

Friday, July 19.

FIRST DIVISION.

UNIVERSITY OF GLASGOW *v.* JAMES DUNLOP KIRKWOOD, INSPECTOR OF POOR OF THE PARISH OF GOVAN, REPRESENTING THE PAROCHIAL BOARD OF GOVAN, AND OTHERS.

Assessment—Exemption—University—Royal Grant—Usage.

The University of Glasgow sold the ground and buildings in the High Street of Glasgow formerly occupied by them, and purchased a new site on Gilmorehill, in the parish of Govan and burgh of Partick, on which they erected extensive buildings for University purposes. They now brought an action of declarator, to have it found that they were exempt from poor-rates and other local burdens imposed in respect of the lands and heritages owned and occupied by them in Gilmorehill, and founded on various royal grants, and, in particular, on a charter by King Charles I. in 1630, conferring upon the University and its members an immunity from taxation of all kinds in the amplest terms, which charter was ratified by the Parliament of Scotland in 1633. *Held* that the immunity from taxation given by the charter had been controlled and limited by usage to an exemption of the particular subjects in High Street, devoted to University purposes, from local rates, and that such exemption did not follow the University to their new seat on Gilmorehill.

This was an action by the University of Glasgow against James Dunlop Kirkwood, inspector of the poor of the parish of Govan, on behalf of and as representing the Parochial Board of the parish of Govan, and David Dreghorn, collector of assessments for the relief of the poor of the said parish of Govan; as also against the Commissioners of Police of the burgh of Partick, and Mathew Walker, writer in Glasgow, their clerk, for behoof of and as representing the said Commissioners, and Gavin Paisley, collector of assessments for the said burgh of Partick; as also against Angus Turner, town-clerk of Glasgow, clerk to the Commissioners of the county of Lanark, for the purposes of the Acts 6 Will. IV. c. 24, 19 and 20 Vict. c. 35, and 31 and 32 Vict. c. 89, on behalf of and as representing the said Commissioners, and Thomas Robertson, 97 Union Street, Glasgow, collector of assessments appointed by the said Commissioners; and also against the Commissioners of Supply for the county of Lanark, and William Alston Dykes, writer in Hamilton, clerk to the said Commissioners of Supply of the county of Lanark, on their behalf and as representing them; and Archibald Tennent, district collector, 30 John Street, Glasgow, collector of county rates for the said county of Lanark—to have it found and declared that neither the University of Glasgow, nor the Senate thereof, nor the principal, professors, members, or officials of the said University of Glasgow, resident in the precincts of the said University, have been or are liable, in respect of the lands and heritages belonging to and occupied by the said University of Glasgow, and by the principal, professors, members, and officers of said Uni-

versity resident therein, situated at Gilmorehill, in the parish of Govan and county of Lanark, in any poor-rates or other assessment, taxation, or burden imposed or to be imposed for or in connection with the relief of the poor in the parish of Govan, or in any assessment, taxation, or burden imposed or to be imposed for police purposes in the burgh of Partick, or in general improvement and district sewer assessments, whether under and in virtue of the Acts 25 and 26 Vict. c. 101, and 13 and 14 Vict. c. 33, or any other Act or Acts of Parliament, or in any assessment, taxation, or burden imposed or to be imposed under and in virtue of the Acts 6 Will. IV. c. 24, 19 and 20 Vict. c. 35, and 31 and 32 Vict. c. 89, or any of them, or any other Act or Acts of Parliament conferring powers of assessment for erecting and maintaining a Justiciary Court at Glasgow, and public offices for the city of Glasgow, enlarging and improving the same, and for other purposes, or in any assessment, taxation, or burden imposed or to be imposed for county police, prison, or other county rates in the county of Lanark, whether under and in virtue of the Acts 23 and 24 Vict. c. 105, 24 and 25 Vict. c. 83, 28 and 29 Vict. c. 84, and 31 and 32 Vict. c. 50 and 82, or any other Act or Acts of Parliament conferring powers of assessment for prisons, registration, general county, and other purposes connected with the county of Lanark, and that the said University of Glasgow, and the Senate thereof, and the principal, professors, members, and officers of the said University resident therein, have been, are now, and shall be hereafter exempt from all liability for any such assessments, taxations, and burdens as aforesaid, imposed or to be imposed in respect of the ownership or occupation of the said lands and heritages belonging to and occupied by them as aforesaid.

