

simply said, that in the event of disagreement, the Secretary for Scotland shall have right to say how many the police burgh may add to the nomination of the county council. Possibly the fertility of controversy may provide emergencies where the provisions of the Act may not completely meet, in all circumstances and in all tempers, the requirements of exaggerated and eccentric cases. But with that we have nothing to do. The provision is that the Secretary for Scotland shall have power to determine that a certain number of gentlemen shall be elected by the police burgh, and not that that number shall be fixed by the fact that the district committee of the county council has nominated a certain number. The determination of the Secretary for Scotland seems to assume that it constitutes a code or rule for the future actings of the county council, whereas the Act contemplates the much simpler case of the Secretary for Scotland having the names of the sub-committee nominated by the county council before him, and determining how many shall be added to it from the burgh.

I have no doubt of the soundness of the Lord Ordinary's decision, and his interlocutor seems appropriate to clear away the difficulties which have been raised.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court adhered.

Counsel for the Pursuers—C. S. Dickson—Cook. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for the Defenders, Hugh Young and Others—D. F. Pearson, Q.C.—J. Macintosh. Agents—Douglas & Miller, W.S.

Counsel for the Defenders, the County Council of Dumbarton—Ure. Agents—C. & A. S. Douglas, W. S.

Friday, October 27.

SECOND DIVISION.

BO'NESS REPRESENTATIVES *v.*
FULLARTON.

Church—Lands Conveyed to Trustees for Use and Benefit of Minister—Mineral Rents and Royalties—Income.

A charter dated in 1676 conveyed certain lands to certain persons as representatives of the inhabitants of Bo'ness "for the use and benefit of the minister of the gospel serving the cure at the kirk of Bo'ness."

In 1888 the minerals in the lands were leased by the said representatives under a lease for twenty years for payment of a fixed rent of £25 or of royalties.

Held that these mineral rents or royalties were not to be handed over to the minister of the parish as ordinary rent or income from the lands, but fell

to be accumulated yearly by the representatives of the town for behoof of the benefice, the interest and annual proceeds of the accumulating fund being paid to the minister.

The town of Bo'ness anciently formed part of the parish of Kinneil, but about the year 1632 the inhabitants of Bo'ness resolved to have it disjoined and erected into a separate parish. In 1638 they built a church in Bo'ness by means of voluntary contributions, and they then proceeded to create a fund for the support of a minister. With the view of establishing a permanent stock for the benefit of the cure, part of the seats in the church were conveyed to certain individuals under the burden of perpetual rents. The bonds taken for these rents were made payable either to the minister and his successors or to certain persons to be elected by the inhabitants as assistants to the minister in the management of the funds for his behoof, and they bore to be granted in order "to make up a stock for the minister and his successors, their stipends." Considerable sums of money were gradually raised for the same purpose, and these were invested for the use, utility, and behoof of the ministers of the said church. The rents of the seats and the income from the funds raised as aforesaid did not, however, amount to 800 merks per annum, which by the Act of the Parliament of Scotland 1633, cap. 8, was the lowest stipend competent to be given to a clergyman of the Church of Scotland, and it became necessary for the inhabitants of Bo'ness, in order to obtain the erection of their town into a separate parish, to provide by annual stent or assessment such a sum as should make up a yearly stipend of 800 merks. Application was accordingly made to Parliament for an Act to authorise the erection of Bo'ness as a parish, and the raising of the necessary assessments, and on 8th March 1649 such an Act was passed erecting the parish of Bo'ness in terms of the application, and giving "power to those whom the supplicants have chosen to be assisting to the kirk-session according to the Act of Parliament, or some other who shall be nominate be common consent of town and session to stent yearly every inhabitant and indweller within the said parochin, bounded as said is, according to their abilities for making up the yearly stipend of 800 merks, promised and obliged to be paid by the supplicants to the minister and his successors in the said charge, and that according to their abilities, ay, and while the annual rents of the supplicants, their stock, extend to the sum of 800 merks yearly." After the passing of this Act additions were made from time to time to the permanent fund for behoof of the minister of the parish.

In 1648 a sum of 5000 merks, part of the fund raised as aforesaid for behoof of the minister of Bo'ness, was lent out on wadset over the lands of Muirhouse, which extended to 171 imperial acres, and in 1653 the lands of Muirhouse were appraised for the said debt. In 1676 a charter was applied for and obtained from King

Charles II., proceeding upon the decree of apprising, conveying the lands of Muirhouse to certain parties as representatives of the inhabitants of Bo'ness "for the use and benefit of the minister of the gospel serving the cure at the kirk of Bo'ness." Under this charter and the infeftment following thereon the lands of Muirhouse have been ever since possessed and managed by the representatives for the time of the inhabitants of Bo'ness for behoof of the minister as aforesaid.

