4th April 1906, and in lieu thereof find in fact (1) that at two sales by auction in Liverpool on 20th and 28th January 1904 the defenders purchased a quantity of damaged jute; (2) that they contracted with the pursuers to carry the said jute by sea from Liverpool to Dundee for a payment at the rate of 10s. per ton, which was to cover freight and the cost of removing the jute and putting it on board at Liverpool; (3) that the whole quantity of jute specified in the auctioneer's delivery-orders was uplifted, taken by the carters employed by the pursuers to the pursuers' steamers, and shipped and carried to Dundee in terms of the contract; (4) that on the arrival of the pursuers' steamers at Dundee, the defenders, who were duly informed of the respective arrivals, sent carts to take away the jute, and that the pursuers in the ordinary course of business proceeded to unload cargo, putting the jute in question under cover in sheds provided for the reception of goods that are in course of being loaded or unloaded, whence the jute was taken away in carts provided by the defenders, and that the whole of the jute carried for the defenders was in fact put on shore at Dundee; and (5) that on the completion of the discharge of the cargoes it was found that the jute received by the defenders from their carters at their warehouse did not correspond to the quantity purchased in Liverpool, but there was a deficiency of 58 pieces or thereby out of a total quantity amounting to about 3700 pieces: Also recal the findings in law contained in said interlocutor, and in lieu thereof find in law that in the circumstances above mentioned the pursuers have performed their contract to carry the jute in question to Dundee, and are not liable in damage for the deficiency in the quantity of jute received at the defenders' warehouse: Therefore of new decern in favour of the pursuers for payment of the sum concluded for, being the unpaid balance of freight: Dismiss the counter claim of the defenders: *Quoad ultra* affirm the foresaid interlocutor of the Sheriff: Find the pursuers entitled to the expenses of the appeal, and remit the account thereof together with the expenses found due in the Sheriff Court to the Auditor to tax and to report."

Counsel for the Appellants—Scott Dickson, K.C.—Lippe. Agents—Boyd, Jameson, & Young, W.S.

Counsel for the Respondents—Hunter, K.C.—C. D. Murray. Agents—Elder & Aikman, W.S.

Thursday, June 27.

FIRST DIVISION.

PARISH COUNCIL OF EDINBURGH *v.* THE MAGISTRATES OF EDINBURGH.

Assessments — Burgh — Poor — Statute — Exemption — "Police Establishment" — Exemption from Poor Rate of Premises Connected with the Police Establishment of a Burgh—The Edinburgh Municipal and Police Act 1879 (42 *and* 43 *Vict. cap. cxxxii*), *sec.* 70.

The Edinburgh Municipal and Police Act 1879, sec. 70, which exempts from burgh assessments many premises in the hands of the municipality for city administration, including "the police offices, station houses, and other buildings or grounds connected with the police establishment," provides—"And the said police offices, station houses, houses, and other buildings or grounds connected with the police establishment shall also continue to be exempted from the payment of all cess or poor rates imposed or to be imposed."

The Act, *inter alia*, made provision for the branches of city administration at one time in the hands of a police commission and transferred to the municipality in 1856, and the exemption from poor rates was a repetition of an exemption in the Act of 1848 regulating the police commission. That statute again followed on a series of earlier ones. The police commission's administration had not been restricted to "police," but included, *e.g.*, lighting, cleansing, fire, and it appointed a large staff of officials. The exemption had been given a wide construction, and much property not connected with "police" had been given exemption both before and after 1879, though some premises had been exempted in one year and not in another. The municipality claimed that the exemption covered all premises used for the administrative duties placed on it by statute, or at least by the Police Commissioners' Statute of 1848, though not those used for such duties as were only optional, and that where premises were used for these as well as other purposes, or where parts of premises were used for these purposes, a partial exemption fell to be allowed.

Held that the exemption was limited to premises used for "police" administration, *i.e.*, the preservation of order and the prevention of crime, and used exclusively for that administration, the portions of premises used for such administration falling, where local separation was possible, to be separated from the remainder of the premises and the *cumulo* rent rateably apportioned.

Application to various premises.

Assessments—Burgh—School—School Rate —Exemption—Police Premises Exempt from Poor Rate under Local Statute not Exempt from School Rate—Education (Scotland) Act 1872 (35 *and* 36 *Vict. cap.* 62), *sec.* 44.

By a Municipal and Police Act exemption from poor rate was granted to premises connected with the police establishment. The municipality claimed that under sec. 44 of the Education (Scotland) Act 1872 this exemption, being statutory, of certain subjects, and not to a favoured class of persons, covered exemption from school rate.

Held that the exemption did not apply to school rate.