The University of Glasgow was established in the year 1451, by bull of Pope Nicolas V., obtained by William Turnbull, Bishop of Glasgow, and issued at the suit of James II., King of Scots, bearing date 7th January 1451. By letter under the great seal, obtained by the said William Turnbull, Bishop of Glasgow, dated 20th April 1453, James II., King of Scots, granted the King's firm peace and protection to the rectors, deans of faculties, procurators of nations, regents, masters, and scholars of his well-beloved daughter the University of Glasgow; and exempted the same rectors, deans, procurators, regents, masters, beadles, scribes, stationers, parchment sellers, and resident scholars (prelates only excepted), "ab omnibus tributis, muneribus, exactionibus, taxationibus, collectis vigiliis custodiis et pedagiis amodo infra regnum nostrum statuentis leuandis seu quomodo-libet percipiendis."

These privileges were confirmed by various charters and other writs by the subsequent sovereigns.

By general charter of confirmation and novodamus under the great seal, dated 28th June 1630, King Charles the First confirmed all the foundations, mortifications, donations, rights, and securities made and granted in favour of the University of Glasgow, particularly those rights and revenues therein mentioned, and also the privileges, jurisdiction, immunities, and exemption from taxation conferred on the University by his royal ancestors, by his father King James VI., by William Turnbull, Bishop of Glasgow, and the bishops or archbishops of that see, and by all other persons whomsoever, lay or clerical. The clause of exemption is

thus expressly repeated in the charter:—"Eximendo simpliciter, quem admodum et nos tenere presentis carte nostre eximimus prefatas personas rectores decanos facultatum prefectos doctores professores magistratos regentes studentes bedellos scribas bibliopolas librorum compactores omnesque suppositos et membra dicte universitatis et academie in eadem residentia, nisi sinit prelati omnesque eorum servos necnon omnes et singulas eorum terras tenementa possessiones redditus beneficia minora prelatibus eorumque res et bona quecunque propria et communia mobilia et immobilia tam spiritualia quam temporalia, infra dictam civitatem Glasguensem et extra eandem, ab omni solutione omnium et singulorum vectigalium taxationum impositionum collectionum summarum monete, et ab omnibus vigiliis guardiis et pedagiis vulgo, lie, watching, warding and pedages; ac declaramus et ordinamus eos eorumque successores in futurum liberos et immunes fore ab omnibus tributis collectis, et taxationibus ordinariis et extraordinariis ante hac impositis et imponendis super eos eorumque terras redditus summas monete res et bona quecunque, communia aut propria quovismodo directe vel indirecte."

By Act of the Scottish Parliament, passed on 28th June 1633, entitled "Act in favour of the College of Glasgow," the foresaid charter was ratified, approved, and perpetually confirmed.

The history of the University, in reference to the usage of exemption which followed upon the royal grants, is thus stated in a joint minute by the parties, lodged at the suggestion of the Inner-House:—

"From the foundation of the University of Glasgow until the year 1460, the premises ordinarily occupied for University purposes were situated in the Rottenrow, near the Cathedral, meetings of the University being held in the Chapter-house of the Blackfriars, or in the Cathedral. In 1460 James, the first Lord Hamilton, conveyed to the University a tenement and piece of land of about 4 acres on the east of the High Street in Glasgow, for the purpose of building a College. About 1465 the seat of the University was transferred from Rottenrow to High Street. In 1467 Sir Thomas of Arthurley conveyed to the Faculty of Arts another tenement, lying also on the east side of the High Street, and to the north of the tenement foresaid, together with a piece of land stretching eastward to the Molendinar Burn. In 1563 Queen Mary made a grant to the University of the manse and kirkroom of the Blackfriars, and 13 acres of land which adjoined or were situated near to the preceding grants of land by Lord James Hamilton and Sir Thomas of Arthurley. In the early part of the eighteenth century the University purchased a considerable area of ground lying to the north of the lands and buildings already occupied by them. A portion of the area thus acquired was added to the University grounds, and upon the western extremity of this portion a new court or square of houses was erected for the residence of the Professors.

"The whole area adjoining the High Street which belonged to the University was about 26 acres, of which 18 acres or thereby were occupied exclusively for University purposes. Upon these 18 acres, which were enclosed, were erected the library, common hall, and other buildings used in teaching, and also the houses of the professors; whilst a large portion of this area consisted of a park or garden, used for recreation or exercise by

persons connected with the University. The remaining 8 acres were let to tenants.

"No taxes were ever paid in respect of any part of the foresaid area of 18 acres or thereby used for University purposes, or in respect of any of the buildings thereon, either by the University or its professors or officials, except as after mentioned. In the year 1743, after the acquisition of the said area, upon part of which houses for the professors were erected, the magistrates of the city claimed payment of the cess or land-tax in respect of the portion of said area included within the University precincts, but this claim was resisted by the University. The dispute was ultimately referred to Mr George Sinclair and Mr Thomas Miller, Advocates, who pronounced a decret-arbitral, dated 30th October 1746, a copy of which is annexed." (The result may be stated generally, that the buildings, including professors' houses, devoted to University purposes, were declared exempt from taxation, but that subjects let by the University to tenants were not exempt.)

