trustee. But the first party to this case maintains that certain expressions in the 21st and 22nd sections of the statute I have cited have conferred upon him the office of chairman of the Parochial Board, and that he is entitled as such to the vacant trusteeship. We must therefore look at these sections, for upon their interpretation and effect depends the answer to the question before us.

Section 21 provides that on and after the 15th May 1895 "Every reference in any Act of Parliament, scheme, deed, or instrument to a parochial board . . . shall be read and construed as referring to a parish council constituted under this Act." This does not appear to me to support the claim of the first party, because the deed before us (Lady Ossington's trust-deed) is not in any sense a deed or instrument "to a parochial board." It conveys nothing to the Parochial Board; it authorises nothing to be done by the Parochial Board. Indeed, the reference in it to the Parochial Board at all is merely by way of description or demonstration to indicate the trustee appointed by this office which he holds. But the deed is to the individual, not to the board. Accordingly, the deed is not one of the kind referred to in the section. Section 22 again provides that "A parish council shall . . . come in place of a parochial board, and shall be deemed to be a continuance thereof." But to what effect and purpose this is to be deemed a continuance is made plain by the words which follow—"And a parish council shall have and may exercise all the powers and duties, and shall be subject to all the liabilities, of a parochial board." In short, the meaning and effect of this clause is shortly and accurately stated in the rubric—"Parish councils to take the place of parochial boards." All the duties incumbent on a parochial board are to be undertaken and performed by the parish council, and all the rights (of property or otherwise) and privileges of a parochial board are transferred to the parish council—in this sense, that the parish council in future should represent the parochial board in its rights and obligations. The one is to be deemed a continuance of the other, but only in this sense. As the trust in question was one with which the parochial board had no concern, so I think the parish council has nothing to do with it. And accordingly I am of opinion that the chairman of the parish council cannot claim *ex officio* to be a trustee. I think therefore that the question put to us should be answered in the negative.

The LORD JUSTICE-CLERK and LORD MONCREIFF concurred.

LORD YOUNG was absent.

The Court answered the question in the negative.

Counsel for the First Parties—Graham Stewart. Agents—Curror, Cowper, & Curror, W.S.

Counsel for the Second Parties—Wood. Agents—Melville & Lindesay, W.S.

Thursday, July 2.

FIRST DIVISION.

[Lord Low, Ordinary.

ABERDEEN HARBOUR COMMISSIONERS *v.* GRANITE CITY STEAMSHIP COMPANY.

Statute—Repealing Statute—Construction of Saving Clause — Harbour Rates — Whether Exemption from Harbour Rates under Repealed Act within Saving Clause — Aberdeen Harbour Act 1879 (42 *and* 43 *Vict. cap.* 88), *Schedule A—Aberdeen Harbour Act* 1895 (58 *and* 59 *Vict. cap.* 136), *secs.* 2, 10, 76, 77, *Schedule A.*

By Schedule A of the Aberdeen Harbour Act 1879 it is provided that any vessel included under class third which shall have made ten voyages in one year, from January to December inclusive, shall not be liable for harbour rates on any additional voyages of the description specified under class third made by it within such year.

By a subsequent Act in 1895 which came into operation on 1st October 1895, the former Acts were declared repealed from and after that date. The Act of 1895 did not contain any exemption similar to that in the Act of 1879.

By section 10 it was provided that "Notwithstanding the repeal of the recited Acts, and except only as is by this Act expressly provided, everything before the commencement of this Act done or suffered or confirmed by the recited Acts shall be as valid as if such Acts were not repealed, and the repeal thereof and this Act respectively shall accordingly be subject and without prejudice to anything so done or suffered or confirmed, and to all rights, liabilities, debts, claims, and demands, both present and future, which, if the recited Acts were not repealed . . . would be incident to or consequent on any and everything so done, suffered, and confirmed."

The owners of a vessel in class third, which had made ten voyages before 1st October 1895, claimed that they had by virtue of the Harbour Act of 1879 acquired a vested right of immunity from payment of all further rates till the end of 1895. *Held* (*rev.* Lord Low) that the pursuers had no vested right of immunity arising out of contract, and that accordingly their right not being consequent upon "anything done or suffered" the saving clause did not apply to it.

By section 100 of the Aberdeen Harbour Act 1868 (31 and 32 Vict. c. 138) the Harbour Commissioners were empowered to levy for every vessel coming into or going out of the harbour certain rates specified in the schedules annexed to the Act. By section 12 of the Aberdeen Harbour Act 1879 (42 and 43 Vict. c. 88) these schedules were re-

pealed, and the schedules annexed to the later Act were substituted.

