a year's rent in terms of the statute, and there is no authority or principle for substituting it instead thereof."

What I understand to be now decided by the House of Lords is that the rights of parties must be measured and determined by the statutes—in particular, the Act 1469, c. 36; that in fixing "the year's maill" there is no room for equitable considerations; and that no regard should be paid to alleged practice not in accordance with the statutory rule, however long it may have continued. Although the case of the *Earl of Home* did not raise precisely the question with which we are now dealing, the principles upon which the House of Lords proceeded apply to and rule this case. The case of *Campbell* v. *Westenra* was pressed upon the House of Lords by the respondent, but disregarded both by Lord Davey (p. 339), and Lord Robertson (p. 347).

I am therefore of opinion that the method adopted by the Lord Ordinary is erroneous, and that the calculation must in those cases be made on the basis of the actual rent.

II. *Fourth and Fifth Questions—Yellow Lands*—The second class of cases to which I wish to refer are those in which there were postponed or graduated feu-duties. A specimen of the graduated feu-duty is to be found in Appendix A, the feu-duty being fixed at £13, 4s. 2d. for the first year, rising to £105, 13s. 6d. for the fourth and subsequent years. In that case I think there is room for holding that the actual feu-duty payable for the year of redemption should be taken. But I am not equally satisfied of the soundness of the Lord Ordinary's judgment in regard to those cases in which no feu-duty was payable before the date of the summons. The Lord Ordinary I understand has allowed the superiors the feu-duty which did not become payable until two years after the feu was granted. Now, I fully admit that the vassal by agreeing to demand no feu-duty could not affect the superior's rights. But then I think the logical result is not that the superiors should get the full feu-duty which was not exigible for some years, but that the lands should be treated as if they were unlet or unfeued and the letting value as at the date of the summons should be taken.

Subject to these remarks, I concur in and adopt Lord Trayner's opinion on the merits of the case. On the competency as I have said I feel bound to dissent.

The Court recalled certain findings in the interlocutor of the Lord Ordinary of 29th January 1902, but not either (3) or (4); found further "that in the case of all lands in which the pursuers are vassals of the defenders and which the pursuers or their predecessors sub-feued either (*a*) for a feu-duty without a grassum afterwards redeemed by the sub-vassal, or (*b*) for a nominal feu or blench duty and a grassum, the rent at the date of raising the action, subject to deduction for rates, teind, and repairs, is to be taken as the yearly rent for the pupose of redeeming casualties: Find as regards the lands feued by the pursuers with entry before raising the action (*a*) for a feu-duty stipulated to be paid in progressive amounts, there being a feu-duty although not the ultimate full feu-duty payable during the year current at the date of signeting the summons; (*b*) for a feu-duty stipulated to commence to be paid for a year subsequent to the expiry of the year current at the date of signeting the summons; and (*c*) for a feu-duty stipulated to be paid in progressive amounts, there being no feu-duty payable for the year current at the date of signeting the summons—that in the first case the feu-duty payable during the year current at the date of signeting the summons; in the second case the feu-duty, and in the third case the feu-duty payable during the first year in which a feu-duty fell to be paid, are to be taken as the yearly rent for the purpose of redeeming the casualties"; further, they recalled the portion of the interlocutor of 16th April 1903 after the description of the seventh excepted part, and pronounced a finding similar to that of the Lord Ordinary with the substitution of £12,144, 10s. 4d. for £6128, 18s. 7d. as the amount of the highest casualty, and *quoad ultra* adhered to said interlocutors.

Counsel for the Pursuers and Respondents—Campbell, K.C.—Cooper. Agents—Alexander Morison & Company, W.S.

Counsel for the Defenders and Reclaimers—Lord Advocate (Dickson, K.C.)—Ure, K.C.—Chree. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Wednesday, June 1.

SECOND DIVISION.

[Lord Low, Ordinary.

GREENOCK HARBOUR TRUSTEES *v.* MAGISTRATES OF GREENOCK.

Burgh — Rate — Harbour—Public Health (Scotland) Act 1897 (60 *and* 61 *Vict. c.* 38), *sec.* 136—*General Assessments in Burghs.*

Held that the trustees of the port and harbours of Greenock were not exempt from liability for the Public Health General Assessment leviable under the Act of 1897.

This was an action at the instance of the trustees of the port and harbour of Greenock against the Provost, Magistrates, and Councillors of the Burgh of Greenock for declarator "that the pursuers are exempt from liability for the Public Health General Assessment under the Public Health (Scotland) Act 1897 in respect of their undertaking of the port and harbours of Greenock; and the defenders ought and should be interdicted, by decree foresaid, from imposing or levying the said assessment on the pursuers in respect of their said undertaking in time coming, so

long as the said exemption remains unrepealed."

