

holding that the circumstances of the case were not such as to justify a departure from the ordinary practice, and appointed the proof in the cause to be led before him on the 13th of March. To-day the Court, after hearing Mr Munro in support of a re-claiming note for the defenders, unanimously adhered, the LORD JUSTICE-CLERK observing that the judicial examination of a party, in all cases a proceeding of extreme delicacy, was particularly so in consistorial causes, and should not be adopted except in circumstances of a very special nature. No such circumstances had been stated in the present case; and, moreover, he was not aware that that proceeding had ever been followed in a proof of marriage by habit and repute.

## JURY TRIAL.

(Before Lord Ormisdale.)

JENKINS AND OTHERS *v.* MURRAY.

*Road—Right of Way.* Verdict for the pursuers in a right of way case.

Counsel for Pursuers—Mr Millar, Mr Balfour, and Mr Mackintosh. Agent—Mr George Donaldson, S.S.C.

Counsel for Defender—The Solicitor-General, Mr Gifford, and Mr Johnstone. Agents—Messrs Russell & Nicolson, C.S.

In this case—in which William Jenkins, junior, salesman, residing in the town of Stirling; and Edward Banks, smith, also residing in the said town of Stirling; John Stewart, tailor, residing in the village of Torbrex, near Stirling; George Finlayson, weaver, also residing in the said village; and William Gillies, pattern-maker, also residing in the said village; Robert Marshall, nailer, residing in the village of St Ninians, near Stirling; George Paterson, nailer, also residing in the said village; Robert Corsair, nailer, also residing in the said village; Robert Andrew, nailer, also residing in the said village; John Dick, nailer, also residing in the said village; and William Wright, nailer, also residing in the said village; Alexander Gordon, gardener, residing in the village of Cambusbarrow, near Stirling; John Ure, weaver, also residing in the said village; and John Lamond, fletcher, also residing in the said village, are pursuers; and Lieutenant-Colonel John Murray of Touchadam and Polmaise, in the county of Stirling, is defender—the issue was as follows:—

“Whether for forty years and upwards, or for time immemorial prior to 1864, there existed a public right of way for foot passengers from a point on the public turnpike or statute-labour road leading from Stirling to Glasgow, marked C on the copy Ordnance Survey map, No. 4 of process, through the defender's lands, as delineated by a line coloured green on the said map, to another point marked D on the said map, also situated on the said public turnpike or statute-labour road, and near to the Murrayshall Lineworks?”

The trial commenced on Wednesday morning and lasted till Saturday, when the jury, after an absence of about half an hour, returned a verdict for the pursuers.

## HOUSE OF LORDS.

Thursday, March 8, and Monday March 12.

LEITH DOCK COMMISSIONERS *v.* MILES.

*Poor—Assessment—Harbour.* Held (aff. Court of Session) that the Leith docks and harbour are liable to be assessed for the support of the poor.

*Res judicata.* Held (aff. Court of Session) that a plea of *res judicata* was not well founded, the question at issue not having been before the Court in the previous action.

Counsel for Appellants—The Attorney-General (Palmer), the Lord Advocate (Moncreiff), and Mr Anderson, Q.C. Agents—Mr John Phin, S.S.C., and Messrs Maitland & Graham, London.

Counsel for Respondent—Sir Hugh Cairns, Q.C. and Mr Rolt, Q.C. Agents—Mr Alexander Duncan S.S.C., and Messrs Simson & Wakeford, London.

This is an appeal from the First Division of the Court of Session deciding that the harbour and docks of Leith are equally liable to be assessed for the support of the poor with any other heritable property within the parish (2 Macph. 1234).

The LORD CHANCELLOR—Is not this case identical with the English Case of the Mersey Docks and the Scotch case of Adamson *v.* The Clyde Navigation Trustees, both decided last session?

The ATTORNEY-GENERAL said it was to a certain extent identical, and he would therefore beg their Lordships to trust him that he would argue only those points which he submitted distinguished the present case from those his Lordship had referred to, and exempted it from the rule applied to them. He begged to submit three propositions to the House—1st, That the non-liability of the commissioners was already *res judicata*; 2d, That these docks were not public property in the sense in which the Mersey Docks were; and, 3d, That assuming they were assessable, the assessment ought not to be levied upon the harbour dues.

LORD CHELMSFORD—It was decided in the Mersey Dock case that though the trustees were bound to lay out every sixpence in their maintenance, the docks were nevertheless liable to assessment.

The LORD CHANCELLOR—Did not the Court of Session hold that Adamson *v.* The Clyde Navigation Trustees governed the present case?

The ATTORNEY-GENERAL admitted they did, but said he hoped to show that the two cases were not analogous. With respect to his first proposition, that this matter was already *res judicata*, it would be necessary to show the position of the appellants. The right to the harbour and port of Leith, with right to levy dues, was conferred on the city of Edinburgh—or was sanctioned—by the Golden Charter granted by James VI. in 1603. These dues were expended in the maintenance and improvement of the port and harbour, which had since, and under authority of the statutes to be presently mentioned, been still more enlarged by the construction of works within high-water mark and otherwise. By the Act 28 George III., c. 58, the magistrates were empowered to borrow £30,000 to purchase certain lands, to execute certain works, and to levy additional duties. Additional borrowing powers were conferred by 38 George III., c. 19, and 39 George III., c. 44; and the latter Act authorised the imposition of additional duties, the construction of further works, and provided that the duties should be applied solely in keeping the works in repair, in paying the interest of the money borrowed, and that any surplus which should remain should be kept as a sinking fund to meet emergencies from accidents. Additional borrowing powers were conferred by various subsequent Acts to the extent of £160,000. The Act 6 Geo. IV., c. 103, authorised the advance of £240,000 by the Treasury to be applied in payment of the sums borrowed by the magistrates, to be secured to the Treasury by a conveyance of the harbour rates, and of all the property purchased for the purposes of the harbour. By 1 and 2 Vic., c. 55, the management of the harbour was entrusted to eleven commissioners, of whom five should be appointed by the Commissioners of the Treasury, three by the magistrates of Edinburgh, and three by the magistrates of Leith, and to these commissioners all the rights and powers of the magistrates were transferred. That Act also provided that the debt to the Treasury should be postponed to an annual sum of £7680, to be paid into bank in name of the Remembrancer and Auditor of the Court of Exchequer, to be applied in payment of—(1) £2000 to the ministers of Edin-