"The professors resident in the University have always paid imperial taxes, viz., window-tax, property-tax, and inhabited-house duty, in respect of the houses so occupied by them. They have also paid income-tax.

"In or about 1830 the chemistry class-room having been found to be unsuitable, the University erected, upon ground which had been acquired by them in that year, at a distance of about 120 yards from the site of the University, at the cost of £4300 or thereby, a new tenement, containing shops and also a chemical class-room. The latter was used for University purposes, whilst the shops were let, and the rents derived from them formed part of the revenues of the University. The chemical class-room was valued at the sum of £150 per annum. The property thus acquired by the University was not, prior to its acquisition by them, exempted from taxation, and since 1832 the University have regularly paid local and other taxes, including poor-rates, in respect thereof. The University paid the taxes on the value of the chemical class-room as proprietors and occupiers, and on the shops as proprietors, the tenants paying their proportion as occupiers.

"The said building ceased to be occupied for University purposes in 1870, and the chemistry-class is now taught within the buildings at Gilmorehill.

"In or about 1843 an observatory and house for an observer (the observatory and house forming one building) were erected at Horslethill, several miles to the west of the old University in the High Street. These buildings were erected, not by or for the University, but by private subscription, aided by a grant of £1500 from the Lords of the Treasury, which was given on the condition that certain astronomical and magnetic observations should be kept up, and that the results of these should be annually published. The buildings were afterwards handed over to the University in or about the year 1846, under an arrangement by which the University assumed the liabilities of the subscribers, with the sanction of the Lords of the Treasury, who gave their consent on the condition that the University should take upon themselves 'all the obligations and conditions to which the proprietors of the Institution are liable to the Crown, thereby relieving the Institution from its responsibility.'

"The house of the observer has, since the building

passed into the hands of the University, been occupied by the professor of astronomy. The house is valued at £70 per annum, and the observatory is also valued at £70 per annum; according to which valuation local and other taxes, including poor-rates, have been paid by the University since the subjects were taken over in 1846.

"In addition to the 8 acres aforesaid, the University has all along possessed various properties in Glasgow, and especially in the neighbourhood of the High Street site, which have not been occupied for University purposes. The University has not enjoyed immunity from public or local taxation in respect of the said properties, nor have professors resident outwith the University been exempted from such taxation.

"There are fourteen professors, who were old or faculty professors, to whom the houses were appropriated in the University.

"There were in the old University buildings fourteen houses for the professors to whose chairs houses were appropriated as already mentioned. By the ordinance (22, sec. 35) of the University Commissioners, the position of these professors, in regard to emoluments from college endowments, was ordained to continue unaltered; and accordingly there were erected thirteen houses in the new University buildings at Gilmorehill, which are now allotted to the principal and twelve professors, to whose chairs houses were formerly appropriated, the professor of astronomy continuing to occupy the house provided at the observatory for the observer.

"The old University buildings have fallen much into decay, and become unsuitable for a University, the present site at Gilmorehill, extending to about 22 acres, was purchased, and the present University buildings were erected thereon, at a cost of upwards of £350,000, including the site. Of this sum, about £150,000 has been derived from contributions by corporations and individuals, and £80,000 from a Government grant of £120,000, of which £40,000 is not yet payable. The purchase made by the University included more ground than was required for a site; but the surplus land was taken over by the Magistrates and Council, who relieved the University of a proportion of the price, an agreement being entered into and duly recorded in the General Register of Sasines on 27th December 1870, by which it is, *inter alia*, stipulated and agreed, as between the Magistrates of Glasgow, the Parks and Galleries Trust, and the University, that nothing shall be erected on the University grounds except buildings required for University purposes, and that nothing shall be erected on the ground north of the Kelvin belonging to the Parks and Galleries Trust except keepers' lodges or ornamental structures for embellishing the Kelvin Grove Park. The 22 acres retained by the University cost them £50,000, and were, at the date of their purchase, valuable and rising in value as feuing-ground. It is in contemplation to erect additional University buildings at an estimated cost of £100,000, or thereby, provided that sum can be obtained by voluntary contributions.

"The University sold to the City of Glasgow Union Railway Company about 26 acres of ground, including the whole of the said 18 acres and buildings thereon occupied for University purposes, for the sum of £100,000.

"The valuation fixed by the Commissioners of Supply of Lanarkshire, and by the Lords Ordinary on appeal under the Valuation Act, is for the Uni-

versity buildings £3000 per annum, and for the houses occupied by the professors and University officers £1400 per annum, making in all a rental of £4400.

"The new site of the University is wholly situate within the limits of the burgh of Partick, which includes an area of about 1000 acres.