The pursuers averred—"(Cond. 2) Prior to the passing of the Public Health (Scotland) Act 1897 the assessment in Greenock for public health purposes was levied in terms of section 95 of the Public Health (Scotland) Act 1867 in like manner and under like powers as the police assessment. By the Greenock Police and Improvement Act 1865, sec. 42, the Greenock Police Act 1877, sec. 60, and the Greenock Corporation Act 1893, sec. 70, the piers and harbours of Greenock are expressly exempted from assessment for police purposes, and the pursuers were accordingly never assessed for public health purposes under the Public Health (Scotland) Act 1867, and never paid any assessment thereunder. (Cond. 3) The Public Health (Scotland) Act 1867 was repealed by the Public Health (Scotland) Act 1897 (60 and 61 Vict. cap. 38), and section 136 of the latter statute empowering burghs to assess for public health purposes is in the following terms:—'With respect to burghs subject to the provisions of the Burgh Police (Scotland) Act 1892, or having a local Act for police purposes, all charges and expenses incurred by or devolving on the local authority in executing this Act or any of the Acts hereby repealed, and not recovered as hereinbefore provided, may be defrayed out of an assessment (in this Act referred to as the Public Health General Assessment) to be levied by the local authority . . . that is to say, the said assessment shall be assessed, levied, and recovered in like manner and under the like powers . . . as the General Improvement Rate under the Burgh Police (Scotland) Act 1892, or when there is no such rate by a rate levied in like manner as the General Improvement Rate under the last mentioned Act.' . . . (Cond. 4) The burgh of Greenock is not subject to the provisions of the Burgh Police (Scotland) Act 1892, and no General Improvement Rate under that or any other Act has ever been levied in Greenock. The Public Health General Assessment under the Public Health (Scotland) Act 1897 accordingly falls to be assessed, levied, and recovered in Greenock by a rate levied in like manner as the General Improvement Rate under the Burgh Police (Scotland) Act 1892 would fall to be levied in Greenock were that Act applicable to Greenock. (Cond. 5) By the Burgh Police Act 1892, and particularly sections 15, 340, 359, and 373 thereof, the imposition of the General Improvement Assessment is expressly made subject to all the provisions of the Act applicable to the Burgh General Assessment, and all assessments imposed by the Act are declared to be subject to existing exemptions from corresponding assessments under the local Police Acts in the burghs to which the Act does not apply. The piers and harbours of Greenock being, as already set forth, exempt under its local Police Acts from the Police Assessment in the burgh which corresponds to the Burgh General Assessment under the Burgh Police (Scotland) Act 1892 would accordingly be exempt from a General Improvement Rate under the latter Act were it applicable to Greenock, and are thus exempt from the Public Health General Assessment under the Public Health (Scotland) Act 1897."

Section 137 of the Act of 1897 requires the Public Health General Assessment to be imposed "upon all lands and heritages within the district."

Section 359 of the Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55) makes provision for the levying of the General Improvement Rate upon "all owners and occupiers of lands or premises within such burgh, with reference to . . . all the provisions of this Act applicable to the Burgh General Assessment (which is dealt with in section 340), "which shall apply to the Improvement Assessment as if they were here repeated." . . .

Section 15 of the Burgh Police Act 1892 provides that any burgh named in Schedule II., and Greenock was there named, might adopt the Act in whole or in part, "Provided that such adoption in part of this Act shall not affect any private interests which shall have been specially regulated by any local Act, and provided further that in every case where Part V. of this Act shall be adopted only in part, such adoption shall include the provisions of this Act relating to incidence of assessments." Part V. of the Act dealt with rating and borrowing powers, and included section 359, already referred to, and section 373, which enacted as follows:—"No assessment authorised by this Act shall be imposed on any lands or premises exempt by Act of Parliament at the commencement of this Act from any corresponding assessment authorised to be imposed by the general Police Acts or the local Police Acts respectively applicable to the burghs named in Schedule II. of this Act." . . .

The Burgh Police Act 1892 was not adopted in Greenock.

The pursuers pleaded—"The pursuers being exempt from liability for the said Public Health General Assessment by virtue of the terms of the statutes condescended on are entitled to decree of declarator and interdict as concluded for with expenses."

The defenders pleaded—"3. The pursuers are not exempt from liability for the Public Health General Assessment in question, in respect that—(1) Said assessment falls to be levied in like manner and under the like powers as a General Improvement Rate under the Burgh Police (Scotland) Act 1892 would fall to be levied within the burgh of Greenock; (2) the pursuers would not be entitled to exemption from such General Improvement Rate if levied within said burgh; (3) the Public Health (Scotland) Act 1897 expressly directs said Public Health General Assessment to be imposed upon all lands and heritages within the district; (4) *separatim*, even if the pursuers would be exempt from General Improvement Rate, if levied under said Burgh Police Act, the provisions of that Act cannot be extended so as to give exemption from such Public Health General Assessment."

The nature of the statutory provisions relied on by the pursuers, other than those already quoted, are sufficiently disclosed in the opinions of the Judges in the Inner House and of the Lord Ordinary (Low), who on 8th December 1903 assoilzied the defenders.

Opinion.—"In this case the Harbour Trustees of Greenock seek to have it declared that they 'are exempt from liability for the Public Health General Assessment under the Public Health (Scotland) Act 1897 in respect of their undertaking of the Port and Harbour of Greenock.'

"In Greenock assessments are imposed for police purposes under certain local Police Acts upon occupiers only, and 'piers and harbours' are exempted from assessment.

"The pursuers contend that that exemption extends to the Public Health General Assessment under the Public Health Act 1897. Whether that contention is or is not well founded depends upon the construction of various statutory enactments.

