

his continuance in any office or employment held under the landlord."

I do not find in the print before us that the Land Court applied their minds to this section upon which the whole question turns. It is not mentioned in the notes which have been printed. If they had applied their minds to that question I am quite unable to see how they could have arrived at the conclusion that the subjects here in question were either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral, when they were dealing with a lease which let "All and whole the buildings (with water-wheel, shaft, and spur-wheel) of the carding-mill at Milnodduff, as presently occupied by Alexander Macdonald, with the croft of land and houses attached thereto," and when it appears that the buildings are used as a carding-mill, spinning-mill, and woollen mill, and when the apportionment of the rent between the mill and the land and dwelling-house is £10, 5s. for the mill, and £9 for the land and dwelling-house. And accordingly in my opinion there are no facts in the present case which would entitle the Land Court to take the view they did and hold that these subjects fell under the provisions of the Small Landholders (Scotland) Act of 1911.

LORD SKERRINGTON—I agree.

LORD JOHNSTON was absent.

The Court answered the question of law in the negative.

Counsel for the Appellant—Wilson, K.C.—D. M. Wilson. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Counsel for the Applicant (Respondent)—Anderson, K.C.—R. C. Henderson. Agent—James Scott, S.S.C.

Wednesday, May 27.

## FIRST DIVISION.

### COATS' TRUSTEES, PETITIONERS.

*Trust—Nobile Officium—Special Powers—Power Given to Trustee to Purchase Trust Property.*

A testator by his trust-disposition and settlement directed his trustees to divide the residue of his estate in certain proportions, and empowered them in the case of property not readily divisible to value the same and assign it according to such valuation as part of any share. The trustees were also given power to sell all or any part of the trust estate by public roup or private bargain.

The trustees having presented a petition for special powers, the Court *authorised* certain pictures specified in an inventory and valuation by Messrs Christie, Manson, & Woods to be sold by public roup at Messrs Christie, Manson, & Woods' at prices not less than those specified in the inventory, and

under the express condition that a certain one of the trustees (who was a son of the testator) as an individual was to be entitled to bid at the sale for all of the pictures or such as he might desire.

William Hodge Coats, John Alexander Spens, and Ernest Symington Coats, the testamentary trustees acting under the trust-disposition and settlement of Archibald Coats of Woodside, dated 6th November 1901, presented a petition to the First Division of the Court for special powers.

The petition set forth, *inter alia*—"3. By said trust-disposition and settlement the testator, after providing for payment of his debts and funeral expenses, and the expenses of executing the trust, and of certain legacies and provisions, provided, *inter alia*, as follows, *videlicet*—'(Fifth) I direct my trustees as soon as possible after my decease, after paying over or providing for the aforesaid debts, legacies, and provisions, to make a division of all the residue of my real, heritable, personal, and moveable property and estate in the following proportions, and subject to the provisions after specified. . . . And I suggest to my trustees that the principle of the aforesaid division shall be so carried out by my trustees that each of my said children shall receive as nearly as may be a proportion corresponding to the amount of their shares respectively of each stock, security, or other asset forming part of my estate, and in the case of any heritable, real, or other property which may not be readily divisible the same shall . . . be valued by my trustees and shall be assigned by them according to such valuation as part or of any share so sold or disposed of as they according to the best of their judgment shall decide.

"4. By the eleventh purpose of said trust-disposition and settlement the testator empowered his trustees to sell all or any part of the trust estate either by public roup or private bargain. . . .

"6. The testator left moveable estate of the value over £1,000,000, as well as considerable heritable estate. Part of his moveable estate consists of a valuable collection of pictures. The petitioners have had an inventory and valuation of the most valuable pictures in the collection made by Messrs Christie, Manson, & Woods, London, which is dated 28th May 1913. . . . The total value put upon the pictures in said inventory and valuation is £34,577, but in respect that the collection comprises, *inter alia*, pictures by artists whose works generally fetch high prices, there is a possibility that some, at all events, of the pictures might realise at a public sale higher prices than those put thereon in said inventory and valuation.

"7. The petitioners obtained said inventory and valuation with the view of obtaining guidance as to the value of said pictures and the proper course to follow in dealing with them. They proposed to assign the said pictures according to said valuation to the petitioner William Hodge Coats, who with his wife and son lived with the said now deceased Peter Mackenzie Coats at Woodside aforesaid, where said pictures

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-