"Up to the date of the transference of the University, these subjects were liable for, and in respect thereof the Police Commissioners of Partick levied a proportion, ascertained according to the valuation-roll, on a valuation of £173, of the annual burgh rate for watching, lighting, &c. The said subjects were also liable for all other rates duly imposed thereon, under 'The General Police and Improvement (Scotland) Act, 1862.'

"The said new site of the University is within the county of Lanark: and, until the transference of the University, county rates were regularly levied in respect thereof. Up to said date the said subjects were liable for and paid poor-rates."

The University pleaded—" (1) In virtue of the immunities and exceptions from taxation conferred and confirmed by the letters, charters, Acts of Parliament, and others condescended upon, and by the ancient rights and privileges of the University of Glasgow, the pursuers are not liable in public and parish burdens, or other assessments within the power of the defenders, in respect of the lands or buildings belonging to the pursuers, and occupied by them for academical purposes. (2) In virtue of the said immunities and exemptions, and of established and inveterate usage, by which the pursuers and their predecessors have enjoyed and possessed such immunities and exemptions, and, *separatim*, in respect of their prescriptive usage of exemption, the pursuers are not liable in payment of any such assessments. (3) The immunities and rights of exemption from taxation inherent in the pursuers as a corporation, and the principal and professors of the University, and officials resident therein, and which have been from time immemorial possessed and enjoyed by them, notwithstanding the removal of the site of the University buildings, subsist in full force and effect in regard to all assessments from which the pursuers were formerly exempt, made in respect of their ownership and occupation of these buildings for academical purposes."

The Lord Ordinary (MACKENZIE) pronounced the following interlocutor:—

"*Edinburgh, 8th February 1872.*— Assolzie the defenders, other than Angus Turner, clerk to the Commissioners of the county of Lanark, for the purposes of the Acts 6 William IV. c. 24, 19 and 20 Vict. c. 35, and 31 and 32 Vict. c. 89, who has not entered appearance to defend the action, from the conclusions of the summons, and decerns; finds the pursuers liable in expenses to the defenders now assolzieid.

"*Note.*—Until the year 1864 the University of Glasgow was owner and occupant of about 18 acres of ground, and of the College professors' houses, and other buildings thereon, situated on the east side of the High Street of Glasgow. In that year the University entered into an agreement with the City of Glasgow Union Railway Company, under which the whole ground and buildings in the High Street of Glasgow then belonging to the University became the property of the Railway Company, for the purposes of their undertaking; and the University acquired a large piece of ground at Gilmorehill, upon which the new University buildings and

professors' and officers' houses have been built. That piece of ground is situated in the burgh of Partick, parish of Govan, and shire of Lanark, and it, and the College and other buildings thereon, as the pursuers aver, have been used since 7th November 1870, and will in time to come be used, exclusively for the purposes of the University. The agreement between the University and the Railway Company, which was ratified and confirmed by the City of Glasgow Union Railway Act, 1864, contains a clause saving and reserving all rights, privileges, and immunities conferred upon and attaching to the University, and the principal, professors, students, and officers thereof, in virtue of royal grant or charter, Act of Parliament, or immemorial usage; and declaring that such rights, privileges, and immunities shall not in any way be prejudiced, impaired, or affected by anything contained in the said Act or agreement.

"The present action has been raised for the purpose of having it found and declared that the University, and the principal, professors, and officers residing within the same, are not, in virtue of the royal letters, charters, and Acts of Parliament descended on, liable, in respect of the said University lands and heritages at Gilmorehill, in payment of poor-rates in the parish of Govan, of assessments imposed for police and other purposes in the burgh of Partick, under the General Police and Improvement (Scotland) Act, 1862, and of county police, prison, or other county rates in the shire of Lanark.

"1. The Lord Ordinary is of opinion that the exemption from taxation claimed by the pursuers in virtue of the royal letters and charters descended on by them, and, in particular, in virtue of the letter under the great seal, dated 26th May 1579, by King James the Sixth, ratified and confirmed by Act of the Parliament of Scotland passed on 29th July 1587 (1587, c. 87; Thomson's Acts, 3, 487), and the charter of confirmation and novodamus under the great seal, dated 28th June 1630, by King Charles the First, ratified by Act of the Parliament of Scotland passed on 28th June 1633 (1633, c. 69; Thomson's Acts, 5, 75), does not extend to the University buildings, houses, and precincts at Gilmorehill. The taxes from which exemption is sought were all taxes leviable in respect of the lands and heritages at Gilmorehill, from the owners and occupants thereof, before the University acquired them; and the exemption founded on does not, the Lord Ordinary considers, extend and apply to lands not the property of the University when that exemption was conferred, but acquired more than two hundred years afterwards. The Act 1587, c. 87, did not ratify the whole immunity granted by the letter of 26th May 1579, but only the immunity granted to the College, 'that the hail rentis of the samen sal be in all tymes cuming frie of all taxatiounis and impositionis, as in the said lettre at lenth is contenit.' And the charter of confirmation by King Charles the First, of 28th June 1630, ratified by the Act 1633, c. 69, only exempts the professors, members, and dependants of the University 'residing in the same,' and their lands and estates, from all taxes imposed and to be imposed. It is thought that the Scottish Parliament by these Acts only exempted the lands which were then known to belong to the University, and that it was not intended that the exemption should extend to lands to be acquired in future by the University, whether by donation or by purchase, in regard to which the effect of the exemption could not then be seen. Accordingly, it is the College