"The Public Health General Assessment is authorised by the 135th and 136th sections of the Public Health Act, the former section referring to districts other than burghs, and the latter section to burghs. By the 137th section it is enacted that the Public General Assessment 'shall be imposed upon all lands and heritages within the district.'

"In regard to burghs it is provided by the 136th section that the expenses of executing the Act shall be defrayed out of an assessment to be called the Public Health General Assessment, and that that assessment shall be levied in like manner as the General Improvement Rate under the Burgh Police (Scotland) Act 1892, or where there is no such rate 'by a rate levied in like manner as the General Improvement Rate.'

"Now, Greenock has not adopted the Burgh Police Act of 1892, and has no General Improvement Rate. The Public Health General Assessment accordingly falls to be raised in Greenock 'by a rate levied in like manner as the General Improvement Rate,' which I take to mean in like manner as the General Improvement Rate would have been levied if the burgh had adopted the Police Act of 1892, and had levied a General Improvement Rate under it.

"That sends me to the Act of 1892 to see what are the provisions in regard to the General Improvement Rate. These are to be found in section 359 of the Act, by which it is enacted that whenever burgh commissioners shall resolve to make provision for the general improvement of the burgh it shall be lawful for them to charge with a special assessment not exceeding a certain amount 'in equal proportions all owners and occupiers of lands or premises within such burgh with reference to the said valuation roll, and to all the provisions of this Act applicable to the Burgh General Assessment which shall apply to the Improvement Assessment as if they were here repeated.'

"These last words make it necessary to ascertain what are the provisions of the Act in regard to the Burgh General Assessment.

That assessment is authorised by the 340th section. The object of the assessment is there said to be to provide the sums necessary for the general purposes of the Act, and it is provided that the assessment is to be laid upon occupiers only. In that respect therefore the incidence of the Burgh General Assessment differs from that of the General Improvement Assessment, which, as I have pointed out, is levied upon both owners and occupiers. When therefore it is said in the 359th section that the General Improvement Assessment is to be charged 'with reference to all the provisions of this Act applicable to the Burgh General Assessment,' it is plain that the provision that the latter assessment is to be levied upon occupiers only is excepted.

"The question therefore is, what precisely are the provisions of the Act which are made applicable by reference to the General Improvement Assessment?

"At first sight the answer to that question appears to be very plain.

"The 340th section is the first of a group of sections running from the 340th to the 358th, which fall under the general heading 'Assessment for General Purposes.'

"As I have said, the first section of that group (the 340th) authorises the Burgh General Assessment to be made to provide the sums necessary for the general purposes of the Act, and then that section, and the succeeding sections in the group provide for a variety of matters in connection with the assessment. Thus notices of the assessment and appeals against assessment, and the method by which the assessment is to be recovered, are provided for; the Commissioners are given power to exempt from assessment in cases of poverty; provision is made for the manner in which certain classes of subjects are to be valued for the purposes of the assessment; directions are given for making up an assessment-roll, and there are various other provisions of a like nature which I need not enumerate.

"It is plain therefore that that group of sections is incorporated into the 359th section, and as these are all the sections which contain provisions made only in reference to the Burgh General Assessment, they, and nothing more, are *prima facie* the sections which are so incorporated.

"The pursuers, however, contend that there is another section included in the reference in the 359th section—namely, the 373rd section.

"The latter section provides that—[*His Lordship then read section* 373, *quoted supra*].

"Now, the importance to the pursuers of having the 373rd section read into the 359th section is this. There is in Greenock an assessment corresponding to the Burgh General Assessment, from which piers and harbours are exempt. Accordingly, if the Burgh Police Act 1892 was adopted in Greenock, and a Burgh General Assessment

laid on under that Act, piers and harbours would still be exempted by virtue of the provision of the 373rd section. Further, supposing that (the Act having been adopted) there was also laid on in Greenock a General Improvement Assessment, then if the 373rd section is to be read into the 359th section, the exemption of piers and harbours from the Burgh General Assessment would be carried forward to the General Improvement Assessment, and as the latter assessment is the model for the Public Health Assessment, piers and harbours would also be exempt from it.

"That is a very roundabout way to provide for exemptions from assessment, but I think that the argument is logical if the 373rd section must be read into the 359th section. I am of opinion, however, that upon a sound construction of the Act the provisions of the 373rd section are not among the provisions which are incorporated by reference into the 359th section.

"In the first place, the former is a general section applying to all assessments authorised by the Act, and does not contain provisions special to the Burgh General Assessment, which I think are the class of provisions referred to in the 359th section according to the natural meaning of the language used, when read in view of the fact that there is a group of sections containing all the provisions which are special to the Burgh General Assessment, and which are all collected under the general heading 'Assessment for General Purposes.'

"In the second place, it is, as I have said, plain that the general reference in the 359th section does not include the provision that the Burgh General Assessment shall be levied upon occupiers only. Now, I take it that that is a matter of the incidence of the assessment, and so also is an exemption of a certain class of subjects from the assessment, and seeing that the reference in the 359th section to the provisions applicable to the Burgh General Assessment did not include a provision in regard to the persons upon whom it was to be levied, I think that it might, in like manner, be expected not to include a provision in regard to subjects to be exempted. And that, as I read the Act, was what it actually did. It seems to me that the incidence of the General Improvement Assessment was specially provided for by the 359th section and the 373rd section, and what was incorporated by reference into the former section was only the machinery and rules for working out the assessment.

