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appears to me that the appellant was driven to come here. If the parties had given up the bond for the L.300, and had come here merely to claim the L.500, I think they would have been entitled to costs; but an appeal was absolutely necessary for the purpose of getting rid of the L.300 bond. I therefore humbly submit to your Lordships there should be no costs; and, with your Lordships' permission, I would humbly make that motion.

Dr Lushington.—Your Lordship will allow me to say, that General Ramsay never claimed the L.300 bond. We have admitted, on the face of the record, that that bond was extinguished.

LORD WYNFORD.—If I have been understood as saying, that General Ramsay has been making a claim which he ought not, I beg to observe, nothing of that sort entered into my mind; and if any one word has fallen from me in the course of what I have said, which may convey that idea, I am sorry for it.

Appellants' Authorities.—3. Ersk. 2. 43.; 1. Stair, 13. 4. Hume, June 28. 1671, (5688.) Ogilvie, June 14. 1699. Irving, Nov. 1738, (11,576.) Holwell, May 31. 1796, (11,583.) 2. Fount. 51.

MONCREIFF, WEBSTER and THOMSON—RICHARDSON and CONNELL,—
Solicitors.

MAGISTRATES OF EDINBURGH, and PATRICK SANDEMAN, Ap-
pellants.—*Sir Charles Wetherell—Lushington—Simpson.*

No. 13.

ALEXANDER M'FARLANE, and WILLIAM BRUCE and OTHERS,
Respondents.—*Spankie—Brown.*

Ferry—Harbour—Statute 28. Geo. III. c. 58.—Held, (affirming the judgment of the Court of Session), that Steam boats, carrying only passengers and their baggage, fall within the description of "Ferry boats or Passage boats," in the above statute and relative tables regulating the dues exigible at Leith and the adjacent bounds, and are liable only to pay rates as such.

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2D DIVISION.
Lord Mackenzie.

THE Magistrates of Edinburgh are, by a variety of ancient charters, empowered to exact certain dues from vessels frequenting the ports, stations, and harbours of Leith and Newhaven, on the Firth of Forth, within certain bounds. The material clauses will be found in the foot-note.*

* • Totum et integrum predictum portum estuarium et receptaculum, vulgo the poirt
• hevin and herbrie de Leith, et fundum ejusdem, ac radam et stationem de Leith et per-
• tinen. cum omnibus et singulis propugnaculis, vulgo the peiris, shoris, and bulwarkis
• ejusdem, ac cum omnibus viis plateis, callibus, diverticulis, tramitibus, et passagiis, ad

In particular, by 'the golden charter' granted by James VI. March 30. 1830. in 1603, (besides confirming the previous grants), there were conferred on the Magistrates 'all the privileges, customs, harbour, dock, and shore dues, anchorage, golden pennies, exactions, rents, duties, and casualties of the said port, haven, road, and towns of Leith and Newhaven, according to the following table, clauses, conditions, and privileges therein contained.' The table specifies a variety of goods, upon which certain duties are to be exacted from freemen and unfreemen; and it contains this clause: 'For every dreg boat and small cock boat, four pennies; each ferry boat inward four pennies, and outward four pennies; and for keeping good order in their several stations, twelve pennies.'

In the charters, the words are 'ilk ferrie boitt.' In tables issued by the Magistrates from time to time for the use of the collector of the dues, the expression is sometimes, 'all ferry boats;' at others, 'all passage or ferry boats;' and again it is declared, that 'all passage boats, ferry boats, and pinnaces, shall pay of beaconage and anchorage, each time they come into the harbour, two shillings Scotch; but if they bring goods, &c. they shall pay as other vessels according to the tonnage.'

In 1788 a statute (28. Geo. III. c. 58.) was passed, proceeding inter alia on the preamble of the great utility of ascertaining the fees and other dues now payable, and hereafter to be paid, by the owners of ships and vessels resorting to the said harbour, basin, quays, piers and docks, and by merchants and other traders using the said warehouses; and by which it is provided, that whereas 'there are payable to the Lord Provost, Magistrates and Council, on behalf of the community, in name of beaconage and anchorage, for all