Hogg v. *Parochial Board of Auchtermuchty*, June 22, 1880, 7 R. 986, 17 S.L.R. 687, and *Gillanders* v. *Campbell*, December 11, 1884, 12 R. 309, 22 S.L.R. 206, *followed.*

The Edinburgh Municipal and Police Act 1879 (42 and 43 Vict. cap. cxxxii), sec. 70, enacts—"The burgh assessments shall not be imposed in respect of the Royal Palace of Holyrood, Queen's Park, Arthur's Seat, Duddingston Loch, nor houses or buildings in the Castle of Edinburgh, nor the Courts of Justice, General Register House, City Chambers, County Buildings, Prison of Edinburgh, nor the University of Edinburgh and the buildings connected therewith, except those parts which are used as houses, nor the Royal Infirmary, the Royal Edinburgh Hospital for Sick Children, nor the Assembly Hall of the Church of Scotland, the Free Church College, the Free Church Assembly Hall, the Synod Hall of the United Presbyterian Church and the buildings connected therewith, so long as these shall continue to be solely used for ecclesiastical purposes or shall not be let for hire for other purposes, except those parts which are used as houses; or in respect of any house or building which is solely occupied for purposes of public charity, or any premises exempted from taxation by public law: And the public parks, gardens, and bleaching greens, drying greens and grounds, public buildings, public wash-houses, baths, gymnasiums, open spaces, the police offices, station houses, and other buildings or grounds connected with the police establishment or provided or upheld out of the burgh assessments, shall be exempted from the payment of such assessments, and the said police offices, station houses, houses, and other buildings or grounds connected with the police establishment shall also continue to be exempted from the payment of all cess or poor rates imposed or to be imposed."

Sec. 5 enacts—"In this Act the following words and expressions shall have the several meanings by this section assigned to them, unless there be something in the subject or context repugnant to such construction, that is to say, . . . the word 'house,' where not otherwise expressed, shall mean dwelling-house. . . ."

The Education (Scotland) Act 1872 (35 and 36 Vict. cap. 62), sec. 44, enacts—"Any sum required to meet a deficiency in the school fund, whether for satisfying present or future liabilities, shall be provided by means of a local rate within the parish or burgh in the school fund of which the deficiency exists. The School Board of each parish and burgh shall annually, and not later than the 12th day of June in each year, certify to the Parochial Board or other authority charged with the duty of levying the assessment for relief of the poor in such parish or burgh the amount of the deficiency in the school fund required to be provided by means of a local rate, and the said Parochial Board or other authority is hereby authorised and required to add the same under the name of "school rate" to the next assessment for relief of the poor, and to lay on and assess the same, one-half upon the owners and the other half on the occupiers of all lands and heritages, and to levy and collect the same along with the assessment for relief of the poor when that assessment is so imposed and levied, and to pay over the amount to the School Board, . . . and should there be no assessment for the poor, or should that assessment not be laid, one-half on the owners and the other half on the occupiers of all lands and heritages within such parish or burgh, the School Board shall be entitled and bound directly to assess for and levy the school rate in the same manner as if it were poor's assessment duly authorised to be assessed and levied in the same manner, and for that purpose shall have all the powers and authorities of any Parochial Board or other authority with respect to assessing, levying, and collecting poor's assessment, and the school rate shall in all cases be levied and collected in the same manner as poor's assessment, and the laws applicable for the time to the imposition, collection, and recovery of poor's assessment shall be applicable to the school rate."

On 20th July 1906 a special case was presented by (1) the Parish Council of the City Parish of Edinburgh, and (2) the Lord Provost, Magistrates, and Town Councillors of the City of Edinburgh, to determine whether and to what extent certain properties owned and occupied, or occupied by the second parties, and used by them for carrying on the duties of their statutory administration, were exempt under the Edinburgh Municipal and Police Act 1879, sec. 70, from the assessments for (*a*) poor, and (*b*) education levied by the first parties.

The case stated:—"Certain properties owned and occupied, or occupied by the second parties were exempt from poor rates as well as from burgh assessments prior to 1879. By the Act of 1832 (2 Will. IV, cap. 87), entituled 'an Act for altering and amending certain Acts for regulating the police of the City of Edinburgh and the adjoining districts, and for other purposes relating thereto,' it was, *inter alia*, enacted by section 3 that the powers and regulations thereinafter, and in certain recited Acts contained for the establishment of a general system of police should extend over

the ancient and extended royalties of the City of Edinburgh, and the whole grounds and houses comprehended within certain defined limits. The said Act continued and extended as applicable to the said Act, except in so far as varied, altered, or repealed, the provisions of two previous Acts then almost expiring, viz.—An Act 3 Geo. IV, cap. 78, entituled 'an Act for watching, cleansing, and lighting the streets of the City of Edinburgh and adjoining districts, for regulating the police thereof, and for other purposes relating thereto;' and an Act 7 Geo. IV, cap. 115, entituled 'an Act to explain and amend an Act of the third year of His Present Majesty' (entituled as foresaid). By section 6 of the Act of 1832 general commissioners for the purposes of the Act were appointed. The purposes of the Act included lighting, cleansing, guarding, watching, and patrolling the streets, passages, and lanes, and maintaining peace and good order within the boundaries described by section 3 aforesaid; and powers were given to the commissioners to levy assessments for the purposes of the Act. By section 22 of the said Act of 1832 it was enacted that 'the police offices, watch-houses, and other buildings or grounds within the said bounds connected with the establishment of the said police shall be exempted from the payment of all cess, minister's stipend, road money, poor's rates, and police duties, imposed or to be imposed.' By section 80 it was provided that the said Act of 1832 should be deemed and taken to be a public Act.

