

Lord Hopetoun denied the right to any renewed lease, the immediate lease sought was the foundation of the right to the renewal. He cannot, therefore, in my opinion, complain, that a claim was not formally made, which, in fact, could not arise till the right to the immediate lease was either decreed or admitted.

I think further, that before the tenant exercised his option as to claiming a renewal, he had a right to have the terms of the immediate lease settled, which would have settled at the same time the terms of the renewed lease. It appears to me, that it was owing entirely to the fault of my Lord Hopetoun's agents, that these terms were not settled long before the time for giving the notice had passed. Under these circumstances, I think, that Lord Hopetoun is precluded in equity from availing himself of the plea, that the notice was not given in proper time; and I therefore concur in the judgment proposed by the LORD CHANCELLOR.

*Interlocutors reversed.*

*Appellants' Agents*, Mackenzie and Kermack, W.S.; Loch and Maclaurin, Westminster.—  
*Respondent's Agents*, J. and J. Hope, W.S.; Connell and Hope, Westminster.

JUNE 22, 1865.

THE TRUSTEES OF THE CLYDE NAVIGATION, *Appellants*, v. EBENEZER ADAMSON (Inspector of the Poor of the City Parish of Glasgow), and Others, *Respondents*.

Poor Rate—Exemption of Public Buildings—Harbour Works—Crown Buildings—*Lands and buildings are not exempt from assessment to the poor rate merely on the ground, that they are used solely for public purposes, and that the trustees derive no personal benefit from them. The sole ground of exemption is, that the lands or buildings are used by the Crown, or the immediate servants of the Crown, or for purposes connected with the government of the country. Therefore the Clyde Navigation Trustees are assessable in respect of their occupation and ownership of their docks and buildings attached.*<sup>1</sup>

The *defenders*, the *Clyde Navigation Trustees*, appealed against certain interlocutors, and in their *printed case* contended, that the interlocutors appealed against, in so far as submitted to review, ought to be reversed, for the following among other reasons:—1. Because the appellants are not trustees or commissioners in the actual receipt of the rents and profits of the Clyde Trust estate, and are therefore not liable to be assessed for poor rates under the Poor Law Amendment Act. 2. Because trustees are liable to be assessed only where the beneficial enjoyers of the property would be themselves assessable if in actual possession, and the appellants are trustees for the public at large, who are not by law assessable under any circumstances. 3. Because, if the public at large are liable to be assessed, the proposed mode of ascertaining the rateable value is erroneously based upon the sums raised to defray the outgoings, instead of upon the benefit derived from the property. 4. Because, if the appellants are liable to be assessed as trustees, in respect of the statutory tolls taken by them from the shipping using the port of Glasgow, their interest therein is not, and never can be, of any rateable value, inasmuch as the working expenses and other statutory charges upon the tolls must necessarily always be equal to the amount received, and it is impossible that the appellants can, under any circumstances, have a balance beyond those outgoings. 5. Because, if the amount received from the tolls is to be deemed the gross rateable value, the nett rateable value will be the difference between that sum and the working expenses and the other statutory charges, which will leave no balance to rate. 6. Because by the proposed mode of assessment a part of the statutory tolls would be included, although such tolls are payable in respect of vessels simply entering the port of Glasgow, whether the lands and heritages in the City parish be used or not used. 7. Because in no view are the appellants liable to be assessed in respect of the court rooms, police office, and watch houses in Robertson Street belonging to the trust.

The *Lord Advocate* (Moncreiff), and *Sir F. Kelly*, for the appellants.

*Rolt Q.C.*, and *W. M. Thomson*, for the respondents.

[After the appellants' argument had been heard, the further hearing was stopped, on the

<sup>1</sup> See previous report 22 D. 606: 1 Macph. 974: 32 Sc. Jur. 203; 35 Sc. Jur. 569. S. C. 4 Macq. Ap. 931: 3 Macph. H. L. 100: 37 Sc. Jur. 512.

ground, that two English cases, *Jones v. The Mersey Docks and Harbour Board*, and *Cameron v. Mersey Board*, were then pending, which involved the same facts. Precisely the same authorities were referred to in those cases. Soon afterwards judgment was given in *Jones v. Mersey Board*, (see these cases—11 H. L. C. 443,) and, on the same day, the following judgment was pronounced in the present case.]