lands and rents that are exempted,—that is, lands and rents then belonging to the College. The Lord Ordinary considers that this is the true meaning of the words used, and that there are no words in the Acts which can be held to apply to lands to be acquired in future. He conceives that, in order to confer such an exemption in respect of lands to be acquired in future, very clear and distinct terms to that effect in an Act of Parliament would be necessary, because it is a privilege of a very unusual character, and because it would increase the burdens or taxes of the other persons in the parish or district where such lands should be situated. There is no express provision to that effect in the University Acts, and no words therein from which such an exemption can be implied. In so far as the exemption can be maintained on behalf of the professors and officers, it cannot be held to apply to lands their private property. It applies only to houses or buildings within the University occupied by them. The assessments or taxes labelled on are imposed upon them only in respect of that occupation. As these houses or buildings did not belong to the University at the date when the exemption was conferred, but were only recently acquired, the Lord Ordinary is of opinion that the professors and officers cannot claim exemption from these assessments or taxes.

"The whole assessments from which exemption is claimed by the University and its professors and officers in the present action are imposed according to the annual value of the lands and heritages of the University at Gilmorehill.

"2. In regard to the respondent's plea that the exemption from taxation claimed by the pursuers has been abrogated by the Poor-Law Act of 1845, and the other statutes in virtue of which the assessments or taxes labelled on have been imposed, the Lord Ordinary is of opinion that the said plea is not well founded. The said statutes are affirmative; and it is a settled rule of law that mere general affirmative words do not repeal, by construction, a prior statutory exemption; and that, unless there is an express repeal of such prior exemption, or unless the later statute is so repugnant to the existence of the exemption as by necessary and irresistible implication to show that it must be held to be thereby repealed, the exemption subsists. There is no express repeal of the pursuers' exemption, and no provisions in the defenders' Acts which by necessary and irresistible implication lead to such repeal.

"As regards the Poor-Law Act of 1845, the majority of the Court were of opinion, in the case of the *Scottish North-Eastern Railway Company v. Gardiner and Others*, Jan. 29, 1864, 2 Macph. 537, that the provisions of the Poor-Law Act did not repeal a prior statutory exemption. The grounds of that opinion are fully set forth in the opinions of the Lord President and of Lord Kinloch, and it is unnecessary to repeat them. The Lord Ordinary concurs in these opinions on this point, and he considers that they are not affected or overruled by the decisions pronounced in the House of Lords in the cases of *Duncan v. The Scottish North-Eastern Railway Company*, May 9, 1870, 8 Macph. H. of L. 53; and of *The Commissioners of Supply for the County of Lanark v. The North British Railway Company*, July 11, 1870, 8 Macph. H. of L. 141. The principles on which the case of *Gibson v. Forbes* was decided in the House of Lords, on 11th and 14th June 1852, 1 Macq. 106, which was cited in the case of the *Scottish North-Eastern Railway Com-*

pany v. Gardiner, also support the view now taken by the Lord Ordinary.

"As regards the other statutes under which the assessments libelled on are imposed, the same principle applies."

The pursuer reclaimed.

WATSON and BALFOUR argued that, in virtue of the royal grant, confirmed by Act of Parliament, and explained by immemorial usage, the proper seat of the University was exempt from local taxation.

SOLICITOR-GENERAL and LANCASTER for the Parochial Board of Govan.

BRAND for the Police Commissioners of Partick.

ASHER for the Commissioners of Supply of Lanarkshire.

The following cases were cited—*All Soul's College, Oxford, v. Costar*, Feb. 13, 1804, 3 Bos. and Pul. 635; *Colchester v. Kewney*, 36 L.-J. Exch. 172.