'et a dicta villa ducentibus ex utrisque lateribus dicti portus et aque de Leith quousque advenerint contigue ad menia seu muros domorum et tenementorum super utraque lateræ dicti portus edificat. Ac cum omnibus commoditatibus, assiamentis, privilegiis et immunitatibus ad premissa spectan. ac pertinen. Et in specie omnia et singula privilegia, custumas et alia prout ad longum in vulgari sequitur, viz. and in special all and hail the privilegis, custumes, hevynsilver, anchorageis, docksilver, goldyn penneis, schoirsilver, exactionis, rentis, dewteis, and casualiteis of the said poirt and hevyn of Leith, raid thiarof, and Town of Leith and of the Newhevin;' 'necnon totum et integrum antedictum novum portum nuncupatum the hevin and harbrie of Newhaven ac stationem, et radam ejusdem, cum terris cuniculariis vulgo lie lynkis, domibus, edificiis, terris, et bondis, et suis pertinentiis, jacen super littus maris ex australi latere aqua de Forth a capella Sancti Nicholai ex boreali latere ville de Leyth usque ad terras nuncupatas Weirdybrow,'—'cum omnibus et singulis privilegiis portuum, pecuniis anchoragiis, lie docksilver, golden penneis, impositionibus, custumis devoriis, taxationibus, exactionibus, censibus firmis et casualitatibus ad dictum portum annexatis; ac cum viis plateis, passagiis, a et ad dictum novum portum ducentibus modo et cum privilegiis supra specificatis.'

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 ‘ fish or oysters, the fish boat threepence, and yawl twopence, both
 ‘ sterling; for every passage boat, ferry boat, or pinnace, twopence
 ‘ sterling; and for all vessels, whether ships, barks, or boats, (other
 ‘ than drag boats, fish boats, yawls, ferry boats, and pinnaces be-
 ‘ fore specified), one penny halfpenny sterling for each ton of
 ‘ their burden; and which fees for beaconage and anchorage, the
 ‘ said Lord Provost, Magistrates and Council, and their successors
 ‘ in office, are hereby authorized by authority foresaid to exact,
 ‘ levy, and demand.’

For a great length of time, passengers were conveyed across the Firth of Forth in sailing boats and pinnaces, plying between Leith and Kinghorn; and it was alleged, that although these boats and pinnaces, when so engaged, paid the stipulated twopence, yet, if they plied to and from other ports, they ceased to be considered as ferry boats, and were charged the penny halfpenny for each ton. Recently, in consequence of the application of the power of steam to purposes of navigation, private individuals established steam passage boats on the Firth of Forth, traversing it in various directions, and conveying passengers and their luggage to and from Leith and Newhaven, to Alloa, Grangemouth, Stirling, and other places. Bruce, M'Farlane, and others, the owners of these boats, by permission of the Magistrates of Edinburgh, built for their own convenience a chain pier near Newhaven, by which passengers embarked or landed.

These steam boats had plied for several years without being called upon to pay any dues; but recently Bruce and others were required by the collector to pay arrears at the rate of one penny halfpenny on each ton, in respect that these steam boats were not passage or ferry boats of the description, or engaged in the employment, which fell under the class liable only in the payment of twopence for each trip. To enforce this claim he raised an action against them in the Admiralty Court, and decree being pronounced against them, the question was carried to the Supreme Court by suspension and reduction. Macfarlane and others then raised an action of declarator against the Magistrates and Collector, concluding, *inter alia*, that it should be declared that steam boats used in the transport and conveyance of passengers only, and their luggage, are to be held and considered as passage boats or ferry boats merely, and as such are only liable for, and ought to be rated at the same fees or dues, as are payable for and exigible from other passage boats or ferry boats entering the harbour of Leith, and landing passengers thereat. In the

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reduction and suspension and declarator, the Lord Ordinary found, 'that vessels ordinarily employed in moving, whether by steam or otherwise, between any port or ports in the Firth of Forth, and the ports of Leith or Newhaven; solely for the conveyance of passengers and their ordinary luggage, and not for the conveyance of goods, may more reasonably be considered, in reference to harbour dues, as passage boats liable to pay a certain sum for each trip, than as other vessels liable to pay dues in proportion to tonnage;' but found, on the other hand, that such vessels must pay dues as passage boats, whether they enter the said harbour of Leith or Newhaven, or land the passengers within the limit of the harbour by means of small boats.' To this judgment the Court (16th May 1827) adhered.*

The Magistrates and Collector appealed.

Appellants.—There has been for centuries a great public ferry from Leith and Newhaven directly across the Firth of Forth, on which ferry the boats included and contemplated by the statutes and the tables, regularly plied. But the steam boats are in a very different situation. They are not ferry boats; and the phrase 'passage boat,' being synonymous with 'ferry boat,' the steam boats can be regarded in no other light than other vessels liable to the rates per ton. It would be perverting the construction of the statutes, and giving the owners of these modern inventions an unjust preference, to support the interpretation sanctioned by the judgment of the Court of Session.

Lord Chancellor.—If there are other boats than ferry boats, and the words of the statute are so comprehensive as to embrace the other boats, why limit the meaning of the word? If originally there had been no boats plying but mere ferry boats on this line, but if other boats commence plying on different lines, why are you to exclude the latter?