"The poor rates claimed by the first parties are imposed under the provisions of the Poor Law Act of 1845. When that Act was passed, the exemption from poor rates conferred by the Act of 1832 was in existence. By the Edinburgh Police Act of 1848 (11 and 12 Vict. cap. 113), section 56, entituled 'an Act for more effectually watching, cleansing, and lighting the streets of the City of Edinburgh and adjoining districts, for the regulating the police thereof, and for other purposes relating thereto,' the provisions of the said Act of 1832 and other recited Acts were repealed, and new and extended powers and provisions were made and granted for the purposes of the said Acts, and for the sanitary improvement of the city. Under this Act provision was made for a fire-engines establishment, and for public safety generally. Section 36 makes provision for the appointment of the following officials:—Treasurers, accountants, collectors, clerks, inspectors of lighting and cleansing, superintendents of streets and buildings (whose duties are now partly performed by the burgh engineer and partly by the city road surveyor), and superintendents of fire-engines (now called firemasters). Section 72 makes provision for the appointment of a superintendent of police (now called chief-constable), in accordance with section 35 of the Act of 1879 after mentioned. By section 8 general commissioners were appointed for the purposes of the Act, who were empowered by section 44 to levy assessments for the purposes of the Act. By section 255 it is enacted that the words 'the commissioners' shall mean the general commissioners of police elected and acting under the provisions of this Act for the time being; and that the word 'clerk,' 'collector,' and 'treasurer' shall mean the clerk, collector, and treasurer appointed by the commissioners under the provisions of this Act. The preamble of section 79 is as follows:—'And whereas many of the police station-houses have been found defective and inconvenient for the purposes of the police establishment, and proper fire-engine houses are necessary for the fire-engine establishment, and it is therefore expedient that the commissioners should have power to provide proper station-houses and fire-engine houses in different situations.' By section 56 of the said Act of 1848 it was provided that the commissioners should not assess for the purposes of that Act certain premises there described, 'nor the Courts of Justice, . . . City Chambers, . . . nor the public markets. . . .' By section 58 of the said Act it was enacted, that 'the police offices, station-houses, dwelling-houses, and other buildings or grounds within the limits of this Act connected with the police establishment shall be exempted from the payment of all cess, minister's stipend, road money, poor's rates, and police assessments imposed or to be imposed.'

"By the Edinburgh Municipality Extension Act 1856 the municipal boundaries of the city were made co-extensive with the police boundaries, and the powers and duties of the Commissioners of Police under the previous Police Acts were transferred to and vested in the second parties, who thenceforward were the administrators of both the municipal or common good properties and duties, and the various properties and duties, which had previously been under the Commissioners of Police. By section 29 thereof it was provided that the lands within the said extended boundaries should not as regards the payment of public or parochial burdens be affected by any of the provisions of said Act.

"By the Edinburgh Municipal and Police Act 1879 the Acts of 1848 and 1856 were repealed, and new and extended provisions were made for the government of the city by the second parties. Under the provisions of the 1879 Act the second parties were required to appoint, *inter alia*, the following officials for carrying on the government of the city placed by the statutes upon them, viz., 'a collector' (defined by section 5 of the said Act to mean 'the collector of police and other local rates leviable under this or any general or local Act of Parliament'), an inspector of lighting and cleansing, a burgh engineer, a medical officer of health and surgeon of police, a chief constable, a prosecutor in the Police Court, a clerk of the Police Court, and a firemaster. The second parties also appoint (1) a town-clerk, who in addition to his ordinary duties as town-clerk performs the duties formerly discharged by the clerk appointed by the Police Commissioners under the Act of 1848, and (2) an official, who in addition to being city cham-

berlain performs the duties of the police treasurer. Further, the second parties fix the number of the constables, firemen, lamplighters, scavengers, and other subordinate officers to be employed by the foresaid officials, and they levy the assessments necessary to pay the salaries and wages of the city officials and their subordinates, in so far as they are engaged in carrying out the duties placed upon them by the said Act of 1879 and subsequent Acts amending the same.

"The assessments which the second parties are authorised to impose for the purposes of the Act of 1879 are in the said Act designated 'the burgh assessments.' Under section 66 of that Act the second parties are required annually to fix the sums necessary to be levied for the current year under five heads, which, *inter alia,* include watching, lighting, cleansing, maintenance of the fire brigade and fire establishment, and works undertaken for the public safety."

The following *description* of the different *properties,* assessment on which was now in question, was given in art. 10:—"(1) The Police Chambers No. 1 Parliament Square. At present the Police Chambers, in addition to being the headquarters of the police or watching force, also contain the following: —The Police Court room and relative offices for the Clerk of Court and Public Prosecutor, a room for the Judge of Police, a room for the Medical Officer of Health and Surgeon of Police, and the office of the Burgh Engineer and Master of Works. There are also two houses on the top flat occupied rent free by the Deputy-Chief-Constable and the caretaker of the chambers, who are required to live in them in connection with their services. In addition to the above the Police Chambers until a few years ago contained the following:—The headquarters of the fire brigade (now removed to the new chief fire station at Lauriston Place), the offices of the Collector of Police and other local rates, and the Inspector of Lighting and Cleansing (now removed to more commodious premises in the High Street adjoining the City Chambers), and the offices of the Medical Officer of Health and Surgeon of Police and Sanitary Inspector (now also removed to more commodious premises in the High Street, except that the Medical Officer of Health and Surgeon of Police still retains one room in the Police Chambers). The Collector of Police Rates, in addition to collecting the burgh assessments, also collects the charges for electric current, his office and staff being used for both these purposes. Poor rates have never been levied on the Police Chambers either prior to 1879 or since. Up to 1886-7 the City Assessor made up and completed the assessment roll for poor rates on the employment of the City Parochial Board, and left out such entries as he thought should be exempt, and amongst these were the Police Chambers, and properties connected with Lighting and Cleansing Department. The Police Chambers were taken over by the second parties from the General Commissioners of Police in 1856. The accommodation in them has been added to since that date, but their occupation and use have remained the same except that some of the officials formerly accommodated in them have been removed elsewhere, as above explained. The various premises included in the Police Chambers are not entered separately in the valuation roll, a *cumulo* rent being entered for the whole building.