At advising—

LORD PRESIDENT—This is a declarator of immunity by the University of Glasgow. The summons concludes—(*reads*.) It is now settled by the decision in *University of Edinburgh v. Greig* (June 8, 1868, 6 Macph., H.L.) that universities, as such, enjoy no immunity from taxation of any kind, general or local. Therefore the present claim must be founded on grounds peculiar to itself. The demand is for immunity from local rates, and not from imperial taxes. It is rested on a variety of royal grants, commencing in 1453 with a letter of protection by King James II., granted within two years of the foundation of the University by bull of Pope Nicolas V. in 1451.

It is needless to examine the royal grants in detail. The last is contained in a charter of King Charles I. in 1630, ratified by Act of the Parliament of Scotland in 1633. It is sufficient for the purpose of judgment to examine the clause of immunity in the charter of 1630, as its terms are as broad and comprehensive as those of any that precede.

Before examining the language of that grant, I shall make two observations of a general kind. *First*, there is no statutory exemption in favour of the University, either in the statutes imposing the rates, or in any special Act of Parliament in favour of the University. For, although it has been said in the course of the argument that the exemption depends on statute as well as charter, and in particular on the ratification of Parliament in 1633 of King Charles' charter, it must be remembered that these parliamentary ratifications have not the force of public Acts of Parliament. Erskine's remarks in b. i, l. 39, in dealing with the Acts of the Scottish Parliament, are peculiarly valuable. "Private Acts were nothing but grants by the Parliament, or parliamentary ratifications of grants made by the Crown, in favour of particular persons or corporate bodies. But none of those were proper laws. For (1) they required no publication. (2) Ratifications by their nature carry no new right, they barely confirm that which was formerly granted, without adding any new strength to it by their interposition. (3) As, by the forms of Parliament, no person was called as a party to the passing of an Act, however deeply he might be interested in it, private Acts were carried through *periculo petentium*, and could not hurt third parties who were not heard on their interests, according to the rule, *Res inter alios acta aliis non nocet*. They were therefore open to reduction by the Court of Session Act 1567, c. 18, No. 1; and in

almost all the Scottish Parliaments holden since 1606, the last Act of the Sessions, entitled *Act salvo jure cujuslibet*, appears to have been enacted for the single purpose of securing third parties against the effect of private Acts and ratifications." It is clear that the exemptions here claimed cannot be said in any proper sense to rest upon statute. *Secondly*, Exceptions which rest upon royal grant ratified by Parliament are liable to be controlled and explained by usage in the same way as grants in crown charters—grants of dues, customs, tolls, and the like,—which can only be enforced in so far as supported by usage. In like manner, exemptions can only be supported in so far as in conformity with the usage following upon the grants.

To revert to the terms of the charter of 1630—(*reads clause of exemption*). In point of expression this is an immunity which comprehends a personal exemption of every individual member of the University, of whatever rank or degree, and of all its servants and attendants, and also an exemption of all the heritable estate of the University, and of every member of the University, and of their whole moveable goods from taxation of every description. In short, as far as the persons and property of all members of the University are concerned, the exemption is in the broadest terms. It may even be interpreted as an exemption of members of the University wheresoever they are. It extends to the whole possessions of the University, without respect of situation. Further, it is an immunity from every species of taxation which has been or shall be imposed. The only point in which perhaps the immunity is defective, is, that it does not say anything about estate to be hereafter acquired. I do not say that, if the exemption had been supported by usage, as embracing estates acquired since the charter, it would not have been sufficient to show that the charter truly included future acquisitions. But, taking the grant without usage, it hardly extends to future acquisitions.

It must be admitted that the exemption has never been enjoyed to its full extent. As regards personal exemption, there is no evidence that this was enjoyed by the University or any of its members. The exemption, so far as usage is concerned, has been confined to those taxes which are often called taxes on heritable property, but which are more correctly designated as taxes imposed on the University in respect of its being the owner and occupier of lands. Next, it is conceded that there has been no exemption from public taxes; the exemption has been from local rates only. Again, it is admitted that the only subjects in respect of which the exemption was enjoyed were subjects owned and occupied by the University in the High Street of Glasgow for University purposes.

The history of these subjects is given very distinctly in the joint minute for the parties, which ascertains the facts on which we are to proceed in dealing with the question of usage. The greater part of these subjects was acquired at a very early period. Another portion was acquired at a comparatively modern period, early in the eighteenth century, at which time the University acquired a considerable area of ground lying to the north of the lands then occupied by them. A portion of the ground was added to the University grounds proper, and a new court or square built upon it for the residence of the professors. There were about 26 acres in all adjoining the High Street, of which

18 acres were occupied exclusively for University purposes, and the remainder let to tenants. The usage, generally speaking, has been that the 18 acres, with the buildings thereon, have been exempt from local taxation, while the 8 acres belonging to the University, but let to tenants, have been subject to local as well as general taxes. The University does not, so far as I am aware, seem to have been possessed of any lands beyond the city of Glasgow, though they are titulars of teinds in various parishes. So that the taxes imposed in respect of ownership and occupancy of land, with which the University has had to do, have been confined to taxes within the city of Glasgow. The distinction seems to have been that the lands, so far as occupied for University purposes, have not been taxed, and, so far as let to tenants, have been taxed. This usage has to a great extent controlled and limited the exemption conferred in 1630. But a recent change in the property of the University has given rise to the present question.