By Schedule A of the 1879 Act the rates for all vessels were provided, and they varied according to the classes into which vessels were divided. Vessels falling under class third were rated at ninepence per registered ton.

The schedule also provides as follows:—"For any vessel included in class third which shall have made ten voyages in any one year from January to December inclusive, no rates shall be charged on any additional voyages of the description specified under class third made by it within such year; and if any vessel included under class third, being a regular trader to the harbour, shall be lost or sold during any such year, any vessel substituted in the trade for such lost or sold vessel shall, in computing the number of voyages in that year, be deemed to be the vessel for which it is so substituted. . . . One sailing inwards and one sailing outwards next following to constitute a voyage."

By the Aberdeen Harbour Act 1895 (58 and 59 Vict. c. 136) the Commissioners were empowered by section 75, "from and after the commencement of this Act," to levy the rates specified in Schedule A. That schedule empowers the Commissioners to levy rates on vessels in class third for each of the first eight voyages in any year sixpence per ton, and for each subsequent voyage threepence per ton.

By section 77 it was provided that "The rates specified in the Schedules A and B to this Act, or as varied under the authority of this Act, shall at all times be charged equally to all persons in respect of the same class or description of vessel, and the same description of goods."

By section 2—"From and after the first day of October 1895" previous Acts are repealed, and the present Act is to commence and take effect.

Section 10 provides—"Notwithstanding the repeal of the recited Acts and Order, and except only as is by this Act otherwise expressly provided, everything before the commencement of this Act done or suffered under or confirmed by the recited Acts and Order, shall be as valid as if such Acts and Order were not repealed, and the repeal thereof and this Act respectively shall accordingly be subject and without prejudice to everything so done or suffered or confirmed, and to all rights, liabilities, debts, claims, and demands, both present and future, which, if the recited Acts and Order were not repealed and this Act were not passed, would be incident to or consequent on any and everything so done, suffered, or confirmed; and with respect to all rights, liabilities, debts, claims, and demands which affect or might affect the existing Commissioners, the Commissioners shall to all intents and purposes represent the existing Commissioners, and may enforce and shall be liable in respect of such rights, liabilities, debts, claims, and demands in the same manner and to the same extent as the existing Commissioners could have enforced or have been liable to in respect of such rights, liabilities, debts, claims, and demands." Further, by section 7 of said Act it was enacted, *inter alia*, that "all contracts or agreements entered into or adopted by the existing Commissioners and any person, and all obligations and writings granted by the existing Commissioners to any person, should remain valid and effectual as if the Act had not been passed."

On 1st October 1895 the s.s. "Linn o' Dee," a steamer belonging to the Granite City Steamship Company, Aberdeen, which was included in the third class specified in Schedule A of the 1879 Act, had completed ten voyages. An action was raised against the Granite City Steamship Company by the Aberdeen Harbour Commissioners concluding for payment of £78, of which £33 was for lights, flags, &c., and £45 for the tonnage rates due under the 1895 Act for eleven voyages made by the "Linn o' Dee" between 1st October 1895 and 18th February 1896. The defenders tendered £33, being the amount they admitted to be due for lights, flags, &c., and with regard to the tonnage dues pleaded—"2. The defenders, having paid harbour rates to the pursuers for ten voyages performed by their said vessel in 1895, acquired by virtue of the Harbour Act of 1879 a vested right of immunity from payment of all further rates for that year, except for flags and signals, for all subsequent voyages in that year."

The Lord Ordinary (Low) on June 18th 1896 assoilzied the defenders from the conclusions of the action as regards the tonnage dues.

Note.—. . . "It is admitted that upon the 1st October 1895, when the Act of that year came into operation, the 'Linn o' Dee' had completed ten voyages since the 1st of January, and that if the provisions which I have quoted from the Act of 1879 were applicable, she would not be liable for any rates for voyages made during the remainder of the year 1895.

"Whether, notwithstanding the commencement of the Act of 1895 on the 1st of October, the 'Linn o' Dee' was entitled to the immunity from rates given by the Act of 1879, depends upon the scope of the 10th section of the former Act. That section is in the following terms—[*His Lordship read the section*].

"That is a saving clause expressed in very ample terms, and in my opinion is sufficient to preserve to the 'Linn o' Dee' the immunity from rates for the remainder of the year 1895 which she had earned at the passing of the Act.

"In the first place it is not expressly provided in the Act that an immunity from rates actually earned under the previous Act shall be forfeited. In the second place, the payment by the 'Linn o' Dee' of the rates specified in the Act of 1879 for the ten voyages after the 1st of January was a thing done under that Act which gave the 'Linn o' Dee' the right, as a consequent on that payment, to continue to trade free of rates until the end of the year. That is, I think, one of the rights saved by the 10th section.