About the beginning of the present century a question arose between Mr Rennie, the then minister of the parish of Borrowstounness, and the representatives for the time with regard to the appropriation of the annual produce of the funds provided and raised as before mentioned, the minister on the one hand contending that his claim was not restricted to 800 merks, but that after certain payments had been provided for he was entitled to the whole surplus funds whatever might be their amount, and the representatives on the other hand maintaining that they were entitled to appropriate the surplus to other purposes according to immemorial usage. The Court of Session decided in favour of the representatives. However, on an appeal by the minister to the House of Lords (5 Pat. App. Cas. 144), the House of Lords reversed the judgment of the Court of Session, and found that the minister was entitled to the annual surplus of the funds in question after serving certain purposes mentioned in a decree of the Court of Session dated 10th August 1764.

The minerals in the lands of Muirhouse were in 1888 leased by the said representatives under a lease for twenty years for payment of a fixed rent of £25 or of royalties. The rents or royalties paid under the lease, amounting in 1893 to £187, 12s. 1d., were not paid over to Mr Fullerton, the minister of the parish, but were accumulated by the representatives or assistants chosen by the heritors and inhabitants of the town in conjunction with the minister and the kirk-session thereof for raising the said assessment and administering the said fund.

A question arose between the representatives and the minister with regard to the disposal of the said mineral rents and royalties.

The representatives maintained that the mineral rents or royalties paid and to be paid under the lease of the said minerals formed part and portion of stock or capital, and therefore fell to be accumulated yearly, and that only the interest or annual proceeds of the said mineral rents were to be treated as revenue and paid to the minister of the parish.

The minister maintained that the mineral rents or royalties referred to ought not to be dealt with as capital sums, but should be treated as ordinary rents or revenue in a question with the minister.

For the decision of this question a special case was presented to the Court by (1) the representatives of the town for the year 1893, (2) Mr Fullerton, the minister of the

parish of Bo'ness, and (3) the Presbytery of Linlithgow.

The gross agricultural rental of the lands of Muirhouse was £206.

The questions at law for the opinion and judgment of the Court were—“(1) Do the mineral rents or royalties paid in respect of the Muirhouse minerals, under the fore-said lease, fall to be accumulated with the capital or stock? or (2) Are the said mineral rents to be dealt with as revenue or income of the estate, administered by the first parties?”

Argued for the first parties—The minister was entitled only to the annual proceeds of the mineral rents, not to the rents themselves. To work out the minerals in the land was to depreciate its value for all time. In the case of a glebe it had been held that money obtained from minerals in a glebe must be applied or held for behoof of the minister and his successors in the benefice—*Minister of Maderty v. The Heritors*, November 14, 1794, M. 5153; *Minister of Newton v. The Heritors*, June 3, 1807, M. App. “Glebe,” No. 6. The lands in question were to be treated in the same manner as a glebe—29 and 30 Vict. cap. 71, sec. 2.

Argued for the second party—A glebe stood in a totally different position from the land in question. A glebe was never intended to be a source of commercial profit to the minister—Lord Balgray's opinion in *Stewart v. Lord Glenlyon*, May 20, 1835, 13 S. 798; *Duncan's Parochial Ecclesiastical Law*, p. 537. The scope of the charter showed that the right of the minister in the lands was something more than a liferent in property or the right of a minister in a glebe. The Presbytery made no objection, and the Court should in the circumstances construe the deed liberally, and deal with the mineral rents as if they were revenue.

At advising—

LORD YOUNG—It seems to me clear that the present incumbent is not entitled to the mineral rents or lordship, and that the trustees have acted with perfect propriety since 1878 in laying them by for behoof of the benefice, and that they should continue to do so, the minister being given annually the interest of the fund.

LORD RUTHERFURD CLARK—I have had no difficulty in coming to the same conclusion. I think clearly the questions can be only answered in that way.

The LORD JUSTICE-CLERK concurred.

The Court answered the first question in the affirmative, and the second in the negative.

Counsel for First Parties—Macphail.

Counsel for Second Party—Wilson.
Agents—Tods, Murray, & Jamieson, W.S.