The University has removed from within the city of Glasgow to a place beyond the city, though in its immediate neighbourhood. They have sold their estates within the city and purchased a new site, on which they have erected very extensive buildings for University purposes. The question is, whether they are entitled to exemption from local taxes in respect of the new property to the same extent as they enjoyed with respect to the 18 acres in the High Street. The plea of the University rests on this, that the ground and buildings in the High Street have been exempted from taxation by force of the charter and usage, because devoted to University purposes. They maintain that usage has been perfectly clear on this point. The distinction between subjects devoted to University purposes and those not so devoted has been maintained, they say, beyond the memory of man; and they therefore say that whatever ground and buildings are devoted to University purposes must be entitled to this exemption. On the other hand, the defenders say that the true effect of the usage following on the charters has been to confine the exemption to the particular property in the High Street—the 18 acres and buildings thereon.

The question thus raised is a narrow one, and not free from difficulty. It depends almost entirely on what the usage really has been in point of legal effect.

On the one hand, there is no doubt that the estate of the University was added to early in the eighteenth century, and that the exemption was extended to that addition in so far as dedicated to University purposes. How it was that the exemption came to be extended to that newly acquired ground we do not particularly know, but the general fact is undoubted.

On the other hand, there are parts in the history of the University of an opposite tendency. In 1830 the University acquired ground, not contiguous to their buildings, but separated from them by about 120 yards, on which they erected a large building, part of which was occupied as a chemistry class-room, there being a want of accommodation within the walls of the University, and the rest was let to tenants. From 1830 downwards, *i.e.*, for a period exceeding forty years, the whole of this property has been liable for and has paid the local rates from which exemption is now claimed. This was the first occasion that the University acquired property not contiguous with their

original estate, and on this first occasion they submitted to taxation apparently without objection, and paid all local rates without distinction of property devoted to University purposes and property not devoted to University purposes.

Again, in 1846, the University acquired another property, consisting of an observatory and dwelling-house connected with it, which had previously belonged to a number of private gentlemen, who had erected an observatory by subscriptions, with the aid of a grant from Government. It was thought desirable to make over the observatory and dwelling-house to the University, and this was done with the sanction of the Lords of the Treasury, on certain conditions. I do not attach any importance to these conditions as affecting the question of exemption, but the University thus acquired the property of these buildings, valued at £140 per annum, half of that valuation being in respect of the dwelling-house which from that time downwards has been occupied by the professor of astronomy as his official residence; and rates have been paid from that time, apparently without objection, on both the observatory and the house. This is the only other example of the University acquiring property not contiguous with its original property.

The usage thus seems to have been that the University remained exempt in respect of all its old estate devoted to University purposes, including that portion acquired in the last century; but, as regards all acquisitions at a distance, or not locally contiguous with its original property, it paid local taxes.

Now that the original estate no longer belongs to the University, and they have acquired another property for University purposes, the contention is that the exemption shall follow them, to the effect that they shall now be exempt, not from the same taxes, imposed in respect of heritages situated within the city and parish of Glasgow, but from the taxes imposed in respect of heritages within the burgh of Partick and county of Lanark. These taxes are different, and the University claims to be relieved at the expense of a different body of rate-payers from those at whose expense they were formerly relieved. It is difficult to say that an exemption, which depends for its validity on usage following on the charters, can be transferred from one property to another, seeing that the usage has been confined entirely to the single property in High Street. I have come to the conclusion, expressed in the Lord Ordinary's judgment, that the University has failed to make out a case for exemption of their new lands of the same nature as that enjoyed in respect of the subjects in the High Street.

LORD DEAS—I have arrived at the same result, and I shall only make two observations. In the first place, it is important to observe that the taxes from which exemption is sought are all taxes in respect of heritable property, and that there is nothing in the face of the charters founded on to exempt from taxes any property which might afterwards be acquired by the University. The consequence of that necessarily is, that, unless exemption has been acquired by usage for property which did not belong to the University at the date of the charter, no such exemption can be claimed. In the second place, we have here no such usage as to be held to extend the exemption to embrace all heritable property which the University may ac-

quire. That being so, the facts are conclusive. We have nothing to do with exemption given in the charter and statute to the professors personally. We have only to deal with the exemption given to property, and there is nothing in the usage to extend the exemption to the subjects for which it is claimed.