"Further, the 373rd section applies to every assessment authorised by the Act, including the General Improvement Assessment. Now, the natural reading of the section is, that the question whether lands are exempt from any particular assessment depends upon whether they are exempt from an assessment corresponding to that assessment. According to the pursuers' argument, however, the question whether lands are exempt from the General Improvement Assessment depends, not upon whether they are exempt from an assesssment corresponding to it, but whether they are exempt from an assessment corresponding to the Burgh General Assessment.

"The pursuers, in the next place, argued that as the Public Health Assessment was to be laid on in like manner as a hypothetical General Improvement Assessment, it was necessary, in order to see what the operation of such an assessment would be, to assume that the burgh of Greenock had adopted the provisions of the Burgh Police Act relating to the General Improvement Assessment. If they had done so, then the 15th section of that Act would have made it imperative upon them also to adopt the 373rd section.

"I think that that argument is sound; but assuming it to be so, it does not aid the pursuers unless they can show that the effect of the 373rd section would be to exempt piers and harbours from the General Improvement Assessment.

"Whether it would do so or not depends upon whether 'at the commencement' of the Burgh Police Act—that is, 28th June 1892—piers and harbours in Greenock were 'exempt by Act of Parliament' from any assessment 'corresponding' to the General Improvement Assessment authorised by the local Police Acts.

"The local Police Act which was in force in Greenock at the commencement of the Burgh Police Act 1892 was the Greenock Police Act 1877.

"By section 60 of that Act it was provided that the assessment authorised by the Act should not be imposed, *inter alia*, upon 'piers and harbours.'

"That being so, the question is narrowed to this—Whether the assessment authorised by the Act, and from which piers and harbours were exempted, was an assessment 'corresponding' to the General Improvement Assessment of the Act of 1892.

"Now, the assessing clause in the Act of 1877 is the 49th, and the authority thereby given is to levy 'on occupiers' the assessment for police purposes authorised by the 84th section of the General Police and Improvement (Scotland) Act 1862. That section authorised the levying of an assessment to be called the 'Police Assessment,' and which corresponded to the Burgh General Assessment authorised to be levied by the 340th section of the Burgh Police Act of 1892. The Act of 1862 also contained a section—the 102nd—which authorised a General Improvement Assessment corresponding to that authorised by the 359th section of the Act of 1892. The 102nd section was not, however, incorporated into the Greenock Act of 1877, but only the 84th section. Therefore *prima facie* of the assessing clause in the Greenock Act, there was no assessment authorised corresponding to the General Improvement Assessment of the Act of 1892.

"The pursuers, however, say that they find a corresponding assessment by the combined operation of the 42nd, 43rd, and 74th sections of the Greenock Act. The 74th section provides that 'the Police

Assessment shall, subject to the provisions of this Act, be applied for carrying into execution the whole objects and purposes of this Act,' and the 42nd and 43rd sections authorise the altering, widening, and improving of certain streets, and the acquisition of lands for that purpose.

"The pursuers' argument is, that in so far as the Police Assessment might be applied to improving streets, it was an assessment corresponding to the General Improvement Assessment of the Act of 1892. I think that there would have been a good deal of force in that argument if the 42nd and 43rd sections of the Greenock Act had given general powers of improvement at all comparable to those conferred by the Act of 1892 (section 154), and to defray which the General Improvement Assessment was authorised. But that was not the case, because the 42nd and 43rd sections did not confer any general power of improvement, but only the very limited power of making certain specified improvements upon two or three streets, I am not sure which.

"I am therefore of opinion that at the commencement of the Act of 1892 there was no assessment in Greenock corresponding to the General Improvement Assessment, and that accordingly if the latter assessment had been levied in Greenock piers and harbours would not have been exempted.

"The pursuers argued, finally, that as piers and harbours were exempted from assessment under the Public Health Act 1867, the presumption was that the exemption (not having been in terms withdrawn) was continued as regarded the corresponding assessment under the Act of 1897.

"I cannot assent to that argument, even assuming that piers and harbours were exempt from the Public Health Assessment under the Act of 1867.

"The Act of 1867 has been repealed, and a new Act, fitted to meet more modern sanitary requirements, has been enacted in its place. There is, therefore, a new Act and a new rate. Further, the Act of 1897 specially provides that the Public Health General Assessment is to be imposed upon 'all lands and heritages within the district,' while the Act of 1867 contained no such provision; and the Public Health Rate under the old Act was, so far at all events as Greenock was concerned, imposed upon occupiers only, whereas the new rate is imposed upon owners and occupiers.

"In these circumstances I do not think that there is room for any presumption at all. The question is simply one of the construction of the Act of 1897, and for the reasons which I have given I am unable to construe it as exempting the property of the pursuers from the Public Health Assessment.

"I shall therefore assoilzie the defenders."

