

perly, be read as indicating institutions benevolent or charitable in their character, and useful in their operations. The adjectives used are such as may reasonably be read together as qualifying the substantive, and do not point to their being used as independently designative. I am, on these grounds, for affirming the judgment reclaimed against.

The Court adhered.

Counsel for the Pursuer—H. Johnston—M'Lennan. Agent—Alexander Morison, S.S.C.

Counsel for the Defenders—C. S. Dickson—Salvesen—Robertson. Agent—J. Smith Clark, S.S.C.

Friday, March 9.

SECOND DIVISION.

[Lord Low, Ordinary.]

OBAN POLICE COMMISSIONERS v. COUNTY COUNCIL OF ARGYLL SHIRE.

County Council — Burgh — Assessment — Parliamentary Burgh Liable to be Assessed for County General Assessment — Rogue Money Act 1839 (2 and 3 Vict. cap. 65), secs. 1 and 3 — County General Assessment Act 1868 (31 and 32 Vict. cap. 82), secs. 1, 2, 4, and 10 — Local Government (Scotland) Act 1889 (52 and 53 Vict. cap. 50), secs. 11, 12, and 27.

Held that a county council had power to levy the county general assessment upon lands and heritages within a parliamentary burgh, which was neither a royal burgh nor had a Police Act, nor had taken the benefit of the Act 3 and 4 Will. IV. c. 46, intitled "an Act to enable Burghs in Scotland to establish a general system of Police."

By the Rogue Money Act 1839 (2 and 3 Vict. cap. 65) it was provided that "Whereas an Act was passed in the eleventh year of the reign of His Majesty George the First, intitled, an Act for more effectual disarming the Highlands in that part of Great Britain called Scotland, and for better securing the peace and quiet of that part of the kingdom, whereby the freeholders of every shire, county, or district in Scotland were authorised to assess the several shires or stewartries for raising a sufficient fund to defray the charges of apprehending, subsisting, and prosecuting criminals; and whereas the collection and application of the fund thereby authorised to be raised, commonly called the 'rogue money,' was, by an Act passed in the second and third year of the reign of his late Majesty, King William the Fourth, intitled, an Act to amend the representation of the people in Scotland, transferred from the freeholders to the commissioners of supply; and whereas such fund has hereto-

fore been raised by assessment on the valued rent of lands and heritages; and whereas it is expedient to authorise the commissioners of supply of the several counties, if they should think fit, to extend the purposes for which such assessment may be made, and to adopt other means of assessing the same: Be it therefore enacted . . . that it shall be lawful for the commissioners of supply of any county, if they shall so determine at any meeting, due notice having been given by advertisement in some newspaper published or usually circulated in such county at least one month previous to such meeting by the clerk of supply, on requisition to him to that effect (stating the purpose of such meeting) by not less than ten of such commissioners, to make an additional assessment for establishing and maintaining an efficient constabulary or police force in the county for the prevention of crime, including any charge for special constables who may have been duly appointed for the preservation of the peace in such county, and such additional assessment shall be deemed and taken to be, and shall be levied and collected, as part of the rogue money. (3) Provided also, and be it enacted, that the said commissioners shall not be entitled for the purposes of this Act to assess any lands, houses, or other heritages situated within the boundaries of any royal burgh, or to assess any lands, houses, or other heritages situated within the boundaries of any burgh or town which either has a Police Act, or which has taken the benefit of an Act passed in the third and fourth year of the reign of his late Majesty King William the Fourth, intitled, an Act to enable Burghs in Scotland to establish a general system of Police."

By the Lands Valuation (Scotland) Act 1854 (17 and 18 Vict. cap. 91), which established one uniform valuation of lands and heritages in Scotland, according to which all public assessments leviable or that may be levied, according to the real rent of such lands and heritages, are assessed and collected, the valuation rolls being made up annually by the commissioners of supply of every county, and magistrates of every burgh, showing the yearly rent or value for the time of the whole lands and heritages within such county or burgh respectively, it is enacted, sec. 40—"After the completion of the first valuation under this Act, it shall be in the power of the commissioners of supply to assess on the said valuation, and any subsequent valuation, the rogue money and all other assessments now levied on the valued rent, provided that the resolution so to assess be given at the meeting of the commissioners previous to the meeting at which such assessment is to be made, but after such resolution has once been adopted by the said commissioners, it shall not be in their power to revert to the former mode of assessment." Sec. 41—. . . "Nothing contained in this Act shall exempt from or render liable to assessment any person or property not previously exempt from or liable to assessment."