"I am accordingly of opinion that the 'Linn o' Dee' was not liable in payment of rates for voyages made between the 1st of October 1895 and the end of that year, and that she did not come under the operation of the Act of 1895 until the commencement of the year 1896."

The pursuers reclaimed, and argued—The right claimed by the defenders depended on the existence of the old schedule, and disappeared on its repeal. They had no "vested right" such as would not be cut down by a repealing statute. The saving clause (section 10) applied only to rights incident to anything "done or suffered" previous to this Act if arising out of any contractual relations between the parties prior to it. There were no such relations here between the defenders and Commissioners, the rates and number of voyages conferring exemption being defined by statute. The object of the new Act was to introduce a new system of rating, and a new date for the commencement of the financial year, and it would be directly against the intention of the Act to hold that voyages made after the date of the introduction of the new Act were to enjoy an exemption conferred by the old.

Argued for respondents — They had acquired a vested right to exemption before the new Act came into operation, and such a right was expressly exempted by section 10. It would not be taken away by implication, and if the statute could be read consistently with its retention, it should be held to be retained, the statute not being retrospective—*Gardner* v. *Lucas*, March 21, 1878, 5 R. (H. of L.) 105, at 117; *Bourke* v. *Nutt*, 1894, 1 Q. B. 725, at 737. This was not a case of a right in course of acquisition, but of one already acquired by the fulfilment of the condition of making ten voyages.

LORD PRESIDENT — In my opinion the interlocutor of the Lord Ordinary cannot be supported. His Lordship has held that there was a right vested in this trader to enter the Aberdeen Harbour without payment of any rates until the 1st of January of the next year. Now, the series of statutes stands in this position. Under the Act of 1879 the Aberdeen Harbour Commissioners have right to levy the rates set out in the schedule, and from the schedule it appears that after a vessel has made ten voyages in any one year, from January to December, no rate could be asked for any additional voyage. Now, that seems to me to be in substance as well as in form merely a limitation of the powers of the Commissioners to exact rates from vessels entering the harbour. They are allowed to do it ten times; they are not allowed to do it after ten voyages have been made. Well, now, this Act is repealed by the Act of 1895. A new set of rates comes into force; the old are swept away. The rating power of the Commissioners under the old Act ceases; new rating powers are to come into operation, and they come into operation from October of 1895. The result is that the Commissioners are authorised to levy their own rates, and not the rates under the Act of 1879. But the question is, whether the trader now in Court is entitled to resist a demand for payment of the rates under the Act of 1895 on the ground that he had already made ten voyages, and by consequence that the old Commissioners were not entitled to ask from him more rates than he had already paid. It seems to me that there was no contract right—no vested right—in this trader at all, and accordingly the 10th section has really no application. All that he could say was, "I am not liable to pay any rates under the Act of 1879, inasmuch as I have already paid for ten voyages." But then the Commissioners who are now in Court are not asking him to pay anything under the Act of 1879, and they cannot do so. They are founding themselves upon their own powers of rating which are conferred by the 75th and 77th sections of the Act of 1895 and the relative schedules. Section 75 says—"You shall levy the rates from every vessel using the harbour;" and section 77 says—"You shall make no distinction between persons who are of the same classes as those defined in the schedule." It seems to me that the Commissioners' position is complete. As I have said, the exemption under the Act of 1879 was less an exemption than a limitation of the power of imposing rates, and the present Commissioners are not seeking to impose rates, and could not do so, under the Act of 1879. Therefore it seems to me that this is merely a case where a person comes under the rating powers of the new Act, and is entirely adrift and set free from all the relations established between him and the rating authority repealed. I am therefore of opinion that the judgment of the Lord Ordinary is wrong, and I think it unnecessary to go in any detail into the illustrations of the unworkableness of the suggested dovetailing of the new Act and the old. From the 1st of October it seems to me that everyone is bound to pay, without distinction as to previous trading or not, according to the schedule of the Act of 1895. The present demand is for the rates under that Act, and there is no good defence to that claim.

LORD ADAM—As I understand the case, the defenders, who are the owners of a ship called the "Linn o' Dee," made certain voyages and used the harbour of Aberdeen, which is the property of the Commissioners, the pursuers, during the months from October to December, and the Commissioners proposed to levy from them the rates contained in the schedule of the Act of 1895 which is applicable to that period. No objection, as I understand, is taken to the amount of the rate, if only the defenders are liable for the rate at all under the Act of 1895, and that is the question which we have to decide.