LORD CHANCELLOR WESTBURY.—My Lords, in this appeal the action was originally brought in the Court of Session by Mr. Adamson, in his character of inspector of the poor of the parish of Glasgow, against the Trustees of the Clyde Navigation, and the issue raised in this action is not at all distinguishable from the two cases upon which your Lordships have just pronounced an opinion, namely, *Jones v. The Mersey Harbour Board*. The principles which are applicable to the decision of the case, and which are embodied in the Statute which is now the General Poor Law Act of Scotland, namely, the 8 and 9 Vict. cap. 83, passed in 1845, are precisely the same as the principles which are applicable to the interpretation of the law of England upon which your Lordships have just expressed your opinion.

By the 34th section of that Act of 1845 it was enacted, that where an assessment was to be imposed, the Parochial Board may resolve, that one half of such assessment shall be imposed upon the owners and the other half upon the tenants or occupants of all the lands and heritages within the parish or combination rateably according to the annual value of such lands and heritages.

The appellants in the present case, the Trustees of the Clyde Navigation, are, on behalf of the subscribers or shareholders in that undertaking, the owners and occupiers of very large docks and other public works which have been erected by them on the river Clyde, for the purpose of improving the navigation. And the question which was raised by them in answer to the demand that they should be rated to the poor, was precisely the same as the question raised by the Mersey Docks and Harbour Trustees—the plea in law for the defenders, the Clyde Trustees, being thus expressed: “Any property vested in the defenders having been vested in them as trustees for public purposes, and the revenues derived therefrom, and from the trust under their management having been all appropriated by Statute to specific public purposes,” and so on. These grounds of defence are, I take it, identical with the defences raised by the Mersey Harbour and Dock Board.

Now, the local legislation applicable to the docks and harbour held by the Clyde Trustees appears to have had this for its object, that the property alleged by the appellants to be appropriated exclusively to public purposes, is appropriated only in this sense, namely, that the revenues which the trustees are authorized to raise by the tolls and imposts upon shipping using the harbour and the docks are dedicated by the Act to the purposes of maintaining and improving the harbour and navigation of the river Clyde, and for paying the debt contracted in the formation of the works. And any surplus is directed by the Act to be applied in making additional improvements. Now, beyond the money required for the purpose of maintaining these docks and this harbour, there is a very large revenue out of which the subscribers or shareholders receive the interest upon the money which they advance for the construction of these docks, and there is still a surplus which is applicable to the purpose of making additional improvements by way of the extension of the docks, and, if necessary, of the harbour.

The question, therefore, recurs in this case, which is to be decided only upon the same principles as those which were discussed in the two cases last decided, namely—Are these public purposes in the sense of being Government public purposes—purposes connected with the use of the Crown so as to warrant the exemption of the Trustees, as the occupiers of this property, from a liability to be rated to the relief of the poor? I apprehend, that this case is not distinguishable, either in principle or in its details, from the cases which have just been decided, and that your Lordships will adhere to the same *ratio decidendi*, and will hold, that the purposes to which the revenues of the Clyde navigation are applied are undistinguishable from those in the *Mersey Docks case*; and that consequently there is no ground for the exemption of the Trustees.

The interlocutor of the Court below is not confined merely to that point; but that is the only point which has been made the subject of appeal. I think, therefore, that your Lordships will concur with me in the conclusion, that it will be right to affirm the order of the Court below so far as it is now appealed from; and consequently to dismiss this appeal, and, as a necessary consequence, to dismiss it with costs.

LORD CRANWORTH.—My Lords, the question here is substantially the same as that in *Jones v. The Mersey Docks*, though it arises under a different Act of Parliament.

By the Scotch Poor Law Act, 8 and 9 Vict. c. 83, the parochial board in every parish may resolve to raise the necessary funds by assessment in any one of three different modes. The first mode is by assessment of one half on the owners, and the other half on the occupiers, of all lands and heritages within the parish. This was the mode of assessment adopted by the parochial board of the city parish of Glasgow; and the rates now in question were imposed by that board on the appellants as owners and occupiers of the quays, wharfs, and docks of the river Clyde at Glasgow.