By the County General Assessment Act 1868 (31 and 32 Vict. cap. 82) it is enacted—“Whereas it is expedient to abolish the power of levying the assessment known as ‘rogue money,’ and in lieu thereof to confer upon the commissioners of supply of counties in Scotland the power of levying a ‘county general assessment.’ . . . II. From and after the passing of this Act, it shall no longer be lawful for the commissioners of supply of counties in Scotland to impose or levy the rate or assessment heretofore known as ‘rogue money.’ . . . IV. It shall be lawful for the commissioners of supply of every county in Scotland once in each year to impose an assessment for the purposes of this Act, to be called the ‘county general assessment,’ upon all lands and heritages within such county, according to the yearly value thereof as established by the valuation roll for the year (commencing at Whitsunday) in which such assessment is imposed. . . . X. Nothing herein contained shall confer on the commissioners of supply of any county the right to levy assessments under this Act on any lands or heritages upon which it is not now competent for the commissioners of supply of each county to levy rogue money, nor shall anything herein contained prejudice the right now possessed by any other body than commissioners of supply to levy rogue money under or in virtue of any law or custom now in force, but such right shall continue as heretofore.”

By the Local Government (Scotland) Act 1889 (52 and 53 Vict. cap. 50) it is enacted sec. 11.—“Subject to the provisions of this Act there shall be transferred to and vested in the council of each county, on and after the appointed day, or at such times as are in this Act, in that behalf respectively specified—(1) The whole powers and duties of the commissioners of supply, save as hereinafter mentioned. . . . The provisions of any Act of Parliament conferring, imposing, or regulating the powers and duties by this Act transferred, or regulating the proceedings under any such Act, shall remain in full force and effect, except in so far as they are repealed by or are inconsistent with the provisions of this Act.” Sec. 12—“(1) Notwithstanding the transference in the immediately preceding section mentioned, all enactments in regard to the constitution, qualification, admission, and making up lists of commissioners of supply shall continue in force, and all existing commissioners of supply shall continue to hold office so long as they retain their qualifications under the said enactments; but save for the purposes in this Act expressly mentioned, every reference in any Act of Parliament, scheme, order, deed, or instrument to commissioners of supply, or to their convener, shall be read and construed as referring to the county council or councillors, or to the convener of the county elected under this Act: Provided also that the County General Assessment (Scotland) Act 1868 shall be repealed after the words ‘such assessment is imposed’ in the fourth section thereof to the end of

section nine of the Act.” Sec. 27—“(1) The county council shall annually fix the rate in the pound of the rateable property which will be necessary to meet the deficiency in the county fund in respect of each branch of expenditure subject to its control, or for which it is responsible in whole or in part, and such rate shall be imposed upon all lands and heritages within the county, except that the rate for the management and maintenance of highways, the administration of the laws relating to public health, and any other special purpose as hereinbefore mentioned, shall be imposed upon all lands and heritages within each division, or district, or parish, as the case may be. The rate in respect of each branch of expenditure for which provision is made under an Act of Parliament in force at the passing of this Act shall be deemed to be imposed under the powers, and subject to the provisions of that Act, except in so far as these are inconsistent with the provisions of this Act. The rate necessary in respect of any branch or branches of expenditure for which no provision is made, as last mentioned, shall be imposed as a general purposes rate under this Act.”

The burgh of Oban, situated in the county of Argyll, was at the beginning of the century a small fishing village. By the Reform Act 1832 (2 and 3 Will. IV. cap. 65) it became a parliamentary franchise burgh. In 1862 it adopted the General Police and Improvement (Scotland) Act 1862 (25 and 26 Vict. 1862), but no steps were ever taken for forming a separate police force within the burgh. Till 1858 the expense of the police force of the county of Argyll including Oban was paid out of the rogue money levied, as after mentioned, and subsequent to 1858, after the General Police (Scotland) Act 1857 came into force, the expense of the police was paid out of an assessment levied by the Commissioners of Supply under that Act, the assessments on lands and heritages within the burgh of Oban being levied according to the yearly value thereof of the burgh valuation roll. In 1881 the boundaries of the burgh of Oban were largely extended for municipal purposes by the Oban Burgh Act 1881 (44 and 45 Vict. cap. 178).

From time immemorial the lands and heritages in the burgh of Oban were regularly assessed for rogue money, at first by the freeholders, and after 1832 by the Commissioners of Supply of the county of Argyll in terms of the Rogue Money Act 1839.