LORD ARDMILLAN concurred.

LORD KINLOCH—There is no doubt that at an early period of its history very large and important privileges were conferred on the University of Glasgow, and all connected with it. Not to go further back than the charter by King Charles I., of date 28th June 1630, it was thereby provided that all the professors and students, and official persons, even to the booksellers and bookbinders, should be exempt from all taxations and impositions, not merely as regarded themselves personally, but as regarded their property, real and personal, wherever situated—"infra dictam civitatem Glasgensem et extra eandem." This charter received a ratification, though somewhat generally expressed, from Parliament, on 28th June 1663. Although, according to our Scottish law and practice, this ratification had much less force than belongs to a proper Act of Parliament, yet, undoubtedly, there were thereby conferred very serious and important rights.

But it is not maintained by the University that these extensive privileges now exist; and no further right is demanded than what rests on immemorial usage. It is therefore necessary to look to the usage, both for the existence and measure of the right. For it cannot be disputed that where a right rests on usage, the usage must determine not only the validity of the right, but its extent.

It is admitted, as to the grounds originally held by the University to the east of the High Street, and also certain others immediately adjoining, acquired in the early part of the last century, and appropriated like the others for University purposes, there has been an exemption enjoyed from local and provincial taxation, both by the University as in its corporate capacity owner of these grounds, and by the individual professors resident in the houses built on these grounds, in respect of their occupancy. But the same rule has not been indiscriminately applied in the case of ground or buildings severed in locality from these, even though removed but a little way off, and used equally for University purposes. This is shown in the case of the premises acquired for the chemistry class-room, though only about 120 yards off; and in that of the observatory at Horslethill, some miles to the west, having a house attached for the professor of astronomy, in both of which cases local and other taxes have been paid.

The question now arises, Whether the exemption from taxation is transferred to the new site of the University on Gilmorehill, a mile or two to the west, and to the grounds and buildings there occupied for University purposes? This raises a very serious question. For the practical effect undoubtedly is, that if the claim of exemption is sustained, the burden of a large amount of taxation is lifted off from property hitherto subject to it, and a proportional increase of the burden is imposed on the remaining property within the same burgh or parish.

I am unable to find sufficient legal grounds for sustaining the claim of the University. The usage

on which their claim rests is not a usage which has ever transferred the exemption to any other property than that originally occupied by the University, and the immediately adjoining ground, which for a century and a-half has been incorporated with it. Any usage in regard to property locally severed from this original property is unfavourable to the claim. Proceeding on the principle that the usage must determine both the existence and extent of the right, I cannot find that transferability to other ground is an intrinsic element of the exemption. If, indeed, I could interpret the usage as meaning an exemption possessed by the University property simply as such, and not as situated in that particular locality, I would find, *vi termini*, that the exemption was transferred to the ground at Gilmorehill. But I have no warrant for so interpreting the usage, simply because the usage does not speak on the subject, if indeed it does not speak to the contrary. I cannot put this meaning on the usage unless I find actual usage to this effect. In any other view the usage is, to say the least, silent, and so does not establish the claim.

On this ground I agree with the Lord Ordinary in rejecting the claim of the University. I would only add, that if this difficulty did not exist, it would require, as I think, very serious consideration, and a very careful examination of the taxing statutes referred to, before effect could be given to the claim of exemption,—at least to the full extent claimed. I am not prepared to say that any exemption enjoyed from the taxes leviable at the date of the exemption will necessarily exempt from new and wholly different taxes afterwards imposed; more especially where, as in the case of lighting, watching, and sewerage, what is sought to be exacted is not so much taxation in its rigid sense, as a charge for the supply of conveniences, which otherwise proprietors would have to supply to themselves, and for which they have justly to pay. But into these separate considerations it is unnecessary to go, as the ground already adverted to is sufficient for the disposal of the case.

The Court adhered, with additional expenses.

Agents for University of Glasgow—Maconochie & Hare, W.S.

Agents for Parochial Board of Govan—D. Crawford & J. Y. Guthrie, S.S.C.

Agents for Partick Commissioners of Police—Ronald & Ritchie, S.S.C.

Agents for Commissioners of Supply of the County of Lanark—Morton, Neilson, & Smart, W.S.

Friday, July 19.

ARUNDALE & COMPANY v. PICKEN.

Proof—Judicial Admission—Qualified Admission—Account. In an action for payment of a balance arising on a debit and credit account between the pursuer and defender, each party produced an account which he averred to be correct, and both renounced probation. *Held*, in accordance with the principles laid down in *Milne v. Donaldson*, June 10, 1852, 14 D. 849, that the pursuer was not entitled to cull out items in the defender's account without taking the account as a whole, or to found on admissions on record without their qualifications.