The pursuers reclaimed, and argued—By section 136 of the Act of 1897 the incidence of the Public Health General Assessment authorised by that Act was assimilated to the incidence of the General Improvement Rate under the Burgh Police Act of 1892. In Greenock, which was one of the burghs excepted from the operation of the Burgh Police Act, and where consequently no general improvement rate under that Act was leviable, the Public Health General Assessment fell to be levied on the model of a hypothetical general improvement rate. But if section 359 of the Burgh Police Act, which authorises the levying of a general improvement rate, were to be adopted in Greenock, then section 15 of the Act necessitated the adoption at the same time of section 373. Under the last named section the General Improvement Rate could not be imposed in Greenock on any lands exempt by statute at the commencement of the Burgh Police Act from any corresponding assessment authorised to be imposed by the local Police Acts. The local Police Act in force in Greenock at the commencement of the Burgh Police Act was the Greenock Police Act 1877 (40 and 41 Vict. c. cxciii.) That Act authorised the imposition of one assessment only in Greenock, viz., the police assessment, which was the only local assessment levied in Greenock, and which by section 74 of the Act fell to be applied to carrying into execution the whole objects of the Act. Among the objects of the Act were to be found precisely those purposes to which under the Burgh Police Act the general improvement rate was applicable. Sections 161 and 162 of the General Police and Improvement (Scotland) Act 1862 (25 and 26 Vict. c. 101), incorporated by section 372 of the Greenock Police Act 1877, corresponded with sections 154 and 158 of the Burgh Police Act 1892, and section 53 of the Commissioners Clauses Act 1847 (10 Vict. c. 16), adopted by section 41 of the Greenock Police Act 1877, corresponded with section 315 of the Burgh Police Act 1892. The result was that at the commencement of the Burgh Police Act 1892 there was in Greenock an assessment corresponding to the General Improvement Rate authorised by that Act, viz., the Greenock Local Police Assessment, which was applicable, *inter alia*, to practically the same purposes as those to which the General Improvement Rate was applicable. But the harbours of Greenock were by section 60 of the local Act of 1877 exempt from the police assessment authorised by that Act. The Greenock harbours would thus have been exempt from the General Improvement Rate under the Burgh Police Act had such a rate been levied in Greenock, and they equally fell to be exempted from the Public Health General Assessment which was modelled in its incidence on the General Improvement Rate.

The argument now submitted differed from that which had been addressed to the Lord Ordinary, in respect that sections 41 and 372 of the Greenock Police Act, with the sections which they incorporated, had not been quoted to the Lord Ordinary.

Argued for the respondents—The Public Health Act was a general Act applicable to

the whole of Scotland, including Greenock, and harbours were an important area for public health administration in the interest of the whole community. There were obvious reasons why the pursuers should be exempt from police assessment under the local Acts; they did their own policing, lighting, and cleansing. The Act in question imposed on the burgh of Greenock duties which they had to perform as much in the interest of ships resorting to the harbours as of anybody else. Statutory exemption from taxation would not be extended by implication—*Hogg* v. *Parochial Board of Auchtermuchty*, June 22, 1880, 7 R. 986, 17 S.L.R. 687.

At advising—

LORD JUSTICE-CLERK — By the Public Health General Assessment Act it is declared in section 137 that the assessment is to be levied on "all lands and heritages." Unless therefore the pursuers, who represent the Pier and Harbour authority in Greenock, can show that by some other enactment they are exempt from assessment for public health purposes the present action must fail. It is difficult to understand why there should be any such exemption, seeing that it is beyond dispute that the enactments for the preservation of health apply to this part of the burgh of Greenock, and must be carried out if the maintenance of public health is to be efficiently attended to in that burgh.

The pursuers' contention is that the enactments of the Public Health Act regarding the levying of the assessment, which as regards burghs are contained in the 136th section, under which directions are given as to the levying of the Public Health Assessment, import into the Act certain provisions of other Acts, and in doing so bring in an implied exemption of the Piers and Harbour of Greenock from the assessment to be levied for public health purposes. By that clause it is enacted that the assessment is to be levied in like manner as the General Improvement Rate under the Burgh Police (Scotland) Act 1892, or if there is no such rate, by a rate to be levied in like manner as the General Improvement Rate. It is under this last part of the clause that the levying of the rate in this case must fall, as the General Burgh Police Act of 1892 has not been adopted in Greenock. I take the enactment to mean that if a burgh is under the Act of 1892, then the Public Health Assessment is to be levied as the General Improvement Assessment is levied, but that if the burgh is not under the Act of 1892 the authority of the burgh which assesses under the Public Health Act is to levy the rate in the same manner as is done under the General Improvement clauses of the Act of 1892.

Now, it appears to me that this enactment is intended for one purpose, and for one purpose only, viz., to provide machinery and arrangements for levying and collecting the Public Health Rate by using the clauses of the Act of 1892 as the model to be followed, thus providing uniformity of mode in the collection of assessments for police and for health purposes in the burghs which are under the Act of 1892, and providing the same convenient machinery and forms for use in the burghs which are not under the Act. And I hold it would be a straining of the words of that clause to apply it to anything else. It is difficult to suppose that if it was intended to give the clause a wider scope words would have not been used to express it. Such an important exemption is not likely to be left to implication.