"(2) The City Chambers, Royal Exchange, These premises are used partly for police. partly for municipal, and partly for judicial purposes, and comprise the following:—Council and committee rooms and relative premises; Burgh Court room (used also as Dean of Guild Court room) and relative offices for the Clerk of Court and Procurator-Fiscal; offices of the Town Clerk, the City Chamberlain and Treasurer of Police, the City Superintendent of Works, the City Road Surveyor, the City Gardener, the Inspector of Hackney Carriages, and Council officers; and houses occupied rent free by the housekeeper and two other officers who are required to live in them in connection with their services. Poor rates were not paid in respect of the City Chambers prior to 1873. During the years 1861-2 to 1869-70 inclusive these chambers were assessed by the first parties' predecessors on a rental of £176, but the rate due was entered by them as discharged in the column of their accounts entitled 'Disputed Arrears.' During the years 1870-1 and 1871-2 these chambers were wholly relieved from poor rates. In 1873 the Parochial Board proposed to assess the City Chambers for poor rates. The Town Council claimed exemption under the Edinburgh Police Act 1848, and the Parochial Board agreed to relieve the City Chambers to the extent of one-half. The said partial relief has been continued ever since, but the first parties have recently raised the question whether or not so large an abatement as one-half should continue to be granted. Since 1873 the City Chambers have been greatly extended. For the purposes of the city accounts one-fourth of their upkeep is now charged against the municipal funds, and three-fourths against the burgh assessments. The work of the police department, in proportion to the municipal department, has greatly increased in recent years. The various premises included in the City Chambers are not entered separately in the valuation roll—a *cumulo* rent being entered for the whole building.

"(3) Houses not contiguous to branch police stations occupied rent free by officers of the police or watching force, who are required to live in them in connection with their services. Poor rates have occasionally been paid by the second parties on these houses.

"(4) Properties connected with the fire-engines department, comprising the chief fire station, branch fire stations, houses in chief and branch fire station buildings, or contiguous thereto, occupied rent free by the firemaster and members of the fire brigade, who are required to live in them in connection with their services, and houses similarly occupied by members of the fire brigade, but which are not contigu-

ous to branch fire stations. The second parties have not, either prior to 1879 or since, paid poor rates on fire stations, but they have occasionally paid poor rates on houses occupied by members of the fire brigade since 1879.

"(5) Properties connected with the lighting and cleansing department, comprising the offices of the Inspector of Lighting and Cleansing, workshops, stables, yards, and stores for the department, muster rooms, mud tooms, refuse destructor, and refuse loading banks. The second parties did not, prior to 1879, pay poor rates on any properties connected with the lighting and cleansing department. Since 1879 the second parties have occasionally paid poor rates on some of these properties.

"(6) The offices of the Medical Officer of Health and Surgeon of Police, the Sanitary Inspector, and the Collector of Police. Until a few years ago these offices were situated in the Police Chambers, and the second parties never paid poor rates on them either prior to 1879 or subsequently. Since these offices were removed to more commodious premises in the High Street the second parties have occasionally paid poor rates on them.

"(7) Workshops, stores, yards, &c., in connection with the Burgh Engineer's department. The second parties have occasionally paid poor rates on these properties.

"(8) Offices, yards, and stone depots of the Roads Department. The second parties have occasionally paid poor rates on these properties."

The *contentions* of parties were thus stated—"12. In these circumstances the first parties maintain that they are entitled to assess properties falling under the heads enumerated in article 10 hereof for both poor and school rates. They maintain that any exemption in a local Act from burdens imposed by a public general statute must be strictly interpreted, and that the exemption in question is limited to premises connected with the police establishment—that is, the ordinary organised civil police of the city maintained for the preservation of order and prevention of crime. In particular, with reference to free houses occupied by members of the police force, the first parties maintain that these represent wages or salary, and that unless they actually form part of the police offices, stations, and other premises specially exempted by said clause they are rateable. Further, with particular reference to the Police Chambers, No. 1 Parliament Square, and the City Chambers, the first parties maintain that as these are not used exclusively in connection with the police establishment the said subjects are not entitled to exemption, at least until the rental has been allocated. The first parties further maintain that all these contentions apply equally to school rate as to poor rate in respect of the provisions of section 44 of the Education (Scotland) Act 1872. Alternatively, the first parties maintain that all the said subjects are and were assessable in so far as used for purposes not connected with the police establishment, strictly so called.

