hoax of a most offensive kind directed against the provost. Yet according to his own admission he saw nothing but fun in it. I think that his conduct on this occasion was such as would have warranted instant dismissal by the police commissioners in ordinary circumstances. The question is, whether it warranted dismissal by the town council from the office of town-clerk on the 24th November? I have found this question to be attended with difficulty. For even if the town council were an entirely distinct and different body of persons they would be entitled to take notice of such conduct in public on the part of their clerk. But there are some considerations which induce me to hesitate in finding this matter sufficient as a ground of dismissal in the present instance from the town-clerkship.

"In the first place, apart from the fact that the proceedings at the previous meeting had got into the newspapers (for which the defender was not responsible), the letter was a very stupid and comparatively stingless joke aimed at the provost. The defender should no doubt have seen that, in the circumstances known to him, the letter would not if published be regarded as all fun. I think that he ought to have handed it over to one of the provost's friends in the police commission to put in the fire or do what he liked with. But it does not necessarily follow that his indiscretion in treating the letter as he did and allowing it to obtain publicity, though grave, was so grossly culpable as to justify his being treated as unfit for any office of public trust.

"In the second place, the defender at this time had been already condemned, and I think irregularly and unwarrantably condemned. I do not presume to express any opinion upon the spirit evinced by the provost and the majority of the town council in their proceedings against the defender. For I hold myself bound to assume that they acted in good faith throughout. But I say that, possibly owing to their not adverting sufficiently to the delicacy of the duty they undertook in dealing with the town-clerk as they did, their proceedings had been irregular and unwarrantable. They were not entitled to reduce the town-clerk's salary at their pleasure, and they acted most irregularly in doing so without hearing him. For the salary was either a pertinent of his office or was due to him by an agreement which is not said to have been terminable by them at pleasure. This circumstance and his dismissal from the clerkship to the police commissioners created a peculiarity in the relations between the defender and the provost which makes it difficult to judge the conduct of the defender at this time as that of a town-clerk whose status and privileges were recognised, and upon whom rested all the responsibilities of office.

"In the third place, I think that the defender's conduct in this matter, though culpable, must be considered as a part of and arising from the long series of altercations into which he had been led.

"Reviewing these proceedings as a whole, I think that the opinion of Treasurer Bell, who took very little part in the squabbles himself, and only interposed, as far as I can see, as a peacemaker, is entitled to much weight and respect. I was greatly struck by his manner and appearance in the witness-box, and though his suggestions in the interests of peace and order may appear to have been somewhat quaint, I was satisfied from his examination that his evidence was that of a fair and exceptionally reliable man.

"My verdict therefore is on the whole for the defender.

"I consider it unnecessary to notice the other matters which have been brought into the case."

The pursuers reclaimed, but before the case was put out for hearing a new council had been elected, and the new council decided not to insist in the reclaiming-note.

Counsel for Pursuers—D.-F. Balfour, Q.C.—Strachan. Agent—William Officer, S.S.C.

Counsel for Defender—Mackintosh—Guthrie. Agents—Paterson, Cameron, & Company, S.S.C.

Tuesday, December 15.

FIRST DIVISION.

POLICE COMMISSIONERS OF OBAN *v.* CALLANDER AND OBAN RAILWAY COMPANY.

Valuation—Railway Refreshment Rooms—Police Assessment—Water-Rate—Oban Burgh Act 1881 (44 *and* 45 *Vict., cap.* 178), *sec.* 51.

Section 51 of the Oban Burgh Act 1881 provides that "The annual value of the railways and sidings. . . . stations, depôts, and buildings, ... belonging to the Callander and Oban Railway Company within the burgh shall, as regards the public water-rate and the police assessment, so far as it is applicable to water, be held to be the nearest aggregate sum of pounds sterling to one-fourth of the annual value thereof entered in the valuation roll."

The railway company had within the burgh a railway station, part of which consisted of refreshment rooms, which were let to a tenant at a fixed rent. *Held* that the refreshment rooms were part of the stations and buildings belonging to the railway company, and therefore fell to be assessed for water-rate, in terms of the section above quoted, at one-fourth of the annual value as entered in the valuation roll.

The Callander and Oban Railway Company were the owners of a railway station situated within the burgh of Oban. Part of the station consisted of refreshment rooms, which were let to a tenant at a fixed rent. These refreshment rooms were open to the public, as well as to passengers upon the railway, and there was an entrance from the railway platform, and also from the approach leading from the street to the station. The railway and stations belonging to the company were valued by the Assessor of Railways and Canals, but the refreshment rooms were valued by the assessor for the burgh of Oban, and entered in the valuation roll for the burgh.