This view is I think strengthened when reference is made to the clause of the Act of 1892 relative to the General Improvement Rate, viz., section 359, by which authority is given to make an assessment upon all owners and occupiers, and it is enacted that all the provisions of the Act applicable to the General Assessment shall apply to the Improvement Assessment 'as if they were here repeated.' But when we turn to the Burgh General Assessment clause, viz., 340, it is found that the assessment under it is only to be laid upon occupiers, while the Improvement Rate is to be upon both owners and occupiers. It appears plain that this section, and the sections which follow it down to the 358th, are made available for the Public Health Assessment for the levying, including modes of notice, of appeal, of recovery, or of relief, and also as regards mode of valuation and making up of a roll. The purpose of incorporating these sections is obvious. It is to define the mode of working out the assessment authorised by the Public Health Act to be levied.

But then it is said that section 373 of the Act of 1892 must be also read along with these sections. It enacts that no assessment authorised by this Act shall be imposed upon any lands and premises exempt by Act of Parliament at the commencement of this Act from any corresponding assessment authorised to be imposed by the General Police Acts or certain local Police Acts mentioned in a schedule, Greenock being one of those so mentioned.

It is said that there is in Greenock an assessment corresponding to the Burgh General Assessment, and that therefore as under the Greenock Act piers and harbours are exempted, they would remain exempted under section 373. And it is maintained that it would follow from this, that in the application to Greenock of a General Improvement Assessment the exemption would fall to apply also to such assessment. I have given this point careful consideration, and have come to the conclusion that the Lord Ordinary is right in holding that the 373rd section is not incorporated by reference into the section 359. I see no ground for holding that any clause relating to exemptions can be made to bear against the express provision of the Public Health Act enacting that the assessment under it is to be on all lands and heritages. To me it appears that the natural place in which to look for special exemptions is in the statute itself, and not in clauses of other statutes, which are referred to for the purpose only

of working out the details of the application of the statute which refers to them. When exemptions are to be carried forward into a new subject it is to be expected, I think, that this will not be left to inference but stated specifically. Moreover, if section 373 were to be read in, my view would be that 'corresponding' meant actually corresponding, not corresponding in purposes generally, but corresponding in all respects. Reference to the Act of 1892 seems to me to be intended to refer not to subject but to procedure. The words are 'levied in like manner.' If this view be sound, as I think it is, then it becomes unnecessary to enter upon difficult, and it may be subtle, questions as to whether there are to be found in the Greenock Police Act subjects corresponding to those to which the General Improvement clauses of the Act of 1892 apply. For it is only if section 373 of the Act of 1892 must be read along with sections 340 to 368 into the Act of 1897 that any such question could arise.

Lastly, I do not see how the proper interpretation of the enactments of the Public Health Act of 1897 can be affected by anything that was contained in the former Public Health Act, that of 1867, which has been repealed, or the practice followed in Greenock in consequence since the new Act was passed. The new Act differs from the old in essential particulars, and the differences must be held to have been intended by the Legislature. One essential difference is the express enactment that the sums to be levied for carrying out the purposes of the Act are to be so levied from all lands and heritages, which was not the case under the old Act. This enactment must be carried out, and upon the whole matter I am satisfied that the decision which the Lord Ordinary has pronounced is right, and that his judgment ought to be adhered to.

LORD YOUNG—The pursuers are the trustees of the Port and Harbour of Greenock, incorporated by Act of Parliament. They are a public body incorporated for public purposes only, and vested with the property of such lands and heritages as the port and harbour of Greenock may consist of. The site must be below low-water mark, in so far as the harbour is accessible at all periods of the tide, which I understand the whole of it is. Now, the question raised in this action is, whether these public trustees, who have no personal interest in the matter, are, under the provisions of the Public Health Act, to which your Lordship has referred, to be dealt with as the owners and occupiers of lands and heritages. That is an interesting question, and I should think chiefly so to the burgh of Greenock, because the growth in extent and prosperity of that burgh must be affected by any rise or fall in the resort to the harbour, whether by citizens of this country or foreigners. Hitherto the port and harbour of Greenock have not been dealt with as lands and heritages in respect of which assessment for any tax is laid upon the owners and occupiers, and the trustees have never hitherto been treated as proprietors and occupiers thereof, or subject to assessment for any tax. It is plain enough that should any assessment be imposed upon the trustees as the owners and occupiers of these premises (the piers and harbour) they must raise the harbour dues to an amount sufficient to meet the assessment, and the resort to the harbour would be thereby seriously and prejudicially diminished, as the trustees tell us they are convinced and have informed the defenders. We were in the course of the argument told that the trustees were authorised by statute, and had exercised the authority, when they found it necessary in the discharge of their duty, to borrow money upon debenture. Having no other revenue than the harbour dues (and no other was suggested) if at any time they had not sufficient money in hand to make any needful reparation, improvement, or extension of the harbour works, it was obviously necessary that authority should be given them to borrow. The observation made as the reason for calling our attention to that fact was that the trustees had issued debentures at a high rate of interest, intending thereby to benefit friends who got them. I think we must assume, in the absence of any evidence to the contrary (I do not think it has any bearing on the question now before us), we must, I say, assume that they did not borrow at a higher rate of interest than the market rate at the time, and therefore I throw that observation aside. What then is the law applicable to such a public body as the pursuers regarding their liability to be assessed as owners or occupiers of property vested in them as such?