"The second parties maintain—(1) That the phrase 'police establishment' used in section 58 of the Act of 1848 means the whole organisation which the Commissioners of Police appointed under that Act were required to set up for the purpose of carrying out its provisions, and does not mean merely the watching force; (2) that the phrase 'police establishment' in section 70 of the Act of 1879 means similarly the whole organisation which the second parties are required by statute to set up, and for which they are entitled to levy rates, and does not mean merely the watching force; or, in any event, it means such part of the organisation which the second parties were required to set up under the 1879 Act as they were authorised to maintain under the 1848 Act; (3) that the second parties are entitled to exemption from poor rates on all the properties occupied and used by them in carrying out the provisions of the statutes providing for the administration of the city, or, in any event, on all properties occupied and used by them for purposes for which they required properties under the 1848 Act; and (4) that they are entitled to exemption from poor rates in respect of the subjects specified in article 10 hereof. The second parties do not claim exemption from poor rates in respect of properties which, although maintained out of the burgh assessments, are not occupied or used in connection with the administration of the city—as, for example, properties dedicated to the use or recreation of members of the public, such as public parks, public baths, public wash-houses, free libraries, &c. The second parties maintain in any event that they are entitled to exemption from poor rates in respect of the portions of the Police Chambers occupied by the Watching Department and as a Court-room and as accommodation for the Clerk of Court and Public Prosecutor and their staffs, to an extent proportionate to the ratio borne by these portions to the whole building. The second parties further maintain that they are entitled to exemption from poor rates in respect of the portions of the City Chambers occupied by the Burgh Court-room, and the offices of the Clerk of Court and Procurator-Fiscal, and the portion of the Police Chambers occupied by the Police Court-room, the Clerk of the Police Court, and the Public Prosecutor, on the ground that they are premises dedicated to the administration of justice, and that such premises are exempt from taxation. The second parties also maintain that, in view of the terms of section 44 of the Education (Scotland) Act 1872, the first parties are not entitled to levy school rates on any properties which are exempt from poor rates."

The *questions* submitted were—"1. Does the exemption from liability to poor rates contained in the 70th section of the Edinburgh Municipal and Police Act 1879 apply only to the offices, stations, and other premises connected with the police establishment in the sense contended for by the first parties in article 12 hereof? or, alterna-

tively, Does it apply to subjects or premises belonging to or leased by the second parties and occupied in the conduct of the following departments, or any them, viz.—(1) The Burgh Engineer's Department. (2) The Department of the Medical Officer of Health and Surgeon of Police. (3) The Town Clerk's Department, with the exception of the proportion effeiring to the Common Good or proper municipal business. (4) The Treasurer of Police Department. (5) The City Superintendent of Works Department, with the exception of the proportion effeiring to the Common Good properties. (6) The City Roads Department. (7) The Fire Department. (8) The Lighting Department. (9) The Cleansing Department. (10) The Sanitary Inspector's Department. (11) The Collector of Police Department. 2. Are the first parties entitled to assess for poor rates houses belonging to or leased by the second parties not contiguous to police stations and occupied rent free by members of the police force? 3. Where a building belonging to or leased by the second parties is entered at a *cumulo* rent in the valuation roll, and parts of such building are occupied by departments whose premises are exempt from poor rates, and parts by departments whose premises are not so exempt, are the first parties entitled to recover poor rates from the second parties on the *cumulo* rent of the building? or, alternatively, Should the said rent be rateably apportioned as between the parts of the premises which are exempt and the parts of the premises which are not exempt, and the poor rate levied accordingly? 4. Should a rateable apportionment be made in the case of premises occupied partly in connection with departments to which the exemption from poor rates applies, and partly in connection with departments to which said exemption does not apply, and the poor rate levied accordingly? 5. Are the second parties entitled to exemption from poor rates in respect of (*a*) the portion of the City Chambers occupied by the Burgh Court room and the offices of the Clerk of the Burgh Court and Procurator-Fiscal, and (*b*) the portion of the Police Chambers occupied by the Police Court room and the offices of the Clerk of Court and Public Prosecutor? 6. Are the first parties entitled to levy school rates on properties which are exempt from poor rates?"