By the Oban Burgh Act 1881 (44 and 45 Vict. cap. 178) the police commissioners of the burgh were authorised to provide an improved supply of water for the burgh, and powers of assessment were given them for that purpose. Section

51 of the Act contained this proviso:—"Provided always that the annual value of the railway and sidings (wherever situate), stations, depôts, and buildings (but not including any railway pier or quay) belonging to the Callander and Oban Railway Company within the burgh shall, as regards the public water-rate and the police assessment so far as it is applicable to water, be held to be the nearest aggregate of pounds sterling to one-fourth of the annual value thereof entered in the valuation roll."

This was a Special Case, to which the Police Commissioners of the Burgh of Oban were the first parties and the Callander and Oban Railway Company the second parties, for the purpose of obtaining the opinion of the Court upon the following question—"Whether the said refreshment rooms are, as regards the public water-rate and the police assessment so far as it is applicable to water, to be assessed at the nearest aggregate sum of pounds sterling to one-fourth of the annual value thereof entered in the valuation roll; or at the full annual value thereof entered in the said roll?"

Argued for the first parties — The refreshment rooms should be valued in the ordinary way, and not, as was the case with the railway buildings, at one-fourth of the annual value. The refreshment rooms were let to a tenant, were open to the public, and entered in the ordinary valuation roll. The case of the *North British Railway Company* v. *Greig*, March 20, 1866, 4 Macph. 645, ruled the present, and section 51 did not make any difference, because the word "buildings" there used must be taken to mean buildings such as are used for the purposes of the undertaking.

Argued for the second parties—This case was distinguishable from that of *Greig*, because there were here no qualifying words. Section 51 contained an express rate applicable to all buildings of which the company were owners.

At advising—

Lord President—The Callander and Oban Railway Company are the second parties to this case, and they have a station with the ordinary accommodation situated within the burgh of Oban. In addition to the ordinary accommodation they have a pier and quay, but I do not think that enters much into the present question.

The other parties are the Police Commissioners of the Burgh of Oban, and they propose to charge the railway company with water-rate under the Burgh Act 1881, in this way. They are willing to assess the station along with the railway itself on the footing that one-fourth of the annual value thereof as entered in the valuation roll is to be taken, but they wish to make a special exception in the case of the refreshment room, which they say should be assessed on the full valuation.

The facts, so far as necessary for the disposal of the case, are very few. This refreshment room is part of the station buildings. The station makes what is like three sides of a square, with one limb produced further than the others, and the refreshment room stands in one of the corners. The refreshment room is let to a tenant, but the primary object of course is to provide needful refreshment for passengers and for persons connected with the railway who require to be at the station at a time when they cannot get regular refreshment elsewhere. It was said that there is a door which communicates with the street outside, but I do not think that is a very great peculiarity—in fact, it is probably very common. At any rate it does not vary the case in any material degree.

Therefore *prima facie* the refreshment room is part of the station buildings, and we must look to the assessing statute in order to see whether there is any reason why the principle applicable to the rest of the station should not be applied in the case of the refreshment room. By section 51 of the Oban Burgh Act 1881 it is provided "that the annual value of the railway and sidings (wherever situate), stations, depôts, and buildings (but not including any railway pier or quay) belonging to the Callander and Oban Railway Company within the burgh shall, as regards the public water-rate and the police assessment so far as it is applicable to water, be held to be the nearest aggregate sum of pounds sterling to one-fourth of the annual value thereof entered in the valuation roll."

Now, it is material to observe that the rates here proposed to be levied are on owners only, and it seems to me that this section deals with one owner, the railway company, and prescribes a special rule for assessing that owner. The question therefore is, whether there is room for distinguishing the refreshment room from the other things enumerated in the section, "stations, depôts, and buildings." I think that in all ordinary and material senses the refreshment room is part of the station, and more obviously is part of the buildings. As therefore there is no hint of any distinction between one part of the station and another, I think that section 51 provides a special mode of assessment for the refreshment room as well as for the other property of the railway company within the burgh.

I am therefore for finding in terms of the first part of the question.

Lord Mure—I think that this is a very special case, and that it depends upon the terms of the Oban Burgh Act.

By section 51 of that Act it is provided—[*His Lordship quoted the section ut supra*].

The question that has been put to us is whether the refreshment room is to be so rated. Now, there is contained in that section an express provision that that rate of assessment shall apply to all buildings which belong to the Callander and Oban Railway Company within the burgh. Therefore we have only to consider whether the refreshment room is a building belonging to the Callander and Oban Railway Company. That is admitted in the case, and therefore I think that under the express words of section 51 the particular mode of assessment therein prescribed applies to this refreshment room.

Lord Shand concurred.

Lord Adam—I think that section 51 of the Oban Burgh Act is conclusive of this matter. The case is just the same as if the section had said that the buildings belonging to John Smith were to be assessed in a particular way. It does not matter whether the railway company let the

refreshment rooms or do not let them. The question is just whether the refreshment rooms are part of the buildings which belong to the railway company, and that fact is not in dispute.