After the passing of the County General Assessment Act 1868 down to the passing of the Local Government (Scotland) Act 1889, the lands and heritages within the burgh of Oban were regularly assessed by the Argyllshire Commissioners of Supply for the county general assessment, the assessment being levied within the burgh of Oban according to the yearly values appearing in the burgh valuation roll.

After the passing of the Local Government (Scotland) Act the County Council of Argyllshire, as coming in place of the

Commissioners of Supply, continued to impose the County General Assessment on the owners of lands and heritages within the burgh of Oban. Among others who were thus assessed were the Police Commissioners of the burgh, as proprietors of heritable property within the boundaries of the burgh. The Police Commissioners refused to pay the assessment, and raised an action against the County Council to have it declared that the defenders were "not entitled to levy county general assessments on the annual value of lands and heritages within the bounds of the burgh of Oban," and in particular that they were not entitled to levy from the Police Commissioners in name of county general assessment the sums specified, and to have the defenders interdicted "from levying county general assessment on the annual value of lands and heritages within the bounds of the burgh of Oban, now and in all time coming, and in particular, from levying from the Police Commissioners of Oban," in name of county general assessment, the sums therein specified.

The pursuers averred—"The said Commissioners decline to pay the said assessments, or to recognise any liability therefor, on the ground that it is not within the powers of the County Council to levy the said assessment upon lands and heritages situate within the boundaries of a parliamentary burgh within the county. The defenders, however, maintain their right to levy the said assessments, and have applied to the Sheriff of the county for, and obtained, a summary warrant to enforce payment of the said assessments. The present action has thus been rendered necessary."

The pursuers pleaded—"(1) In respect that the imposition of the county general assessment on the annual value of lands and heritages within the burgh of Oban is illegal, decree ought to be pronounced as libelled. (2) In respect of the terms of the Local Government (Scotland) Act 1889, the defenders are not entitled to levy the county general assessment from lands and heritages situate within the burgh of Oban."

The defenders pleaded—"(2) The lands and heritages within the burgh of Oban having been legally assessed for county general assessment by the Commissioners of Supply for the county of Argyll prior to the passing of the Local Government (Scotland) Act, and said Act having transferred the powers and duties of the Commissioners of Supply to the County Council of said county, the said assessment has been rightly imposed by said Council."

On 2nd November 1893 the Lord Ordinary (Low) pronounced the following interlocutor—"Finds and declares, and interdicts, prohibits and discharges in terms of the conclusions of the summons, and decerns, &c."

Note.—I had occasion to consider, in the case of *The Corporation of Galashiels v. The County Council of Selkirk*, the question whether the county council of a

county within which a parliamentary burgh is situated, is entitled to levy the county general assessment upon lands and heritages in the burgh. I then held that the county council had no power to levy the assessment, and upon reconsidering the question in the present case, I see no reason to alter the opinion which I then formed.

"The first ground of my decision in the *Galashiels* case was that the commissioners of supply were not entitled under the County General Assessment Act of 1868 (31 and 32 Vict. cap. 82) to levy the county general assessment in a parliamentary burgh.

"The defenders in this case asked me to reconsider my opinion upon that point, in view of the provisions of the Act of 1839 (2 and 3 Vict. cap. 65), in regard to rogue money, and to the Police Act of 1857 (20 and 21 Viet. cap. 72), neither of which had been quoted in the argument in the *Galashiels* case.

"The Act of 1839 authorises the commissioners of supply to extend the purposes to which 'rogue money' may be applied, and to levy an additional assessment along with the 'rogue money.' By section 3 it is provided that the commissioners shall not be entitled to assess any lands situated within the boundaries of a royal burgh, or of any burgh or town which 'either has a Police Act, or which has taken the benefit of the Act 3 and 4 Will. IV. c. 46, intituled 'An Act to enable burghs in Scotland to establish a general system of police.'"

"The use which the defenders made of that enactment was this—The County General Assessment Act of 1868 established the general assessment 'in lieu' of rogue money, and it was argued that the assessment which came in lieu of rogue money must be leviable wherever rogue money was leviable, that is to say, on all lands within the boundaries of the county, except upon such as were within royal burghs, or burghs which had a private Police Act, or had adopted the Police Act of 1833.

"The question in this case is whether the County Council of Argyll, as coming in place of the Commissioners of Supply, are entitled to assess lands and heritages within the burgh of Oban for the county general assessment.

"The burgh of Oban, to which the conclusions of the summons apply, includes the parliamentary burgh, and also the one which has been included within the burgh by the Oban Burgh Act of 1881, for municipal purposes.