With respect to the burgh of Greenock—and we are concerned with no other—we have an exceptionally clear statement of the law approved of by the Legislature, and necessarily also by the municipal authority of the burgh, as applicable to the police tax and assessments therefor. It is contained in the Greenock Police and Improvement Act 1865, section 42, and provides that no assessment shall be imposed upon lands and heritages or piers or harbours held by "any public body for behoof of the public, and not held by any public or private company or corporation for their own profit or advantage." The reason and policy of the provision are obvious, and must, as I have said, be taken as approved by Parliament and by the municipal authority of Greenock. It is, of course, to be kept in view, that the statute to which I have just referred is a local police Act passed in 1865, while that to which this action relates is the Public Health (Scotland) Act 1897, the tax authorised by which, and immediately in question, being not a police tax. It is, however, a tax of the same kind and character, and the question before us is the meaning and import of the Act regarding the liability of the pursuers to be assessed therefor. The assessment of them for the police tax is expressly forbidden by Parliament, and they have not hitherto been assessed for

any tax whatever. If the Public Health Act 1897 contains nothing in any of its very numerous clauses which will enable us to avoid imputing to the Legislature the intention of departing, respecting the health tax, from the principle and policy enacted in the Act of 1865 regarding the port and harbour of Greenock, we must of course admit and follow the departure, but I should, if possible—which I think it is—avoid the imputation. The Public Health General Assessment (that now in question) is, by section 136 of the Act, to be "levied in like manner as the General Improvement Rate under the Burgh Police (Scotland) Act 1892," by section 373 of which it is enacted that "No assessment authorised by this Act shall be imposed on any lands or premises exempt by Act of Parliament at the commencement of this Act from any corresponding assessment authorised to be imposed by the General Police Acts or the local police Acts respectively applicable to the burghs named in Schedule II. of this Act annexed, or any portion of a local police Act expressly saved by this Act, unless and until such exemption is repealed by Provisional Order confirmed by Parliament." This, in my opinion, supports the pursuers' contention that it was not the intention of the Act of 1897 to subject the pursuers to assessment in respect of the piers and harbour of Greenock.

I have already expressed my opinion that, looking to the reason and policy of the matter in dispute, there is no distinction between a police and public health tax. The only ground of distinction suggested was that the pursuers employed and paid policemen to do such duty at the piers and docks as was required for order and safety there. Similar employment and payment of policemen for their services at railway stations, banks, shops, and even private mansions in the country are frequent, and have never been thought to afford any ground either for subjection to or exemption from the police tax of burgh or county.

I have made no reference to the common law applicable to the liability of statutory trustees vested with and occupying property for exclusively public purposes, and with no personal or private interest therein either as owners or occupiers, to be assessed in respect thereof for local taxes, and having regard to the *Mersey* and *Clyde* cases, the decisions in which have been referred to, I shall avoid indicating any opinion beyond this, that I am not prepared to say that these cases would be regarded as applicable to the port and harbour of Greenock, or to the pursuers as vested therewith, and that irrespective of the Acts of 1865 and 1892 to which I have referred. I found my judgment in this case on what I hold to be the view and intention of the Legislature in the matter as indicated by the statutory enactments to which I have specially referred.

Lord Trayner—By the Public Health Act 1897 the local authority is authorised to impose and levy for the purposes of that Act a tax or rate "on all lands and heritages" within the district, and under that authority the defenders have imposed the statutory rate on the pursuers in respect of lands and heritages owned and occupied by them in Greenock. There is no dispute as to the fact that the pursuers own and occupy such lands and heritages, but the pursuers claim and seek by this action to have it declared that they are exempted from liability for the rate in question. The facts being as I have stated them, it is plain that *prima facie* the pursuers are liable for the rate, and that it lies upon them to establish the alleged exemption. I am of opinion, with the Lord Ordinary, that they have not succeeded in doing so. Before proceeding to state, as I shall do briefly, the grounds on which I have arrived at this conclusion, I would like to say a word or two on some observations which fell from Lord Young. His Lordship said that according to the common law of Scotland taxes were not leviable upon any subject held for public purposes. Now, in the first place, taxation is not a matter which is regulated by common law. Taxation can only be imposed upon property or persons by the authority of the Legislature, that is, by Act of Parliament—no other authority can give or exempt from taxation but the Legislature—and therefore any appeal to the common law does not seem to me, with great submission, to affect this question. Nor am I disposed any more to take into consideration the suggestion that to impose the tax in question, and to necessitate an increase of the harbour dues in order to meet that tax, would be in itself injurious, in the first place to the pursuers as owners and occupiers of the piers and harbours, and in the second place to the town of Greenock itself. The local authority are required by statute to do certain things in furtherance of the public health, and what they are required to do they must do. What they are required to do must be paid for, and the statute has provided the only mode in which they are to get the money necessary to pay for the expense incurred in the performance of that duty. At present what we are concerned with is the enforcement of the statute, and we are not concerned with the consequences of such enforcement. If the imposition of this tax bears hard upon the pursuers and the town of Greenock, their only remedy is an appeal to the authority which imposed the burden complained of. Again, the fact that the pursuers are a public body constituted by Act of Parliament, and holding the subjects they possess not for private purposes nor for any private interest, but for public purposes, is not a reason why they should be exempt from taxation. It has been otherwise decided both in England and here. On this subject I need only refer to the case of the *Mersey Docks* (Clark's H. of L. Cases, 11, 443), and the *Leith Docks* (4 Macph. H.L. 14). The pursuers, indeed, do not plead that they are entitled to be free from the tax in question on account of their public position. That is not suggested in

