

[16th August 1839.]

(Appeal from the Court of Session, Scotland.)

(No. 32.)

ALEXANDER MORRISON and others, Appellants.¹

[*Knight Bruce — H. J. Robertson.*]

GLASGOW COMMISSIONERS OF POLICE, Respondents.

[*Sir William Follett — A. M'Neill.*]

Title to pursue — Statute 1821 (Glasgow Police). — 1. Held, as in preceding case of *Ewing v. Inglis*, (affirming the judgment of the Court of Session) that rate-payers, as such, had no title to pursue commissioners of police, on behalf of themselves and others, for misapplication of funds.

2. Parties (being also commissioners of police) having sued as rate-payers, in a complaint against the general body of commissioners, in which character the Lord Ordinary decerned against them, and having in that character reclaimed to the Court, and the Court (adhering to the interlocutor) having found that they could not so sue, — Held (affirming as aforesaid) that it was not competent to ask the judgment of the Court, on the ground that, as a minority of the commissioners of police complaining of the acts of the majority, they had a sufficient title notwithstanding.

2D DIVISION.

Lord Ordinary
Cockburn.

MR. MORRISON and other rate-payers, some of them being also commissioners of police, brought a suspension of a resolution of the board of commissioners to

pay the expenses of successfully opposing a water bill in parliament, similar to that in the preceding case. The Lord Ordinary, following the judgment of the Court in *Ewing v. Inglis*, repelled the reasons of suspension. The suspenders reclaimed. At the advising in the Inner House, their counsel directed the attention of the Court to the circumstance that some of their number were designated in the suspension as commissioners of police. In that character, therefore, they now insisted that they were entitled to sue as a minority complaining of the acts of the majority.

The Court disregarded the attempt to alter the title to insist at that stage of the process, and repeated their judgment as in *Ewing v. Inglis*.

Morrison and others appealed, and founded on the case of *Aitchison v. Magistrates of Dunbar*, 4th February 1836¹; while the respondents maintained that the instance being radically defective, could not be cured *medio processu*.

LORD CHANCELLOR.—My Lords, the decision in this case must necessarily follow that of *Ewing v. Inglis*. An attempt was indeed made to distinguish this case from that. It was stated that some of the pursuers are commissioners of police; and it was therefore contended, upon the authority of *Aitchison v. the Magistrates and Town Council of Dunbar*, (upon which I have before observed,) and the case of *Goddard v. the Leith Dock Commissioners*, in 5 *Shaw and Dunlop*, 355, that they were entitled to take advantage of their title as such.

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and others
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Statement.
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Ld. Chancellor's
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¹ 14 D., B., & M., 421.

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It is, I think, quite unnecessary to consider those cases, or how far the present case falls within them; because, although it is true that some of the pursuers are described in the summons as general commissioners of police for the city of Glasgow, it is quite clear, after looking through the summons and the other proceedings, that the title to pursue is not founded upon the possession by those pursuers of that character, but is founded exclusively upon their liability, together with the other pursuers, to police assessments. This case, therefore, is precisely the same as that of *Ewing v. Inglis*; and I, therefore, move your Lordships to pronounce the same judgment, dismissing the appeal, with costs.

The House of Lords ordered and adjudged, That the said petition and appeal be and is hereby dismissed this House, and that the said interlocutors, so far as therein complained of, be and the same are hereby affirmed: And it is further ordered, That the appellants do pay or cause to be paid to the said respondents the costs incurred in respect of the said appeal, the amount thereof to be certified by the clerk assistant: And it is further ordered, That unless the costs, certified as aforesaid, shall be paid to the party entitled to the same within one calendar month from the date of the certificate thereof, the cause shall be remitted back to the Court of Session in Scotland, or to the Lord Ordinary officiating on the bills during the vacation, to issue such summary process or diligence for the recovery of such costs as shall be lawful and necessary.

ARCHIBALD GRAHAME—DEANS and DUNLOP,
Solicitors.