"The first question is, under what category does the burgh of Oban fall? Is it to be regarded as a parliamentary burgh or as a police burgh, or as partly the one and partly the other? The answer to these questions depends on the provisions of the Act of 1881.

"The 7th section of the Act, after describing the limits of the extended burgh, provides that 'the provisions of this Act, and of all Acts for the time being in force,

relating to burghs in Scotland which contribute to return members to Parliament and are not royal burghs . . . shall, subject to the provisions of this Act, apply to and have effect in the burgh, as defined by this section, in the same way and to the same effect as if the burgh, as so defined, were a burgh which contributed to return a member to Parliament.'

"The 8th section provides that 'nothing in this Act contained shall affect the county of Argyll or the parliamentary burgh of Oban, or the limits thereof, so far as regards the election of members to serve in Parliament.'

"The 11th section provides that the assessor of the parliamentary burgh of Oban shall annually make up a valuation roll for the extended burgh, 'distinguishing the lands and heritages within the district annexed from the lands and heritages within the existing burgh, . . . and for all assessments imposed, or which may be imposed, within the burgh by any legally appointed assessing body under this Act or any other Act, the said roll shall be deemed to be the valuation roll under the Valuation Acts. . . . Provided always that the said valuation roll shall not affect the valuation roll made up for the county of Argyll, and that no lands and heritages shall be assessed for the same purposes both in the burgh and in the county of Argyll, although such lands and heritages may be included in the valuation roll made up for the said county, but the district annexed shall be liable to be assessed for the purposes of the Police Act and this Act by the corporation and the police commissioners respectively only.'

"The result of these enactments seems to me to be, first, that all Acts relating to parliamentary burghs shall apply to the extended burgh; secondly, that the valuation roll of the extended burgh shall be the valuation roll for the purposes of all assessment; and thirdly, that there shall be no double assessment in the burgh—that is to say, that an assessment for the same purposes shall not be levied both by the county authorities and by the burgh authorities.

"The last enactment would I think, in any view, strike at both the county general assessment and the police assessment under the General Police Act being levied within the burgh, because these assessments are levied for almost the same purposes in the county and the burgh respectively. The police assessment in a burgh, in fact, corresponds to the county general assessment in the county.

"That consideration seems to me to constitute a formidable obstacle in the way of the defenders, but as it is not a point which was discussed in argument, I do not desire to rest my judgment upon it.

"The provisions of the Act of 1881 which I have quoted appear to me to result in this, that the whole burgh of Oban is to be treated for the purposes of this case, which raises a question in regard to assessment only, as a parliamentary burgh.

"Whether that contention is or is not well founded, seems to me to depend upon

the construction of the County General Assessment Act.

"That Act commences with the preamble that it is expedient to abolish the power of levying 'rogue money,' and in 'lieu thereof to confer upon commissioners of supply of counties in Scotland the power of levying a "county general assessment." The 2nd section abolishes 'rogue money,' and the 4th section contains the enactments by which the general county assessment is established. It is there provided that the commissioners of supply 'of every county in Scotland' shall, once in each year, impose an assessment to be called the 'county general assessment upon all lands and heritages within such county, according to the yearly value thereof as established by the valuation roll for the year.'

"That enactment seems to me to admit of only one construction. The assessment is to be imposed upon lands and heritages within the county, according to the value established by the valuation roll of the county. The power to assess, therefore, is limited to the lands and heritages appearing in the valuation roll of the county. There is, however, no definition of county in the Act, and therefore it is necessary to go to the Valuation of Lands Act to see what is included in the valuation roll of the county.

"By the 1st section of the latter Act it is provided that the commissioners of supply of every county and the magistrates of every burgh respectively shall annually cause to be made up a valuation roll showing the yearly value of the whole lands and heritages within such county or burgh respectively. By the 42nd section it is provided that the word 'burgh' shall apply only to a 'city, burgh, or town being a royal burgh, or which sends or contributes as a burgh to send a member to parliament,' and it is also provided that 'the word "county" shall include "stewartry," and shall include and apply to a county exclusive of the burghs situated therein.'

"It therefore appears to me that an assessment which is to be laid on according to the valuation roll of the county upon the lands and heritages included in that valuation roll, cannot possibly extend to a burgh which contributes to send a member to parliament.

"The defenders, however, argued that the County Police Act of 1857 showed that the word 'county' in the County General Assessment Act ought to be read as including burghs which had not a police establishment. The former Act provides (section 29) that the commissioners of supply of every county shall impose a police assessment 'upon all lands and heritages within such county, according to the yearly value thereof, as established by the valuation rolls in force for the year of assessment.'