There is no doubt whatever, and it is not disputed, that the Act of 1895 came into operation on first October of that year; and there is as little doubt that it specifies in the schedule appended to it certain rates which are to be levied on ships of certain classes,

these rates being authorised by the 75th section of the Act. The answer made is that between January and September 1895 the "Linn o' Dee" made ten or more voyages, and had thus acquired an exemption from rates for the remainder of the year prior to the coming into operation of the Act of 1895. Undoubtedly if the Act in existence prior to 1895 had continued in force, that would have been so, but unless the exemption is to be found in the 10th section of the Act of 1895, there is no such exemption under that Act. The whole defence arises upon that section, and the first question is whether it applies to the circumstances of this case at all, of which I have all along been doubtful.

The section says, that notwithstanding the repeal of the previous Act "everything before the commencement of this Act done or suffered" shall continue to be valid. Nobody could conceive that that was meant to refer to payment of rates. One would rather conceive, as Mr Ure said, that it was meant to apply to acts of a different kind, namely, acts of a contractual nature.

However, that may be, I am of opinion that the charging of these rates under the new Act falls under the exemption contained in section 10, and that it is expressly provided by the Act of 1895 that all vessels using the harbour subsequent to that Act coming into operation shall pay the rates in the schedule. I cannot read the Act otherwise. It expressly says that from the commencement of the Act vessels of class 3 shall pay certain rates, and I must say that that is inconsistent with any presumed right to exemption altogether. The view which I take of this case is that the interlocutor of the Lord Ordinary is wrong, and that everyone must pay the rates specified in the schedules, in terms of the Act of 1895. I therefore agree with your Lordship.

LORD M'LAREN—Under the Aberdeen Harbour Act of 1879 it is provided that "for any vessel included in class three, which shall have made ten voyages in any one year from January to December inclusive, no rates shall be paid on any additional voyages." The vessel in question, the "Linn o' Dee," having made ten voyages, as is admitted, in the year 1895, if the Act of 1879 had continued to regulate the collection of rates, then beyond question the vessel would have been entitled to perform as many subsequent voyages in that year as the owners pleased, without payment of harbour rates. But an alteration has been made by Act of Parliament in the financial year for the transactions of the Harbour Trust, and the year now commences on 1st October instead of beginning on the 1st of January and continuing to the 31st of December. The question is, as I represent it to myself, whether the exemption from rates to which the "Linn o' Dee" was entitled can continue any longer than the 1st of October, at which time the Act of 1895 came into operation with its appropriate schedule of rates. The Lord Ordinary has given effect to the argument of the defenders that they are entitled to continue to sail their ship free of rates to the end of December in 1895, carrying on, as it were, the Harbour Trust year as if the Act of 1879 had been in operation; and that right his Lordship holds to be acquired under the 10th section of the Act of 1895. Now, that section occurs in the second part of the statute, and without attaching importance to the title of that part or division of the statute, which is probably not included in the text of the Act, I may remark, that the 10th section occurs as one of a series of clauses which primarily relate to the legal effect of the transfer of the harbour from one body of commissioners to another body differently constituted. These clauses are primarily intended to perpetuate the rights, obligations, and liabilities of the trust in the persons of the new body corporate, but I do not doubt in the least that as regards any consensual contract between the Commissioners and outside parties, the obligations of the Trust would either under section 10, or in virtue of the general parliamentary law—which presumes that statutes are not retrospective in their operation—continue to affect the Harbour Trust. But then I agree with your Lordships, differing in this point only from the Lord Ordinary, that the owners of the "Linn o' Dee" had no contract right of any kind to a continuance of the privilege of sailing their ship to the end of the year 1895 without payment of rates.

In the first place, the Harbour Commissioners are not a body constituted for profit. They are a public trust authorised and entitled to levy rates for the purpose of maintaining the harbour, and, very naturally, the rates are laid upon those who take benefit from the harbour. But it is very clearly explained in section 92 that the harbour rates are only applicable to payment of debt and maintenance and improvement of the harbour. Therefore we do not begin with a right acquired by means of something in the nature of a contractual payment. The money paid by the owners is strictly a rate assessed on tonnage, or on goods, for the purpose of maintaining a public work for the benefit of the persons who contribute to it; and the contribution under the Act of 1879 is limited, for vessels of this class, to ten voyages in a year, probably because those who had promoted and obtained the Act of 1879 were satisfied that a rate limited in this way would be sufficient to provide funds adequate to the purposes of the Act. But the right to enter the harbour without payment of rates results merely from the circumstance that the Act of 1879 did not authorise the imposition of any rate except for the first ten voyages. What proves to my mind that there is no contract—at least no consensual contract—is this, that neither the owners nor the Harbour Commissioners had any power to vary the statutory liability by charging a different rate by agreement or by dispensing with any rate which the statute authorised. If we are not within the 10th section, the case I think is quite clear, because the new Act of