The Court found and declared that the refreshment rooms were, as regarded the public water-rate and the police assessment so far as it was applicable to water, to be assessed at the nearest aggregate sum of pounds sterling to one-fourth of the annual value thereof entered in the valuation roll.

Counsel for the First Parties (Police Commissioners of Oban)—Jameson—M'Kechnie. Agents—Gill & Pringle, W.S.

Counsel for the Second Parties (Callander and Oban Railway Company)—D.-F. Balfour, Q.C.—R. Johnstone. Agents—Hope, Mann, & Kirk, W.S.

Wednesday, December 16.

SECOND DIVISION.

[Lord Trayner, Ordinary.

BRUCE AND OTHERS (FISHERMEN OF BODDAM) *v.* AITON

Harbour—Harbour Lights—Obligation of Proprietor of Harbour to Exhibit Lights.

The proprietor of a harbour who exacts harbour dues is bound, so far as these dues will go, to light and otherwise maintain the harbour.

The proprietor of a harbour was sued by the fishermen using it for declarator that he was bound to maintain and exhibit at his own expense certain specified lights, and to have him ordained to do so. It was proved that the harbour dues yielded a revenue to the proprietor, but that the revenue was not enough to provide for the lights and also to pay the interest on a sum of money expended by him on improvements on the harbour executed by him under a Provisional Order obtained from the Board of Trade. The Court *held* that under the local statutes and the relative Provisional Order of the Board of Trade applicable to the harbour, the proprietor was bound to apply the revenue derived from the harbour dues to the maintenance of the harbour (which includes lighting) in the first instance till they were exhausted, if necessary, and that the pursuers were entitled to declarator to that effect, the particular manner in which the obligation was to be carried out being left to be prescribed by the Commissioners of Northern Lighthouses.

In 1845 the Earl of Aberdeen, being then proprietor of the estate of Boddam, including the village of Boddam and the harbour of Boddam, and the piers and works therewith connected, obtained an Act of Parliament (8 and 9 Vict. c. xxv.) for improving and maintaining the harbour. The Act proceeded upon the narrative that it would be of great advantage to the public, and especially to those using the harbour, if it were to be improved in the manner specified; that the Earl was willing to make the improvements at his own expense; and that in consideration of the expense to which he had been and would be put for improving and maintaining the harbour, it was reasonable that he and his heirs and successors should receive the tolls, rates, and dues thereinafter mentioned.

The Act, *inter alia*, contained the following provisions:—Section 57—"And be it enacted that it shall be lawful for the said Earl to contract and agree with any person to light the said harbour and other works with gas, oil, or otherwise, and to supply the said harbour and other works with water for the use of the shipping resorting to and using the said harbour and other works, as he shall think necessary and proper; provided always that no vessel using the said harbour shall be obliged to take water from the said Earl." Section 62—"And be it enacted that it shall be lawful for the said Earl to erect beacons for the guidance of vessels, of such character, and to be exhibited in such mode, and to lay down such buoys of such description and in such situation within the limits of the said harbour, as shall from time to time be prescribed by the Commissioners of Northern Lighthouses in writing, signified under the hand of their secretary for the time being." Section 63—"And be it enacted that it shall not be lawful for the said Earl to exhibit or alter, or to permit to be exhibited or altered, any light, beacon, or sea-mark without the sanction in writing of the Commissioners of Northern Lighthouses, signified under the hand of their secretary, first having been obtained in that behalf, and if any such light, beacon, or sea-mark shall be exhibited or altered, with such sanction as aforesaid, the same shall be of such power, description, and character, and shall be from time to time discontinued or altered as the Commissioners of Northern Lighthouses shall from time to time direct by new notice to the said Earl."

Prior to the passing of the Act the leading lights of the harbour consisted of wooden lanterns with candles, which were provided and maintained by the fishermen. In 1849 Lord Aberdeen took the lighting into his own hands, and applied to the Commissioners of Northern Lighthouses to prescribe the character and position of the leading lights. The Commissioners prescribed certain leading lights, which were fitted with Argand burners, and maintained by Lord Aberdeen at his own expense until 1864, when he began to charge the fishermen 2s. 6d. a-boat for light dues, which were paid by them. The lights were exhibited from sunset to sunrise during the herring fishing season, from 1st July to 1st October.

In 1865 the estate of Boddam, including the harbour, was bought from the Earl of Aberdeen by William Aiton, the defender in this action. The leading lights were maintained and exhibited by him from 1865 to 1872, he levying a charge of 2s. 6d. per boat on the fishermen to defray the expense of so maintaining and exhibiting them. In 1872 he proposed to raise the contribution to 5s. per boat, and in consequence of the refusal of the fishermen to pay this advanced rate no lights were exhibited during the fishing season of 1872.

In 1873 an agreement was entered into between the defender and a committee of the fishermen, by which, on the narrative that the fishermen