"There is no doubt that the word 'county' as there used includes burghs which have not a police establishment, but I do not think that that can affect the construction of the County General Assessment Act, because the Act of 1857 has a

special definition of the word 'county.' That word is defined by the 78th section as including 'all burghs and places within the county or stewartry not being a burgh or town which has a Police Act or an establishment of police' under one of the General Police Acts then in force. It is also not unimportant to observe that under the 29th section the police assessment is to be laid on according to the valuation rolls, thus recognising that both the county valuation roll and the burgh valuation roll may require to be used. In the County General Assessment Act, on the other hand, the valuation roll alone is referred to.

"I am therefore of opinion that commissioners of supply had no power to assess for the county general assessment lands and heritages within a parliamentary burgh.

"I am confirmed in that view by the provisions of the Local Government Act 1889.

"The case of Oban differs from that of Galashiels in that the latter has a police establishment, and therefore is not represented on the county council and does not contribute to the county fund, while the former (having a population of under 7000) is represented upon the county council, has the administration of its Police and of the Contagious Diseases (Animals) Acts vested in the county council, and contributes to the county fund.

"No doubt it would be more easy to arrive at the conclusion that the county council had the right of direct assessment upon lands within a burgh which was represented upon the county council than within a burgh which had no representation, but I think that it is clear that the Act did not contemplate any such direct assessment, except in the case of police burghs, and of burghs having a population of more than 7000 but which have no separate police force. Such burghs are represented upon the council, but are not subject to the provisions as to contribution to the county fund, the assessments continuing to be levied directly by the county council.

"The position under the act of a parliamentary burgh with a population of less than 7000 is as follows. By section 8 such a burgh is entitled to be represented on the county council, and by sections 13 and 14 the administration of the Police and of the Contagious Diseases (Animals) Acts is transferred to the county council. By section 60, sub-section 3, it is provided that every such burgh shall contribute to the county fund in aid of the expenditure upon Police and the Contagious Diseases Acts, and by sub-section 4 of the same section, it is provided that the amount of the contribution shall not be assessed by the county council upon lands and heritages within the burgh, but shall be paid by the town council out of the police assessment or other assessment levied in the burgh, or out of the common good. In contradistinction to that enactment, it is provided by sub-section 5 of the same

section that police burghs with a population of less than 7000 shall be assessed by the county council for Police and the Contagious Diseases Acts in the same manner as other lands within the county. Finally, by the 66th section it is provided that the county council shall annually send a requisition to the town council of a burgh liable in contribution requiring them to pay the amount of the contribution.

"Now, it seems to me that these provisions were intended to deal exhaustively with the relationship between parliamentary burghs with a population of less than 7000, and the county council, and that it was not contemplated that the council should in addition have the power of direct assessment within such burghs. If, in addition to the contribution to the county fund which such burghs were bound to make, the council, as coming in place of the commissioners of supply, had power to levy the county general assessment within the burgh, I think that in order to make the scheme of the statute clear and complete, it would have been necessary to make special provision in regard to the matter.

"I shall therefore give decree in terms of the conclusions of the summons with expenses."

The defenders reclaimed, and argued—There were two questions in this case, (1) Whether the county general assessment under the Act of 1868 was properly levied on individual proprietors in the burgh of Oban along with the proprietors in the landward portion of the county, and (2) if it was assumed that the county general assessment had been properly levied on lands and heritages in Oban under the Act of 1868, did the Local Government Act 1889 take away that right from the commissioners of supply and the defenders who came in their place? The Lord Ordinary had decided both points against the defenders. On both questions his judgment was erroneous. As regards (1) when rogue money was imposed, Oban fell under neither of the exceptions stated in the Act of 1839, and therefore was rightly assessed for rogue money. The Act of 1868 introduced the county general assessment in lieu of rogue money, and unless there was something in the Act which specially excluded Oban from its application, Oban must be held to be liable for county general assessment. The Lord Ordinary held that Oban was excluded because the assessment was to be imposed "according to the yearly value thereof as established by the valuation roll in force for the year of assessment" which he interpreted to mean "the valuation roll for the county." But there was no good reason for inserting "for the county" after "the valuation roll." The reference to the valuation roll was merely to show the basis of assessment. It would be a strange method of exempting a burgh from assessment by merely making in an Act an indirect reference to a valuation roll for the mode in which an assessment was to be levied. If "valuation roll" was understood to mean the valua-

