Tuesday, November 23.

SECOND DIVISION.

[Court of Exchequer.

GIBB *v.* COMMISSIONERS OF INLAND REVENUE.

Revenue—Stamp Act 1870 (33 *and* 34 *Vict. c.* 97), *sec.* 19—*Discharge or Conveyance.*

A person entered into a feu-contract by which he acquired a piece of feuing-ground in consideration of an annual feu-duty of £500, to be doubled at the entry of each heir and singular successor. He was taken bound to redeem certain portions of the feu-duty at specified periods. The feu-contract was stamped as an original constitution of a feu-right with an *ad valorem* duty under the then existing Stamp Act. *Held* that the discharge he received on redeeming one of the stipulated portions of the feu-duty fell to be stamped as a release, and not as a conveyance on sale.

By feu-contract between William Gibb, residing at Kepplestone, Aberdeen, and Francis Edmond, advocate in Aberdeen, trustee on the sequestrated estate of Sir Alexander Anderson of Blelack, knight, advocate in Aberdeen, recorded in the register of sasines and Books of Council and Session 31st January 1872, the annual feu-duty was fixed at £500, and double that amount at the entry of each heir or singular successor in the lands. The entry to the lands was fixed at the term of Whitsunday 1870. The feu-contract was stamped with the leading duty of £30, being the amount of the *ad valorem* duty on the sum of £500 as fixed by a schedule to the Act 17 and 18 Vict. c. 83, which was then in force, and which schedule contained this entry—"Charter, disposition, or contract containing the first original constitution of feu and ground-annual rights in Scotland (not being a lease or tack for years), in consideration of an annual sum payable in perpetuity or for any indefinite period, whether feefarm or other rent, feu-duty, ground-annual, or otherwise, the same duties as a lease or tack for a term exceeding at a yearly rent equal to such annual sum." That duty in cases where the annual sum exceeded £500 fixed at £3 for £50 or part of £50.

The feu-contract contained the following clause:—"And it is hereby expressly provided and declared that it shall be in the power of the said William Gibb and his foresaids at any time to redeem the said feu-duty, or any part thereof, at the rate of twenty years' purchase; but the said William Gibb hereby binds and obliges himself and his foresaids, within five years from the said term of entry, if so required, to redeem the said feu-duty to the extent of at least £100 sterling of feu-duty at the said rate, and within ten years from the said term of entry to redeem the said feu-duty to the extent of at least another £100 of feu-duty, making together £200 of feu-duty at the said rate; which feu-duty of £500, and which conditions as to the redemption thereof to the extent of at least £200 within the respective periods above mentioned, shall be real burdens affecting the said piece of ground hereby disponed."

In the year 1875 Mr Gibb, in implement of this clause, made payment to the City of Aberdeen Land Association, who had acquired the estate of superiority in the lands, of £2000 in redemption of the first £100 of feu-duty.

In 1880 the Aberdeen Land Association having required Mr Gibb to make payment to them as superiors of another sum of £2000 to redeem the second £100 of feu-duty, in terms of the clause of the feu-contract above quoted, Mr Gibb made payment for that purpose of £2000. In consideration thereof the Aberdeen Land Association granted the deed under which the present question arose. By this deed they discharged "not only the said William Gibb of £2000 as the redemption price of the said feu-duty, but also the feu-duty of £500 to the extent of another £100 of feu-duty, and his obligations to same extent from Whitsunday 1880, with interest, penalty, and casualties corresponding to the portion of feu-duty redeemed. Further, they discharge and declare to be disburdened to the extent foresaid of the real burden created by the feu-contract, All and Whole the lands" of which a description was given.

Mr Gibb then desired the opinion of the Commissioners of Inland Revenue as to the stamp-duty with which the discharge was chargeable.

The Act 17 and 18 Vict. c. 83, above quoted, expired on 31st December 1870. The Act 33 and 34 Vict. c. 97, which came into operation 1st January 1871, provides by section 72, sub-section (2):—"Where the consideration or any part of the consideration for a conveyance on sale consists of money payable periodically in perpetuity, or for any indefinite period not terminable with life, such conveyance is to be charged in respect of such consideration with *ad valorem* duty on the total amount which will or may, according to the terms of sale, be payable during the period of twenty years next after the day of the date of such instrument."

Sub-section (4) of the same section is as follows:—"Provided that no conveyance on sale chargeable with *ad valorem* duty in respect of any periodical payments, and containing also provision for securing such periodical payments, is to be charged with any duty whatsoever in respect of such provision, and no separate instrument made in any such case for securing such periodical payments is to be charged with any higher duty than ten shillings."

"Conveyance on Sale" is defined by section 70, referred to in the schedule under the head "Conveyance on Sale," to include "every instrument and every decree or order of any court or of any commissioners whereby any property upon the sale thereof is legally and equitably transferred to or vested in the purchaser, or any other person on his behalf or by his direction."

In the schedule to the Act there is under the head "Release" the following entry:—"Release or renunciation of any property, or of any right or interest in any property:—Upon a sale—*See* Conveyance on Sale. By way of security—*See* Mortgage, &c. In any other case, 10s."