Argued for the first parties—(1) *Poor Rate.*—The general law was that all property, including public or trust property, was subject to rates with the sole exception of Crown property, and the onus was therefore on the second parties to displace the presumption and prove exemption—*Mersey Docks* v. *Cameron* (1864), 11 H.L.C. (Clerk's) 443; *Edinburgh Magistrates* v. *Surveyor of Taxes*, November 15, 1889, 17 R. 73, 27 S.L.R. 64 (*Adam* v. *Inland Revenue*). To bring the properties in question within the exemption in favour of the Crown it must be shown that they are part of the Government establishment—*Edinburgh Magistrates, cit. sup.*, Lord President Inglis at 17 R. 74. To bring the properties in question within the exemption of the Edinburgh Act they must be "connected with the police establishment." But "police establishment" meant the establishment for "the preservation of order and prevention of crime"—*Coomber* v. *Berks Justices* (1883), L.R., 9 A.C. 61, *per* Lord Blackburn at p. 67—and being in an exemption the terms, unless something in the context required otherwise, must be read strictly, and the use for police must be exclusive use—*Surveyor of Taxes* v. *Smith*, October 25, 1901, 4 F. 31, 39 S.L.R. 20. It was true that the statute used the word "continue," but that did not give a wider meaning to "police establishment," and *contemporanea expositio* did not apply in the interpretation of a modern statute, as this was—*Clyde Navigation Trustees* v. *Laird & Son*, July 19, 1883, 10 R. (H.L.) 77, Lord Watson at p. 83, 20 S.L.R. 869. It could not be argued that because police premises were exempt by the general law, therefore the statute must have meant to include by that term something more, for it also mentioned Holyrood Palace, &c., which by the general law were exempt. The impossibility of the construction sought by the second parties was shown by this that it would exempt the whole administration of the municipality save the common good. Applying the law to the different properties in question, it followed that the exemption did not cover those given in the second alternative of the first question. As to the dwelling-houses discontiguous from police stations, but occupied rent free by the police, dealt with in question two, these were truly a part of the men's wages, and were not exempt. The present was *a fortiori* of *The Crown* v. *Beattie*, January 29, 1856, 18 D. 378; *Showers* v. *Chelmsford Union*, 60 L.J. (N.S.), Mag. Cas. 55; *v.* also *Rex* v. *Mathews*, 1777, K.B. (Mag. Cas.), Cald. 1. It could not be pleaded that they were part of police premises, when the position might have been reversed—*Cross* v. *West Derby Union*, 16 T.L.R. 120. Where parts of a building were used for police purposes, and parts were not, as was figured in question three, the whole building was subject to rates—*Cowan & Strachan* v. *Solicitor of Inland Revenue*, January 22, 1880, 7 R. 491, 17 S.L.R. 311. The second parties' remedy was to have the *cumulo* valuation divided, and it was for them to have this done, for they knew the values of the different parts. As to buildings only occupied partly in connection with the police establishment, as where the official in occupation did other as well as police duties, which were dealt with in question five, there was no exemption, for to obtain exemption the use must be exclusive—*Trustees of College Street United Free Church* v. *Edinburgh Parish Council*, January 31, 1901, 3 F. 414, 38 S.L.R. 265; *Surveyor of Taxes* v. *Smith* (*cit. sup.*) No allocation of valuation was here possible. The premises dealt with in question five were in the same position as those in question three. No exemption could be allowed, and the second parties' remedy was to have the *cumulo* valuation allocated. (2) *School Rate*—The exemption

in the Edinburgh Act from poor rate, did not infer exemption from school rate. The Education (Scotland) Act 1872, section 44, only meant that the method of assessing poor rate, and the law relating to such assessment, should apply, but not that special exemptions should hold good—*Hogg* v. *Auchtermuchty Parochial Board*, June 22, 1880, 7 R. 986, 17 S.L.R. 687; *Gillanders* v. *Campbell*, December 11, 1884, 12 R. 309, 22 S.L.R. 206. The exemption had been given on particular considerations, and was not, without special provision, to be extended.

Argued for the second parties—(1) *Poor Rate* — The exemption in the Edinburgh Act of the "police establishment" must be construed in a wide sense to include all the City administration, which was by statute compulsory, as distinguished from what was voluntary, *e.g.*, lighting and scavenging as distinguished from public parks and bowling-greens. That was the construction pointed to by the earlier Acts of 1832 and 1848, and given effect to prior to 1879. The word "continue" implied that the same exemption was to be given as previously — Maxwell on Interpretation of Statutes, 4th ed., pp. 453-4. The words "police establishment," like the words "police assessment," were to have a wide construction and covered general purposes of administration as well as mere watching. The same exemption applied to the burgh assessments as to poor rate, and if the first parties' contention was correct, the second parties would require to levy burgh assessments on themselves. The exemption therefore included the premises mentioned in the second alternative of the first question. The houses in the second question were clearly exempt. They were houses connected with the police establishment, and the statute (section 5) interpreted "house" as meaning dwelling-house. The exemption here was a statutory one, not as in the cases cited by the first parties at common law. As to the premises dealt with in questions three, four, and five, the first parties should divide the annual value according to the portions occupied, or the amount of use, as the case might be—*Edinburgh Magistrates* v. *Surveyor of Taxes* (*cit. sup.*) They had a duty to make an allowance for repairs—*Aberdeen City Parish Council* v. *Caledonian Railway Company*, July 14, 1906, 8 F. 1072, 43 S.L.R. 711—and there was no difficulty in their allocating the rent at the same time. (2) *School Rate* — The exemption granted from poor rate here also applied to school rate. The Education Act 1872, section 44, said the same law should apply, and this was a statutory exemption. The cases cited did not apply. They were exemptions to ministers, a favoured class, *e.g.*, granted on personal grounds, while the exemption here was of subjects.