tion roll made up for the county under the Valuation of Lands Act 1854, the railways would be exempted also from assessment, because a separate valuation roll was made up for them. This was absurd. "Valuation roll" in the Act of 1868 meant the valuation roll in which the lands and heritages assessed were entered. If the lands were within burgh, then it was the burgh valuation roll which was meant; if the lands were situated in the landward part of the county, then it was the valuation roll for the county which was meant. The history of the tax showed that the interpretation of the defenders was the proper one. *De facto*, after 1868 down to the passing of the Act of 1889 Oban had paid her share of the county general assessment. Rogue money stood on a distinct footing from police assessment, and since the passing of the Police Act of 1857 rogue money and police assessment had come to be levied as two distinct things. In 1868 the county general assessment had been imposed, not in lieu of police assessment, but in lieu of rogue money. (2) The Local Government Act 1889 did not take away from the county council the right of levying county general assessment from a burgh such as Oban. By section 11 the whole powers of the commissioners of supply were vested in the county council subject to the provisions of the Act. There was no provision of the Act which in any way modified the powers of the county council with regard to the county general assessment. Indeed, section 12, while it repealed part of the County General Assessment Act 1868, left unrepealed the assessing clause, and there was thus clear evidence that under the Act of 1889 the county council were to have the same powers as the commissioners of supply in imposing the assessment. The Oban Burgh Act of 1881 merely extended the boundaries of the burgh.

Argued for pursuers—The judgment of the Lord Ordinary was well founded. (1) Under the Act of 1868 the commissioners of supply had no legal right to assess lands and heritages within the burgh of Oban for county general assessment. The county general assessment was to be imposed under that Act "upon all lands and heritages within the county according to the yearly value thereof as established by the valuation roll for the year in which such assessment is imposed." The roll prepared by the Commissioners of Supply under the Act of 1854 was the valuation roll for the county. This was the roll referred to in the Act of 1868 and the burgh of Oban not being included in this roll was excluded from the assessment by the direct terms of the Act. (2) If the Commissioners of Supply had a legal right to impose the county general assessment on Oban before the passing of the Local Government Act of 1889, after the passing of that Act the power ceased as it was inconsistent with the provisions of that Act. This was shown conclusively by the arguments used by the Lord Ordinary. The county general assessments were levied for almost the same purposes as the police assessments,

and under the Oban Burgh Act of 1881 it was provided that no double assessment for the same purposes should be levied within the burgh. The interlocutor of the Lord Ordinary should be affirmed.

At advising—

LORD JUSTICE-CLERK.—By the 11th section of the Local Government Act of 1889 there are vested in the county council "the whole powers and duties of the commissioners of supply," except as otherwise mentioned in the Act. The power of the commissioners of supply as regards assessment was fixed by the Rogue Money Acts of 1832 and 1839, by which they were empowered to assess for rogue money and for constabulary expenses, and by the County General Assessment Act of 1868, by which a county general assessment in lieu of rogue money was established. Under the former Acts the commissioners of supply were entitled to assess all lands and heritages within the county, with the exception under section 3 of the Act of 1839 of royal burghs or any burgh or town having a Police Act or having taken advantage of an Act of Will. IV. enabling burghs to establish a general system of police. The burgh of Oban does not fall within either of these exceptions.

If the burgh of Oban, not falling under either of the above exceptions, was simply a burgh and nothing else, no question could be raised. There could be no doubt that the county authority would have the power, under the old Acts giving authority to the commissioners of supply, to assess on the lands and heritages within the burgh. But the burgh of Oban maintains that being a parliamentary burgh the county council has no power to levy on it the general county assessment. The burgh maintains that there was no power of assessment under the Act of 1868, and *separatim* that if there was, it was not transferred to the new county council by the Act of 1889. The argument upon which it is maintained that there was no power to assess under the Act of 1868 is one which depends upon implication only. By the Act of 1868 power is given to the commissioners of supply to impose an assessment to be called the "general county assessment, upon all lands and heritages within such county, according to the yearly value thereof as established by the valuation roll for the year (commencing at Whitsunday) in which such assessment is imposed." The first question here is what is included in the words "within the county," and that must be determined by the definitions and exceptions in the previous statutes. Now, the only parts of the area of a county which have been excluded from the operation of rogue money assessment by the previous statutes were royal burghs and burghs having a Police Act or having been brought under the Police Act of Will. IV. Therefore Oban, which is not in any of these categories, was within the county for assessment prior to 1868. Therefore the words "within the county" in the Act of 1868 must include Oban, unless by some other words of that Act it must be held to be