The Commissioners held that the instrument fell to be assessed as a conveyance on sale, and they accordingly fixed the *ad valorem* duty at £10, being the amount payable under the head "Conveyance on Sale" under the Act. Mr Gibb having paid this sum, took a Case for appeal.

The question for the opinion of the Court was—"Whether the said instrument is liable to be assessed and charged with the said *ad valorem* conveyance on sale stamp-duty, in terms of the Act 33 and 34 Vict. c. 97; or, if not, what other stamp-duty it is liable to be assessed and charged with?"

Argued for appellant—The case was ruled by that of *Belch*, Feb. 24, 1877, 14 Scot. Law Rep. 389, 4 R. 592. The only difference was in the appellant's favour, since he did not, as the appellant in that case had done, pay the £2000 of his own will, but under an obligation.

Argued for Inland Revenue—The question in *Belch's* case related to a security—a ground-annual. A feu-duty was in a different position, being a separate estate.

At advising—

Lord Gifford—This is a case bringing up a general point of some practical importance which the Commissioners of Inland Revenue wish to have determined. It was contended that there was a destinction between the present case and that of *Belch*, and that the decision in the case of *Belch* does not apply to the circumstances of the present case. It was urged that this is a proper case of redeeming a feu-duty, and that different principles rule the cases of ground-annuals and of proper feu-duties, which last constitute a separate feudal estate. Now, I am not able to draw any distinction between this case and the case of *Belch*. No doubt, feudally speaking, in the case of a feu-duty there is a *dominium directum* and a *dominium utile;* there is a proper separation of estates which does not occur in the case of a ground-annual, which is more of the nature of a burden. But in reality this does not affect the present question as to the proper stamp required for the instrument. The release of a ground-annual is, so far as it goes, the release of a burden, and the release of a feu-duty or of part thereof (the two estates remaining as before) is no more. In the one case the feu-duty is restricted or taken away altogether, and it may be with the conveyance of a separate feudal estate; in the other a burden is restricted or taken away. I think they both fall under the same principle, and the reason of the rule is the same. It is quite plain that this piece of ground laid out for feuing purposes was sold for a price, and it does not make any difference whether the price was to be paid down or stated as a feu-duty calculated at a percentage of what would otherwise have been the price. Then the superior stipulates that he shall get part of the price in money within five years—£100 of the feu-duty is to be redeemed in three years, and another £100 within five years. That in substance is just a stipulation for payment of the price, and though the vassal pays the price instead of continuing to pay the interest or feu-duty, the transaction is not a transaction of sale properly so called. It is all embraced in and provided for, and is really a part of the original transaction (as your Lordship observed in *Belch's* case), and it is solely in virtue of the original agreement that the vassal now redeems the feu-duty, which is just the interest of price, by paying off a part of the capital. I think that is a proper case of release, renunciation, or discharge, not upon a sale or by way of security, and that it falls under the heading in the schedule "in any other case ten shillings." If the deed were to be held to be a discharge or surrender of a burden redeemed in terms of an obligation or consent to do so, then it would fall under the fourth head of the schedule—a reconveyance or renunciation—and the stamp-duty would be the same. I think the appeal should be sustained and the duty fixed at ten shillings.

The Lord Justice-Clerk and Lord Young concurred.

The Court sustained the appeal, found that the duty payable is ten shillings, and ordered repayment of the £9, 10s. paid in excess, and found appellant entitled to expenses.

Counsel for Appellant—Keir. Agents—Mitchell & Baxter, W.S.

Counsel for Inland Revenue—Lord Advocate (M'Laren, Q.C.)—Rutherfurd. Agent—David Crole, Solicitor of Inland Revenue.

Friday, November 26.

FIRST DIVISION.

[Sheriff of Midlothian.

HEDDLE *v.* GOW.

Process—Appeal—Competency—Value of Cause.

A summons raised in the Small-Debt Court, concluding for £12 as assessment under a sewerage statute, was remitted to the Sheriff's ordinary roll, and judgment given against the defender. On his appealing to the Court of Session, the appeal was, in Single Bills, *dismissed* as incompetent, on the ground that the value of the cause was not of the requisite value of £25, and that the appellant had not shown that a question of continuing liability was involved.

James Gow, S.S.C., clerk to and as representing the Water of Leith Sewerage Commissioners, sued James Heddle, rectifier, Water Street, Leith, in the Small-Debt Court at Leith, for £13, 7s. 6½d., restricted to £12, being amount of assessment laid by said Commissioners on the defender's property as a "reasonable sum of money for the use of the main or branch sewers and works," in terms of the 47th section of "The Edinburgh and Leith Sewerage Act 1864."

The Sheriff-Substitute (Hamilton) sent the case to the ordinary roll, and subsequently, after proof led, repelled the defences and decerned for the sum sued for.

On appeal the Sheriff (Davidson) adhered.

The defender appealed to the Court of Session. When the case appeared in Single Bills, counsel for the respondent objected to its being sent to the roll, and craved that the appeal be dismissed as incompetent, in terms of section 22 of the Sheriff Courts (Scotland) Act 1853 (16 and 17 Vict. c. 80), the value of the cause being under £25.

The appellant argued that the value of the cause was in fact over £25, as it involved a question of continuing liability.

Authorities—*Drummond* v. *Hunter*, Jan. 12,