At advising—

LORD M'LAREN—By a series of local statutes, the last of which is entitled the Edinburgh Police Act of 1848, the control of certain departments of local administration was vested in a representative body called the Police Commission. By the 58th section of this Act certain buildings were exempted from the payment of local rates, poor rate being expressly mentioned. In the description of the buildings exempted the words used are "police offices, station houses, dwelling-houses, and other buildings or grounds within the limits of this Act connected with the police establishment." The first question for consideration is whether the expression "police" and "police establishment" are to be construed according to the ordinary and more restricted meaning of an organisation for the prevention of crime and the maintenance of public order, or are to be taken in a wider sense as including other departments of municipal administration constituted by statute. As a guide to the true meaning of the words in question it may be useful to consider what is the extent of the exemption from taxation which may be claimed by public authorities independently of special statutory exemption. The most authoritative statement of the law on this subject is the judgment of the House of Lords in the case of *Coomber* v. *The Justices of Berkshire*. The question was as to the liability to taxation of a county assize court with its offices. Lord Blackburn delivered the leading opinion, but perhaps the clearest statement of the principle is a passage quoted by Lord Watson from Lord Blackburn's opinion in a previous case—"Long series of cases have established that where property is occupied for the purposes of the government of the country, including under that head the police and the administration of justice, no one is rateable in respect of such occupation" (9 App. Ca. 72).

In 1848, when the Edinburgh Police Act was passed, it cannot be said that the application of this principle or its extent were fully understood. Indeed, I am not sure that the limits of the principle are even yet thoroughly settled. It was therefore very natural that the Police Commissioners in the Act which they obtained from Parliament should seek to have a settlement of this question for themselves. On the other hand I think it is unlikely that they should have sought or that Parliament should have granted exemptions from taxation that were independent of the general law as to the incidence of taxation on public property. If, then, there is any ambiguity in the words "police" and "police establishment" as used in the Police Act of 1848, sound construction requires that we should give to these words a meaning which is consistent with the general law rather than to interpret them in the wider sense, which would include buildings appropriated to purely municipal purposes for the exemption of which no good reason can be assigned.

I ought to state that there is a later Act than that of 1848, viz., the Act of 1879, passed after the Police Board had been merged in the Town Council. But the exemption (which is contained in sec. 70) is only a repetition of the exemption in the 1848 Act in identical terms.

The first question in the case includes a large number of alternatives; but as the answers to these all depend on the application of the principle of construction which I have announced it will be sufficient to state the decision of the Court under each head.

(1) and (2). Departments of Burgh Engineer and Medical Officer of Health. These are departments of municipal administration, and do not fall within the exemption.

(3) and (4) The business of the Town Clerk's department and of the Treasurer of Police are said to include the administration of funds which are raised for proper police purposes. But the greater part of the work done in these departments is municipal business, and as it is impossible to make a local separation, exemption cannot be claimed under these heads. It would be contrary to the spirit of all the authorities to make a money allocation of the premises used for such purposes, because the principle is, that unless the building is used exclusively for purposes connected with the service of the Crown the exemption will not hold.

These observations apply also to heads (10) and (11).

(5) and (6) The works and roads here referred to were not under the care of the Police Commission during the time when there was a Police Commission distinct from the Town Council, and the exemption cannot be maintained.

(7), (8), and (9).—Fire prevention and lighting and cleansing were within the functions of the Police Commission as defined by the recited statutes, but it is not therefore to be assumed that the buildings used for these purposes are exempt from total taxation. If it had been intended that no building used for any of the public purposes which were controlled by the Police Commission should be assessed for poor rates, this might easily have been expressed as a general exemption of all the property of the Commission. But the exemption is not of this general character. Section 58 of the Police Act of 1848 enumerates the classes of buildings which are to be exempted from local taxation. These are, briefly, police offices and buildings on grounds connected with the police establishment, and it could not be intended under this description to include buildings appropriated to lighting and cleansing or the prevention of fire.

The result is that the exemption does not apply to any of the buildings enumerated under the second alternative of the first question. The first alternative of the first question will therefore fall to be answered in the affirmative and the second alternative in the negative.

2. We consider that the houses here described are covered by the expression "police offices, station-houses, and dwelling-houses" used in the 58th section of the Act of 1848, and substantially re-enacted by the Act of 1879. The question will accordingly be answered in the negative.

3. Where a local separation of the subjects entered *in cumulo* can be made, as in the case of the Burgh Court room and the Police Court room and their precincts, the second parties will be entitled to have these subjects separately valued. As regards the current year, we cannot give any useful decision, as the parties have not put a value upon the subjects for which exemption is claimed.

4. We answer this question in the negative.

5. We answer this question in the affirmative.

6. It is settled by concurring decisions of the two Divisions of this Court that what are termed class exemptions from assessment for poor rate are not extended to school rate—*Hogg*, 7 R. 986, and *Gillanders*, 12 R. 309. The Education Act does not authorise such exemptions, and the provision that the school rate is to be collected along with the poor rate is held to be a merely administrative provision with a view to economical collection of the rates, and not as intended to identify the rates.

In the case of *Gillanders* the Lord President, after stating the principle that no person can claim exemption from a tax or rate imposed by statute unless the statute gives him the exemption, goes on to say that there is one exception to this rule, the case of Crown property, an exception depending on the constitutional principle that the Crown cannot be taxed without its consent. Under this exception it is clear that the second parties are entitled to exemption from school rates as well as poor rates in respect of the buildings described in question 5, viz. the court rooms and their adjuncts, as being property appropriated to the service of the Crown, although heritably vested in the Magistrates and Council of Edinburgh.