excluded. There is no expression indicating that the word "county" means anything different from what it bore in the previous Act. There are certainly no enacting words to that effect. And therefore, as I said before, it must be by implication that the position of such a burgh as Oban is to be changed by the Act of 1868 as regards liability to assessment. Such an implication, by which an area of assessment is to be held to be altered, would require to be clear and unambiguous. In this particular case we have this somewhat extraordinary state of matters, that from the date of the passing of the Act of 1868 down to the passing of the Local Government Act of 1889, it never seems to have occurred to any ratepayer in Oban, or indeed to any ratepayer in any similar burgh, that his liability to contribute to the county expenses was abolished by that Act. It can therefore scarcely be a very clear implication. From the argument addressed to us and from the Lord Ordinary's note it appears that the implication is to be derived from a consideration of that part of the enactment which relates to the mode in which the assessment is to be imposed. The Act directs that the assessment is to be levied according to the yearly value as "established by the valuation roll for the year." It is the contention of the pursuer—and the Lord Ordinary has given effect to the contention—that as the word "roll" is given in the singular, it is the same as if it had said valuation roll for the county only, and that therefore there can be no power to assess in any area in which there is a separate valuation roll under the Valuation Act. I cannot concur in that view. It appears to me that if at the time of the passing of the Act of 1868, the authority which assessed for rogue money did so over burghs which were not exempted under the previous Acts authorising the levying of rogue money, as that authority undoubtedly did, that the new authority must in the absence of express enactment to the contrary assess on the same burghs, and that if the order is given that the new authority is to use the valuation roll as the basis of assessment, then it must be the roll applicable to the burgh in the case of a burgh which previously formed part of the county for rogue money assessment. They are to obtain their basis from the valuation roll, and that must be the roll of the county or the roll of the burgh respectively. I should have been of that opinion upon the Act of 1868 alone, but I am confirmed in that opinion by what I find in the Valuation Act itself. For it is enacted by section 40—[*His Lordship read the clause.*] That enactment clearly empowers the commissioners to assess on the statutory valuation. But as by the Valuation Act the parliamentary burgh roll was made up separately they could only complete their roll on the valuation by using the burgh roll to ascertain the value of those subjects whose owners or occupiers were liable to contribute to the rogue money, but which were within the burgh. If it be contended that the directions of the

Valuation Act that a separate roll for a parliamentary burgh should be made up, excluded the assessing by the commissioners within the burgh, that is I think conclusively answered by the latter part of clause 41 of the Valuation Act, which declares that nothing contained in this Act shall exempt from or render liable to assessment any person or property not previously exempt from or liable to assessment. Therefore the commissioners were bound to assess those in burghs who had been assessed for rogue money before as not having been previously exempt, and were in doing so entitled to proceed on the valuation under the Valuation Act. If they did so, they must in the case of a burgh have done so on the valuation roll of the burgh.

If this view be sound, I am unable to find anything in the Local Government Act of 1889 which alters the position of such a burgh as Oban in regard to the county general assessment which came in lieu of the rogue money. The powers and duties of the county council are those of the commissioners of supply, and the Act while repealing some of the clauses of the General Assessment Act of 1868, by so doing expressly leaves in force that part of the Act by which taking it along with the Rogue Money Acts the area of assessment is fixed and the power to assess conferred.

I have therefore come to the conclusion that the interlocutor of the Lord Ordinary should be altered and the defenders assoilzied from the conclusions of the action.

LORD YOUNG concurred.

LORD RUTHERFURD CLARK—I am of the same opinion.

LORD TRAYNER—I concur. The view which I take of this case may be briefly stated.

Under the Act of 1857 the Commissioners of Supply were authorised to levy an assessment for rogue money and other purposes on "the whole county," and "county" was declared to include, *inter alia*, "all burghs and places within the county not being a burgh or town which has a Police Act, or an establishment of police" under the provisions of certain recited Acts. Oban being within the county, and not having a Police Act or establishment of police, was liable to be assessed for rogue money, and it was so assessed. By the Act of 1868 rogue money was abolished, and in lieu thereof the Commissioners of Supply were authorised (sec. 4) to levy a county general assessment upon all lands and heritages within the county according to the value thereof as appearing on the valuation roll for the year, but that only (sec. 10) on lands and heritages then liable to be assessed for rogue money. When the Act of 1868 passed Oban was liable for rogue money, and was therefore liable under that statute for the county general assessment authorised to be levied in lieu of rogue money. The county general assessment was accordingly imposed on lands and heritages in Oban down to the passing of the Local Government Act of 1889, by which the whole

powers and duties of the Commissioners of Supply were vested in the County Council. The latter body, the defenders in this case, have imposed the county general assessment on lands and heritages in Oban, and the pursuers' purpose in bringing this action is to have it declared that the defenders are not entitled to do so. I think they are. They are only doing what the Commissioners of Supply did without complaint. They are exercising one of the powers and fulfilling one of the duties of the Commissioners of Supply, and therefore seem to me to be acting within their statutory right. The view that the powers of the County Council are restricted by the direction that they are to assess according to the value appearing in the valuation roll and not valuation rolls appears to me untenable. The valuation roll referred to is the valuation roll in which the subjects assessed are appropriately entered.