* 5. Shaw and Dunlop, Nos. 665–8. The steam boats did not enter into either the harbour of Leith or Newhaven, but received and landed their passengers at first by boats and planks, and afterwards at a chain pier, built by the owners of the steam boats near Newhaven, on a feu from a private individual, but within the Magistrates' bounds, having first obtained the permission of the Magistrates to project the pier into the Firth beyond low water-mark. The Magistrates were found entitled to dues on passengers landed at the chain pier, (as well as by boats and planks), as if the steam boats had actually entered Leith harbour. The steam boat owners did not take these points by cross appeal to the House.

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Sir Charles Wetherell (for the appellants.)—We maintain, that boats plying to and from other ports, and on other lines, paid always by the ton.

Lord Chancellor.—There is nothing to shew why there should be such limits. The statute makes no such limitation as to the line.

Spankie (for the respondents.)—The boats were in the use of crossing over to the different ports; not perhaps as regularly as the Kinghorn boats.

Lord Chancellor.—It almost appears, from the nature of the country, to be impossible that it could be otherwise.

Sir Charles Wetherell.—The respondents are certainly claiming an advantage never intended to be given to them; and to support their claim they have been obliged to argue, that a different thing is the same thing, and that the rambling up and down forty miles is a mathematical line across.

Lord Chancellor.—To ply as a passage boat, does not mean only crossing. The passage boats may coast and pass up and down. If the Legislature had contemplated ferry boats merely in the strictest sense of the word, passage boats would not have been mentioned. Why should passage boats be mentioned if only ferry boats were to enjoy the exemption? These are plainly two classes of boats;—a ferry is a passage, but a passage is not always a ferry. The introduction of steam was certainly not in contemplation of parties at the time; but I see no reason for holding that the Legislature did not intend to comprehend all passage boats, although not exactly ferry boats, within the lesser rate.

Sir Charles Wetherell.—Justice cannot be done in this case unless your Lordships are satisfied as to the custom. At least there ought to be a remit, to see how this matter stands as to usage.

Lord Chancellor.—It is easy to understand why there should be different charges as to boats carrying passengers, and as to boats carrying goods. But, after all, the question rests on the terms of the statute and the relative table of fares, and nothing can be stronger than the terms of the latter. Now, why are we to limit the terms to a ferry boat passing between the ports which are mentioned, and to which the appellants desire the words may be limited, it not being averred that there are not other places on the Firth of Forth from which passage boats, and so on, may sail? It is, in my opinion, impossible to give such a limited construction to the words of the Act of Parliament, which are plain and unequivocal. There is a clause to the same effect in the table of fares. It does not say boat or ferry boat, as desig-

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nating the same species of vessel, but it mentions them as distinct classes, 'passage boats, ferry boats, and pinnaces.' As to the custom, it would be extraordinary if we could suppose that the Magistrates' collector did not know what duties were leviab; and if the rate per ton had been leviab from these passage boats, why did he not insist upon these dues until three years after the steam boats began to ply? We are all of opinion that the construction should be given to this clause in the Act, and to the table of fares, which has been given in the Court below, and that the judgment complained of must be affirmed; and I would now move your Lordships that it be affirmed, with L.50 costs.

The House of Lords accordingly 'ordered and adjudged, that the interlocutors complained of be affirmed, with L.50 costs.'

SPOTTISWOODE and ROBERTSON—RICHARDSON and CONNELL,—
Solicitors.

DAWSON and MITCHELL, Appellants.
Spankie—James Campbell.

No. 14.

MAGISTRATES of GLASGOW, Respondents.
Lushington—A. McNeill.

Burgh Royal—Superior and Vassal—Servitude.—1. Circumstances and clauses in titles held, (affirming the judgment of the Court of Session), to constitute a burgage tenure, and not a feu. 2. In a grant by burgage-holding, the town-clerk is alone entitled to act as notary; and the sasine must be registered in the books of the burgh. 3. Held, (reversing the judgment of the Court of Session), that a clause of thirlage of grana crescentia, having these words adjected, 'and other stuff and corn they shall happen to grind, seed and horse corn and bear excepted,' does not import a thirlage of invecta et illata.

THIS was a branch of the case reported ante, Vol. ii. No. 21. p. 230., which see.

March 31. 1830.

1ST DIVISION.

In the original appeal taken by the Magistrates of Glasgow, the House of Lords 'ordered that the cause be remitted back to the Court of Session in Scotland, for them to review generally the interlocutors complained of; and on reviewing the same, they are particularly to consider in the said action of advocacy, whether the Magistrates of Glasgow are entitled to any, and if to any, to what dues, in respect of corn or grain brought within the liberties or territory of the city or burgh of