That, under the local Act regulating the port and harbour of Glasgow, these appellants are owners and occupiers of the property in respect of which they are rated, cannot be disputed; but they contend, that they are not such owners and occupiers as were contemplated by the Poor Law Act, for that their ownership and occupation are not beneficial to themselves; that they are merely owners and occupiers for the benefit of the public.

This is the very question which the House decided in the last case. The principle is the same. The Scotch Act does not, any more than the English Act, make an exemption in favour of those who occupy only for the benefit of the public. And on the same grounds on which trustees or commissioners of public docks and harbours are made liable in England they must be made liable in Scotland. I am therefore of opinion, that this appeal is unfounded, and ought to be dismissed.

LORD KINGSDOWN.—My Lords, I was not present at the hearing of the English cases, and I have only to express my entire concurrence in the principles which have been laid down in the judgment in this case.

*Interlocutors affirmed with costs.*

*Appellants' Agents*, Hamilton and Kinnear, W.S.; Grahames and Wardlaw, Westminster.—  
*Respondents' Agents*, W. Burgess, S.S.C.; H. Ward, Westminster.

JUNE 22, 1865.

CALEDONIAN RAILWAY COMPANY, *Appellants*, v. STATUTE LABOUR ROAD TRUSTEES OF KILMACOLM, *Respondents*.

Statute Labour—Assessment—Conversion—Poll Tax—General Statute Labour Act, 8 and 9 Vict. c. 41, §§ 13, 14—*The Statute 8 and 9 Vict. c. 41, §§ 13, 14, authorizes the abolition of the personal performance of Statute service, and of the levying of the conversion thereof in money, or any assessment in lieu of such conversion as a poll tax; and thereafter trustees are, in lieu thereof, to assess any sum not greater in amount on all lands, buildings, &c.*

HELD (affirming judgment), *That the word "poll tax" is used in the Statute in a comprehensive sense as denoting all kinds of assessments on occupiers, which were substitutes for Statute labour. Therefore a railway company is subject to the assessment, though, by the local Acts, some of the assessments were not, in a strict sense, a poll tax.*<sup>1</sup>

This was an appeal from interlocutors of the First Division. The question involved turned upon the meaning of the word "poll tax," in the Statute 8 and 9 Vict. c. 41; and whether the Caledonian Railway Company were assessable as occupiers to the highway rate of the parish of Kilmacolm.

The sections of the Statute 8 and 9 Vict. c. 41, were as follows:—§ 13. "And be it enacted, that in all cases in which a sum of money, heretofore exigible as conversion of Statute service, or assessment in lieu thereof, shall, under this Act, cease to be so exigible, it shall be lawful for all such trustees, at a general meeting assembled, to assess, in any county or district of a county, any sum not exceeding the amount of the conversion or other money which, by reason of this Act, shall cease to be exigible, and to cause the same to be levied upon all lands, buildings, and other heritable subjects not hereinbefore exempted from assessment, or to be added to the sums otherwise assessable by any local Act, and that notwithstanding the rate of assessment should be thereby raised above the maximum amount authorized by such local Act; and all such sums so assessed or added shall be levied and applied in the same manner as the money might have been levied and applied, in lieu of which the said sums are assessed; and all such sums shall be payable, one half by the owners, and the other half by the occupiers of the lands, buildings, or other heritable subjects so assessed; and it shall be competent to levy from the occupiers the half payable by the owners, and such occupiers shall be entitled to deduct such half from the rent payable to the owners or other parties having right to such rent."

§ 14. "And whereas it is expedient to abolish the personal performance of Statute service, and the levying of the conversion thereof in money, or any assessment in lieu of such conversion, as a poll tax, be it enacted, that from and after this present year 1845, it shall and may be lawful for all such trustees, at a general meeting assembled, if they shall think fit, to order and direct,

<sup>1</sup> See previous report 2 Macph. 355: 36 Sc. Jur. 93. S. C. 4 Macq. Ap. 937: 37 Sc. Jur. 513: 3 Macph. H. L. 34.