The Court recalled the interlocutor of the Lord Ordinary and assoilzied the defenders.

Counsel for the Pursuers—Kincaid Mackenzie—Craigie. Agents—Macpherson & Mackay, W.S.

Counsel for the Defenders—Solicitor-General Asher, Q.C.—Graham Stewart. Agents—M'Neill & Sime, W.S.

HIGH COURT OF JUSTICIARY.

Monday, March 5.

(Before the Lord Justice-Clerk, Lord M'Laren, and Lord Rutherford Clark.)

PATTERSON v. MACDONALD.

Justiciary Cases—Public-Houses Acts Amendment Act 1862 (25 and 26 Vict. cap. 35)—Relevancy—“Or about that time.”

A hotel-keeper was charged with an offence against the laws for the regulation of public-houses in Scotland, “in so far as upon Sunday the 31st day of December 1893 years, or about that time” he “did open his hotel for the sale of exciseable liquors, and sell or give out therefrom one bottle of whiskey” to a person named, “contrary to the terms and conditions of his certificate.”

Held that the complaint was irrelevant, in respect that the words “or about that time” must be taken as including the days immediately before and after the Sunday specified, and therefore as including hours on Saturday and Monday when the sale would not have been an offence.

John Patterson, the holder of a certificate for the sale of exciseable liquors at the Waverley Hotel, High Street, Hawick, was charged in the Police Court of the Burgh of Hawick with a contravention of the Public-Houses Acts Amendment Act 1862. The complaint

set forth that Patterson had “been guilty of an offence against the laws for the regulation of public-houses in Scotland, in so far as upon Sunday the 31st day of December 1893 years, or about that time, the said accused did open his said hotel for the sale of exciseable liquors, and did sell or give out therefrom one bottle of whiskey to John Jamieson . . . contrary to the terms and conditions of his said certificate.”

Patterson was convicted of the offence charged “in respect that he did allow his hotel to be opened and one bottle to be given out therefrom, all as libelled.”

In an appeal against this conviction on a stated case one of the questions of law submitted to the Court was whether an offence under the statute was relevantly libelled in the above complaint.

Argued for the appellant—The charge set forth that the sale took place on Sunday or about that time, and therefore included a period of time extending beyond the limits of Sunday. The extension could only be to Saturday and Monday immediately preceding and following, and as the sale might have been during the lawful hours on these days the libel did not necessarily set forth an offence—*Drummond v. Latham*, 3 White, 166, 29 S.L.R. 481.

Argued for the respondent—If the complaint had merely said “on Sunday 31st,” then by the Criminal Procedure Act of 1887 the words “or about that time” would have been implied; the insertion of the words could not therefore vitiate the libel, and they must be read as referring to the prohibited hours on Saturday night or Monday morning—*Baird v. Rose*, 5 Irvine, 200. Selling during unlawful hours is the substance of the charge, and the particular day is not essential. In any case, the time is limited by the words “contrary to the terms and conditions of his certificate.” It is not necessary, when there is a reference to the certificate, to set forth specifically that the person to whom the liquor was sold was not a *bona fide* traveller or resident in the house, and on the same principle the reference to the certificate must be held as limiting the time to prohibited hours. [By the COURT—The fact that the sale is to a *bona fide* traveller or to a person resident in the house is a defence, and need not be set forth in the libel.]

At advising—

LORD M'LAREN—The question is, whether in a charge of contravention of certificate, in respect that the accused, on a Sunday, did sell and give out exciseable liquors, the addition of the words “or about that time” affects the relevancy of the libel?

It is objected that the libel is irrelevant because it charges, not the precise offence of selling on Sunday, but that the accused sold liquor “about that time.” It is answered that the words “about that time,” if not there, would be implied by the Criminal Procedure Act of 1887, and that their insertion cannot have a destructive effect. No doubt under the statute of 1887 it would be competent under a charge of selling liquor upon a