

That surely is a very strong circumstance. I rather think we ordered this present depending process to be intimated to the Duke of Roxburghe, in order that he might, if he thought proper, appear to see that his interests were not compromised. But his Grace did not choose to appear, and I think that must have arisen from a conviction that the valuation upon which the heritor here founds, really comprehended the whole of his teinds in the parish.

There has never been an allocation upon the objector's lands beyond the amount of the valued teind; and I may say that, down to the present locality, no such attempt has been made. Nay, the opinion of the respondent, who is common agent in the locality, was entirely in favour of the objector at first, and he proposed a locality by which no additional stipend was allocated on Mr Plummer. But when our decision as to *Philippaugh*, in the same locality, was pronounced, the respondent seems to have thought that we went on a principle that might carry him out in making an additional allocation upon Mr Plummer. I have therefore been at some pains to distinguish the two cases, in order to satisfy the parties that we are not inconsistent in the course that I now propose to your Lordships to adopt, viz., that we should sustain the objection of Mr Plummer in this case by adhering to the interlocutor of the Lord Ordinary as well on this branch of it as on the other.

LORD JUSTICE-CLERK.—That is the opinion of the Court, we shall adhere to the part of the interlocutor which was not adhered to in the previous judgment of the Court on 20th March.

Agents for Objector—Hughes & Mylne, W.S.

Agent for Common Agent—James Macknight, W.S.

Thursday, December 12.

SCOTTISH NORTH-EASTERN RAILWAY CO.
v. INSPECTOR OF POOR OF ST VIGEANS.

Poor—Assessment—6 Will. IV., c. 32—6 Will. IV., c. 34. Circumstances in which held that, under the statutes libelled on, a railway company was exempt from liability for poor's-rates.

This was a suspension in which the question was, as to a right of exemption claimed by the Scottish North-Eastern Railway Company from poor's assessment, in respect of certain exempting clauses in their Acts. The clauses mainly relied upon were the 23d section of the Act 6 Will. IV., c. 32, and the 32d section of the Act 6 Will. IV., c. 34. By section 23 of cap. 32, it was enacted, "That the rights and titles to be granted in manner above-mentioned to the said company to the lands and heritages therein described shall not in any measure affect or diminish the right of the superiority of the same, but, notwithstanding the said conveyances, the rights of superiority shall remain as before, entire in the persons granting such conveyances; and the lands and heritages so conveyed to the said company shall not be liable for any feu-duties or casualties to the superiors, nor for land-tax; cess, stipend, schoolmaster's salary, nor any public or parish burden whatever, but the same shall be paid by the original proprietor of such lands or heritages." By section 32, cap. 34, it is enacted, "That the lands or heritages to be acquired for the purposes of this Act shall not be liable in payment of land-tax,

or any feu-duties, casualties of superiority, cess, stipends, schoolmaster's salary, or other public or parochial burdens, unless it be so stipulated in the conveyance thereof to the said company, but the same shall be paid by the original proprietors of such lands or heritages, except in case the said company shall purchase and acquire the whole lands or heritages belonging to any person within the said parishes, in which case the said burdens shall be paid by the said company for the whole of such lands or heritages which may be so acquired as aforesaid."

The Court had formerly decided, in an action at the instance of the Inspector of Coupar-Angus, that the claim of exemption was well-founded; but the present case was designed to bring up the merits of the Coupar-Angus case with a view to appeal, and also to enable the respondents to state certain additional pleas, to the effect (1) that the exemption only applied to the assessment attaching to *ownership*, and (2) that there were certain portions of the railway company's line in the parish of St Vigeans which were not under the exempting clauses.

The Lord Ordinary suspended *simpliciter*, holding that there was no distinction between this case and that of Coupar-Angus, and that the respondent had not condescended upon the portion of the line excepted from the exemption.

His Lordship pronounced the following interlocutor:—

"The Lord Ordinary having heard parties' procurators, and made avizandum, and considered the proceedings: Finds that the suspenders, the Scottish North-Eastern Railway Company, are not due to the respondent, the Collector of Poor's-rates for the parish of St Vigeans, the sum of assessment for which warrant has been granted: Suspend *simpliciter* the warrants and proceedings complained of. Declares the interdict already granted perpetual, and decerns: Finds the respondent liable to the suspenders in the expenses of process: Allows an account thereof to be lodged, and remits to the auditor to tax the same, and to report.

"W. PENNEY."

"Note.—The present case must be ruled by the decision of the Court in the case of the *Scottish North-Eastern Railway Company v. Gardiner*, 29th January 1864, 2 M., 537. The Collector of Poor's-rates for the parish of St Vigeans has avowedly disregarded that decision, and assessed the Railway Company without giving effect, in any respect, to the exemptions sanctioned by the judgment. The sum insisted for, and for enforcement of which poidings were executed of the Company's carriages and locomotives, is clearly not due to the whole extent. The Lord Ordinary would have been well pleased had he been enabled in the course of the process to fix the sum (within that demanded) truly due by the Company, and he gave the Collector an opportunity of showing the limitation produced by the application of the decided case. The Collector has been unable to do so, from causes alleged by him to be beyond his control. The Lord Ordinary has therefore felt that he had no alternative but to grant suspension of the warrant and interdict against the prosecution of the poiding.

"W. P."

The Collector reclaimed.

LORD ADVOCATE and THOMS for him.

CLARK and WEBSTER in answer.

The Court to-day adhered, except as to the last point, upon which they held that it was incumbent on the Railway Company to furnish information,

and as to which, therefore, they ordered them to put in a minute. The case will, it was intimated, be at once carried to the House of Lords, both parties being desirous to have the main question decided.