But with respect to the other police buildings which are exempted from poor rates by these local statutes the exemption would not apply to school rates. The claim of the second parties to exemption from school rates in respect of police offices, barracks, and police officers' houses, is based on the theory that these buildings are appropriated to the service of the Crown. Now it is true that in the case of *Coomber* the county building which was held by the House of Lords to be exempted from income tax included a police station which was a part of the block of buildings erected for the purpose of an assize court. But in that case the police station was really an adjunct of the assize court, and it would be carrying the principle too far to treat the central police office of Edinburgh and the police stations and barracks throughout the city as adjuncts or pertinents of the Police Court, which is a court of very limited jurisdiction. Unless they can be so treated, so as to fall within the general exemption of Crown property from imperial and local taxation, these buildings must be considered as subject to payment of school rates. This question, accordingly, must be answered in the affirmative, except as to the subjects described in the fifth question, which at common law are exempt from taxation.

LORD KINNEAR and LORD PEARSON concurred.

The Court answered the first alternative of the first question in the affirmative and the second alternative in the negative, the second question in the negative, the second alternative of question three in the affirmative, question four in the negative, question five in the affirmative, and question six in the affirmative, "except as to the subjects described in the fifth question which at common law are exempt from taxation."

Counsel for the First Parties—The Dean of Faculty (Campbell K.C.)—W. J. Robertson. Agents—R. Addison Smith & Company, W.S.

Counsel for the Second Parties—Cooper, K.C.—Spens. Agent — Thomas Hunter, W.S., Town Clerk.

Tuesday, July 2.

SECOND DIVISION.

[Lord Guthrie, Ordinary.

BRIMS & MACKAY AND OTHERS *v.* M'NEILL & SIME AND OTHERS.

Process—Summons—Competency—Several Pursuers—Community of Interest—Title to Sue—Dissolved Firm and its Successor Suing Together for One Sum Representing Debts Due to Old and New Firms.

The firm of B. & M. was dissolved in 1901 on the death of B., and a new firm of B. & M., constituted, of which M. a member of the original firm, was a partner. In 1907 an action was raised at the instance of (1) the new firm of B. & M. and its individual partners, (2) B.'s representatives, and (3) the dissolved firm of B. & M., against the firm of M'N. & S., and against P., one of the partners, as an individual, the conclusion being, *inter alia*, for payment of the sum of £200 "conjunctly and severally, or otherwise severally."

The pursuers averred that about 1894 the firm of B. & M. entered into an arrangement with P., then in business by himself, under which they from time to time sent him business on condition of his sharing agency fees with them; that subsequently, in 1898, P. joined the firm of M'N. & S., and that business was thereafter sent to him upon the same footing as before. It was not averred that any agreement had been made with M'N. & S.; nor was it averred that the new firm of B. & M. acquired, by assignation or otherwise, debts due to the old firm of B. & M.; but it was averred that an arrangement had been made for the new firm to collect accounts due to the old. The sum sued for was in respect of agency fees for business done both prior and subsequent to 1898.

The Lord Ordinary (Guthrie) dismissed the action so far as directed against the defenders M'N. & S., on the grounds (*a*) that the action was irrelevant, there being no averment of any agreement with M'N. & S., (*b*) that the action was incompetent, it being sought to make M'N. & S. liable for what in part represented debt due by P. before he joined the firm; but he held that as directed against P. the pursuers had a title to sue, and the action was relevant and he allowed a proof.

Held, on a reclaiming note at P.'s instance (the pursuers acquiescing in the Lord Ordinary's judgment as regarded M'N. & S.), that the action though relevant was incompetent, there being, so far as the right and title to debts due to them respectively was concerned, no connection between the old firm of B. & M. and the new, and it being settled law (following *Killin* v. *Weir*, February 22, 1905, 7 F. 526, 42 S.L.R. 393) that two or more unconnected persons cannot sue in one joint action unless they have been aggrieved by the same act of the defender or have a joint interest in the matter libelled.

Opinions as to the instance in an action to recover debts due to a firm with a personal name when dissolved, and existing only for the purposes of winding up.

(1) Brims & Mackay, Solicitors, Thurso, and Alexander Mackay, William Manson Brims, and James Young, all Solicitors, Thurso, the individuals of the firm, (2) the trustees of the deceased James Brims, Solicitor, Thurso, and (3) the now dissolved firm of Brims & Mackay, Solicitors, Thurso, brought an action against M'Neill & Sime, S.S.C., Edinburgh, and James Adam Pattullo and Henry Vetch, the individual partners of the firm, and also against James Adam Pattullo as an individual, the conclusion of which was that the defenders should be ordained "to exhibit and produce before our said Lords a full and particular account of the whole law agents' fees recovered by them in the matters condescended on, whereby the true amount or proportion thereof due by the defenders to the pursuers may appear and be ascertained; and the defenders ought and should be decerned and ordained, conjunctly and severally, or otherwise severally, by decree foresaid, to make payment to the first-mentioned pursuers of the sum of £200 sterling, or such other sum as shall appear and be ascertained by our said Lords to be due by the defenders to the pursuers as the pursuers' share of said fees."

The pursuers averred, *inter alia*—"(Cond. 1) The pursuers Brims & Mackay are solicitors and conveyancers, carrying on business in Thurso, and the other pursuers are the individual partners of said firm, and the representatives of a deceased partner of the now dissolved firm of Brims & Mackay, Solicitors, Thurso, which, however, subsists for the purpose of winding up. The deceased James Brims and the pursuer Alexander Mackay were the partners of the said dissolved firm of Brims & Mackay.