entity in law. *Prima facie* one would expect if it is charged under any of the denominations above mentioned, it would, when its income does not exceed £160 a year, be exempted like an individual or a proper legal person, under the same or a similar denomination, and I think this is the true construction of the statutes, the exemption, like the charge, including a group of individuals, such as the members of the Old Monkland Conservative Association, although they do not constitute either a corporation or any other legal entity.

For these reasons I am of opinion that the Commissioners acted rightly in sustaining the appeal, and that their decision should be affirmed.

LORD ADAM—The assessment in this case is imposed upon the respondents, the Old Monkland Conservative Association, under section 40 of the Income Tax Act of 1842. The words of the Act are:—"All bodies politic, corporate, or collegiate, companies, fraternities, fellowships, or societies, whether corporate or not corporate, shall be chargeable with such and the like duties as any person will under and by virtue of this Act be chargeable." I should have thought with your Lordship that the intention of that enactment was that corporations and persons not incorporated, or the persons therein enumerated, should be put in exactly the like position as single persons—that they were to be assessed in the same way and were to pay the same amount of assessment on their incomes, just like any individual. That I should have thought was the intention of the Act, and I suppose that the assessment is laid upon this Old Monkland Association as being a society of persons not incorporated, that is to say, imposed upon them as a non-incorporated society; but it appears to me, when the whole of the section is read, that there are very important considerations, which are these:—"The chamberlain or other officer acting as treasurer, auditor or receiver, for the time being of every such corporation, company, fraternity, fellowship, or society shall be answerable"—and this is the duty imposed by the Act—"for doing all such acts, matters, and things as shall be required to be done by virtue of this Act in order to the assessing such bodies corporate, companies, fraternities, fellowships, or societies to the duties granted by this Act, and paying the same." That is to say, that in the assessment of these bodies, whether corporate or unincorporate, the Inland Revenue authorities are to look to the officer of the society on whom the whole duty lies of representing the various societies, corporate and unincorporate, with reference to these assessing matters; and accordingly, it humbly appears to me, looking to the rule of this society, that the officer who in the case of this Association is charged by the Act with these duties is the treasurer. He, under the rules, is the person who is the receiver of all the money and accounts, and no doubt the treasurer of the society is

the officer upon whom rests the duty of representing the society under the rules. Accordingly, when we come to consider the 163rd section on which the case for the Crown rests, which is in these words, "Any person charged or chargeable to the duties granted by this Act, either by assessment or by way of deduction from any rent, annuity," and so on, or other annual payment, will be entitled to prove the grounds of exemption, they say that that is a clause which is meant to exempt only an individual, and does not apply to societies, corporations, companies, and such like. I do not think that is the proper reading of it at all. The treasurer, or the person representing the society, is the person referred to in that clause of the Act; and accordingly, as I suppose this Old Monkland Association could not appear as a body, when a person representing them appears on their behalf, I think he was clearly the person representing the society referred to in that 163rd section of the Act. It clearly appears that he, as the person representing the society, was entitled to obtain the exemption if he proved his right to it. All through the Act, where there are references to these associations and companies and corporations, it is always a person that is spoken of, and a person who represents and is bound to represent and act for the company. Now, this is a matter in regard to which the Act says that this person as representing the society should be exempted. Again, the interpretation section of the Act says that the word "person" referred to in the Act shall be understood to include several persons. Well, what is this Association? Is it not just an Association of several persons? I think that the true reading of the Act is that the person mentioned in the section includes the person entitled to appear as representing the association and claim exemption. On these grounds I think your Lordship's conclusion is right.

LORD M'LAREN—It has been the policy of the Revenue authorities, in applying to Parliament for money, to cast a wide net and with meshes so small that no person within the general range of the Act can hope to escape upon the ground that he is not specifically included. In the year 1842, when the Income-Tax Act was passed, we had not the benefit of a General Interpretation Act for Acts of Parliament, and accordingly, to avoid all such questions as have been argued in this case, it was customary to put every proposition both in the singular and the plural, with the addition of a reference to bodies corporate and others who might not be supposed to fall within the scope of a statute putting a tax upon persons or individuals. That practice led to a great deal of redundant phraseology, but it had the merit of making the intention perfectly clear to anyone who read the Act. Now, in this Act, as in other taxing statutes, we find that the Income-Tax is laid not only upon individuals but on bodies politic and corporate and on unincorporated societies or fellowships. I agree with Lord Adam in

holding that these last-mentioned words were unnecessary, because an unincorporated society is merely an aggregate of individuals who, if the question be of taxation on heritable property, may be regarded as tenants in common, or if it is taxation of income, may be regarded as traders in common, and therefore affected by the general words "person or persons." It so happens that while in the clause laying on the tax the unincorporated societies are referred to in express terms, yet in the clause relating to the exemption of small incomes unincorporated societies are not specially referred to. It may be that the framers of the Act had not thought that there would be any cases in point needing to be provided for, but of course it is not necessary to mention unincorporated societies at all; the meaning of the two clauses will be the same—I mean that the persons to whom they apply must be the same. I should be extremely reluctant to admit the supposition that some of the clauses of the Income-Tax Acts were intended to apply to a range of persons which included unincorporated societies, and that others which it is necessary to construe along with them were not to be applied to unincorporated societies. Nothing but the very clearest language of exclusion would, I think, lead to such an unnatural scheme of construction of an Act of Parliament. I therefore agree with your Lordships that both clauses are to be read as perfectly general in their terms and application, and therefore that this club, which it is admitted has no income, is entitled to exemption.

LORD KINNEAR concurred.

The Court dismissed the appeal and sustained the deliverance of the Commissioners.

Counsel for the Appellant the Surveyor of Taxes—The Solicitor-General (Dundas, K.C.)—Young. Agent—Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for the Respondents—R. S. Horne. Agents—Gray & Handyside, S.S.C.

Thursday, November 24.

SECOND DIVISION.

[Sheriff Court, Edinburgh.]

GORDON v. JOHN CRAN & COMPANY.

Master and Servant—Apprentice—Contract of Apprenticeship—Constitution of Contract—Proof of Contract.

In a contract of apprenticeship, though the obligation of the master to teach and of the apprentice to learn is of the essence of the contract, it does not require to be stated in express terms in the writing which embodies the contract.

Averments of contract of apprenticeship which held relevant.

This was an action raised in the Sheriff Court at Edinburgh at the instance of William Gillespie Gordon, apprentice en-