Agents for the Suspenders—Morton, Whitehead, & Greig, W.S.

Agent for the Respondent—John Galletly, S.S.C.

Friday, December 13.

FIRST DIVISION.

MURRAY AND OTHERS *v.* ROBERTSON (PETERHEAD POLICE COMMISSIONERS) AND OTHERS.

Water Supply—General Police and Improvement Act 1862—Waterworks Clauses Act 1847—Title to Sue. Action by inhabitants of a burgh against police commissioners, founded on allegations of insufficient supply of water for domestic purposes, dismissed on the proof. Opinions as to their title to sue.

In August 1865 Alexander Murray, of Springbank Mills, Peterhead; James Greig, Kirk Street, there; and other parties, designing themselves as householders, inhabitants, and payers of police-rates in the burgh of Peterhead, presented a petition in the Sheriff-court of Aberdeenshire against Alexander Robertson, clerk to, and representing, the Commissioners of Police of the burgh of Peterhead, craving interdict against the Commissioners supplying water for other than domestic and ordinary purposes so long as there was not a supply of water greater than was required for such purposes. The petitioners founded upon the General Police and Improvement (Scotland) Act, 1862, (25 and 26 Vict., c. 101), which, with a certain exception, had been adopted by the burgh shortly after it was passed. That Act provides, sec. 216:—"The Commissioners shall cause all existing public cisterns, pumps, wells, conduits, fountains, and other waterworks used for the gratuitous supply of water to the inhabitants within the burgh to be continued, maintained, and supplied with water, or they shall substitute other such works equally convenient, and shall cause them to be maintained and supplied with water; and such public cisterns and other works shall be vested in the Commissioners, and be under their management and control; and the Commissioners may construct and maintain any number of new cisterns, pumps, conduits, fountains, and other waterworks for the gratuitous use of any persons who choose to convey the same away, not for sale, but for their own private use, and may supply with water any public baths or wash-houses." Section 221 provides:—"Where the Commissioners are able and willing to supply the houses or tenements within the burgh with water for domestic and ordinary purposes, the owners of such houses and tenements shall be entitled to obtain such supply by connecting a service-pipe with the main-pipes to be laid down by the Commissioners, the expense of such service-pipes, and of connecting the same with the main-pipes, being defrayed by such owners; and where the houses and tenements generally in any street, public or private, within the burgh, shall be supplied with water by means of such service-pipes, it shall be competent to the Commissioners to require the owner of any tenement in such streets not so supplied to take a

supply of water by connecting a service-pipe with the main-pipe as aforesaid; and, in the event of refusal or delay on the part of such owner to comply with such requisition, it shall be lawful for the Commissioners to enter such house or premises, and proceed to lay down such service-pipe themselves, and to recover the expense thereof from such owner." Section 222 provides:—"No person within the burgh shall be entitled, without special agreement with the Commissioners, to use the water supplied through the pipes of the Commissioners except for domestic and ordinary purposes; but where there is a supply of water more than is required for such domestic and ordinary purposes within the burgh, it shall be lawful for the Commissioners to contract with any person or persons within the burgh to supply any public baths and wash-houses, works, manufactories, or other premises within the burgh, with water, at such rate and upon such terms and conditions as may be agreed on; or, in the event of disagreement, either as to the ability of the Commissioners to give the supply, or as to the rate, terms, or conditions on or in respect of which the supply is to be given, the same shall be fixed by the Sheriff upon summary application by either of the parties, and the decision of the Sheriff shall be final." Section 225 provides:—"A supply of water for domestic and ordinary purposes shall not include a supply of water for cattle or for horses, or for washing carriages, where the horses and carriages are kept for hire or are the property of a dealer, or for steam-engines, or for railway purposes, or for warming or ventilating purposes in public buildings, or for working any machine or apparatus, or for any trade, manufacture, or business whatsoever, or for watering gardens by means of any tap, tube, pipe, or other suchlike apparatus, or for fountains, or for flushing sewers or drains, or for public baths or wash-houses, or for any ornamental purpose whatever." Section 226 provides:—"With respect to the supply of water within burgh, all the clauses and provisions of 'The Waterworks Clauses Act, 1847, 10 Vict., cap. 17,' with respect to the following matters, that is to say," *inter alia*, "with respect to the communication-pipes to be laid by the inhabitants, shall, so far as the same are not varied by the provisions of this Act, be incorporated with this Act." This provision incorporates in the General Police Act, *inter alia*, the whole clauses of the said Waterworks Clauses Act, 1847, 10 Vict., cap. 17, from section 48 to section 53 inclusive. By section 53 of the said Waterworks Clauses Act, 1847, it is enacted as follows:—"Every owner and occupier of any dwelling-house, or part of a dwelling-house, within the limits of the special Act, shall, when he has laid such communication-pipes as aforesaid, and paid or tendered the water-rate payable in respect thereof, according to the provisions of this and the special Act, be entitled to demand and receive from the undertakers a sufficient supply of water for his domestic purposes."

The petitioners alleged that the commissioners were in use to supply water for works and manufactories while there was not a sufficient supply for the domestic and ordinary purposes of the inhabitants of the burgh; and, in particular, that on certain specified occasions a supply of water was afforded to all the breweries and tanneries within the burgh, and to certain herring-curing works, while the petitioners had not a sufficient supply for domestic purposes. Contumaciousness and defences were ordered, and thereafter the Sheriff-substitute