their record or pleas. Their plea is that they are exempt from liability by virtue of the statutes referred to by them; they put forward no other claim to exemption. Now, have the pursuers established the right to exemption which they claim? The exemption claimed is not conferred by the Act of 1897 in express terms; the pursuers maintain that that is done by implication. Upon this I observe that where by statute a rate or tax is imposed on "all lands and heritages" without any exception, it is difficult to infer that any exemption was intended, and this all the more from the fact that where exemption from a statutory burden is intended to be given it is almost always, certainly generally, expressed in the statute by which the burden is created or imposed. I do not say that exemption may not in any case be conferred by implication, but the implication must be clear and precise. Exemption by implication is not to be readily inferred —the presumption is rather against it.

The pursuers' contention I understand is this—By the Act of 1897 it is provided (sec. 136) that the rate therein authorised is to be "assessed, levied, and recovered in like manner and under the like powers as" the General Improvement Rate under the Burgh Police Act 1892, "or where there is no such rate, by a rate levied" as if there was. But no General Improvement Rate is levied in Greenock, and if there was the pursuers would be exempt from it by virtue of section 373 of the Act of 1892 and the provisions of the Local Act of 1877. There being therefore no General Improvement Rate, or rate corresponding thereto, leviable from the pursuers, a rate which is to be "assessed, levied, and recovered *in like manner and under the same powers*" is one from which they are exempt, because there is no "manner" prescribed by which it can be imposed or levied, and no "power" to impose, levy or recover. The Lord Ordinary has dealt with this argument very fully, and I adopt his views without repeating them. I assume that the pursuers are not, and cannot be made, liable for a General Improvement Rate or a corresponding rate, and are entitled in that respect to any exemption conferred by the 373rd section of the Act of 1892, but assuming this and giving the pursuers the fullest benefit which the 373rd section of the Act of 1892 confers, the question before us is not touched. For the exemptions conferred by the clause are only from assessments authorised by that Act itself, and the Public Health Assessment imposed in 1897 (five years later) is not, and could not be, among them. Again, to say that the Public Health Assessment cannot be imposed, levied, or recovered where there is no General Improvement Assessment, because then there is prescribed no manner in which, or power in respect of which, it can be imposed, levied, or recovered, is leaving out of view one-half of the 136th section of the Act of 1897. It provides for the case where no General Improvement Assessment exists, in which case the Public Health Rate is to be imposed, levied, and recovered as if a General Improvement Assessment did exist. The power to impose, levy, and recover the Public Health Assessment is given by the first part of section 136 of the Act of 1897; the latter part of the section refers merely to the mode in which this is to be done, the machinery by which the power is to be made effectual. An argument similar to that now urged by the pursuers was repelled in the case of *Hogg*, 7 R. 986.

LORD MONCREIFF was absent.

The Court adhered.

Counsel for the Pursuers and Reclaimers —Salvesen, K.C. — Macmillan. Agent — W. B. Rainnie, S.S.C.

Counsel for the Defenders and Respondents—Dean of Faculty (Asher, K.C.)— M'Lennan. Agents—Cumming & Duff, S.S.C.

Saturday, June 25.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

MURDOCH *v*, BRASS AND OTHERS.

Succession — Will — Uncertainty — Bequest "for the Love I have for A" — Object of Bequest not Named.

A testatrix by holograph will provided for the disposal of her estate as follows:—"I, M., . . . for the love that I have for my husband J., will bequeath and leave everything which belongs to me or which may belong to me at some future time." Certain specific bequests followed. *Held* (*reversing* judgment of Lord Kincairney—*diss.* Lord Young) that the general bequest was not effectual, in respect that the object thereof was not named, and that it was not admissible to supply the want by the conjecture that the husband of the testatrix was the person she intended to benefit.

This was an action at the instance of John Murdoch, retired master mariner, Summerbank, Dalbeattie, against John Brass, 18 Wisbeach Street, Balmain, Sydney, New South Wales, and his factor and commissioner and others, in which the pursuer sought to have it found and declared — "(*First*) That the last will and testament, dated 31st March 1891, executed by the now deceased Mrs Margaret Brass or Murdoch, the pursuer's wife, was valid and effectual; (*second*) that by the said last will and testament a valid and effectual bequest of the whole estate belonging to his wife at the date of her death, but under deduction of the special legacies therein mentioned, was made to the pursuer; (*third*) that the pursuer was entitled to take possession of the whole estate, property, and effects left by his said deceased wife."

The defenders were the heirs *ab intestato* of Mrs Murdoch and the special legatees under her will.