Parliament expressly provides that in place of total exemption there shall come into operation a reduced rate, and that upon the completion of eight voyages; and it is also most clearly expressed that the clause in question shall be applicable to years beginning in October. From this I should infer that the full rate is exigible for every voyage subsequent to 1st October 1895. What confirms me in this view is that if anything different had been intended, there would have been provided what we are familiar with in many Acts of Parliament—temporary provisions which would have regulated the rates during the intercalary period from October to December. But I think in the contemplation of the Act there is no intercalary period. The powers of the old Act, which would subsist in perpetuity if Parliament had not interfered, are suddenly cut off in the middle of a year—I mean on the 30th of September 1895—and the new Act takes effect from and after that date. I was at first impressed with the apparent equity of the conclusion which the Lord Ordinary had come to, but on further consideration I am satisfied, for the reasons assigned by your Lordship, that the judgment is not well founded, and that we ought to sustain the reclaiming-note.

LORD KINNEAR—I agree. If the defenders had acquired a right under any lawful contract with the former Commissioners, they would not be deprived of it by the new Act. But there is no element of contract in the imposition of the rates in question. They are fixed by statute. The Commissioners were not empowered by the Act of 1879 to charge any further rate on a vessel which had already paid rates on ten voyages during the currency of a single year, until the beginning of a new year. I cannot consider this to be a vested right of the kind which Parliament intended to save from the operation of the new Act. It is not a particular right arising to an individual from contract, or from the conduct of the Commissioners, but a general right of the lieges to use the harbour on paying the statutory rates. Accordingly, when the defenders rest their case upon this so-called vested right, it seems to me that the question they really raise is whether they have acquired a right to use the harbour on payment of the rates provided under the old Act instead of those under the new. That question does not appear to me to admit of discussion. The Act of 1895 provides a new schedule of rates, and for the computation of the period for which they are to be payable special dates are fixed for the beginning and end of the year. The effect of this is that the Commissioners can levy rates which they were not entitled to charge under the old Act. Section 10 provides, as a necessary consequence of the transference of the rights of property and actions to the new Commissioners, that they shall be held as representing their predecessors to the effect of enforcing their rights, and being responsible for their liabilities, and accordingly any claim which had arisen against the former Commissioners will be equally available against the new Commissioners, and must be determined on the same grounds as if the new Act had not been passed. But this cannot mean that in any case the old conditions of rating are to continue in force after the new Act has come into operation.

The Court sustained the reclaiming-note and reversed the decision of the Lord Ordinary so far as regards the tonnage rates.

Counsel for the Pursuers—Ure—Salvesen. Agents—Morton, Smart, & Macdonald, W.S.

Counsel for the Defenders—Guthrie—Craigie. Agent—John Rhind, S.S.C.

Tuesday, June 16.

SECOND DIVISION.

[Sheriff of Stirlingshire.

HARPER *v.* PATERSON.

Parent and Child — Illegitimate Child — Affiliation — Proof of Paternity — Effect of Defender's Denial of Material Facts Established by the Evidence.

The pursuer in an action of affiliation gave evidence that the defender had met her frequently during the latter half of the year 1894, that he had courted her, and that he had sexual intercourse with her in November of that year. She also averred that when she found herself pregnant she sent three letters on the subject to the defender—the first two by post, the third by a messenger. The defender denied having courted the pursuer or walked out with her except on one occasion. He also denied having received letters from her. The proof established that the pursuer and defender had been seen walking together on several occasions during the period mentioned by the pursuer. The messenger who had taken the pursuer's third letter to the defender also gave evidence that when she presented it to him, he, on learning that it was from the pursuer, refused to take it, saying that he had had enough of the pursuer, and wanted no more of her messages.

Held (*dub.* Lord Trayner) that the defender's denial of the above facts was false, and that the denial, taken with the facts themselves, was sufficient corroboration of the pursuer's case.

Marjory Harper, a domestic servant, raised in the Sheriff Court at Alloa an action of filiation and aliment against John Paterson, fish merchant, Alva.

A proof was led. The facts of the case are fully set forth in the note to the Sheriff's interlocutor.

On 9th March 1896 the Sheriff-Substitute (JOHNSTONE) pronounced the following interlocutor—"Finds that on or about the 7th day of August last, 1895, the pursuer was