EDINBURGH WATER COMPANY, . APPELLANTS.

JOHN HAY, . . . . . RESPONDENT (*a*).

1854.
*9th, 10th, and 13th Feb.*

Under the 8 & 9 Vict., c. 83, a Waterworks Company are liable to assessment for relief of the poor, as owners and occupants of the land through which their pipes run.

The word "owner" occurring in the Act does not necessarily mean owner of the fee. It may mean the owner of a partial interest.

*Semble*—That the Imperial Legislature may be taken to have cognisance of the decisions of the superior Courts of justice —especially when they relate to questions of a public nature.

THE Court of Session had decided (13th January, 1850), that the Company were liable to assessment for the relief of the Edinburgh poor, as owners and occupants of the land through which their pipes passed. The Company appealed.

The *Solicitor-General* (Sir *Richard Bethell*), and Sir *Frederick Thesiger*, for the Appellants; Mr. *Rolt* and Mr. *Anderson*, for the Respondents.

The argument is fully discussed in the following opinion, delivered, in moving for judgment, by

The LORD CHANCELLOR (*b*):

*Lord Chancellor's opinion.*

My Lords, as I am of opinion that the Court below has come to a perfectly correct decision in this case, I do not think it will be necessary or useful to keep the matter standing over any longer for further consideration.

(*a*) Fully reported in 12 Second Series, 1240.

(*b*) Lord Cranworth.

It is impossible to deny that the question is one of some nicety, depending upon the minute construction of the particular words of an Act of Parliament, those words perhaps not being used exactly in the sense which, *primâ facie*, they might be supposed to bear.

The question of law turns upon the construction which is to be put upon the late Scotch Poor-law Act, the 8th & 9th of Victoria, chap. 83. By the 34th section of that Act it is enacted—

> That when the parochial board of any parish or combination shall have resolved to raise by assessment the funds requisite, such board shall, either at the same Meeting, or at an adjournment thereof, or at a meeting to be called for the purpose, resolve as to the manner in which the assessment is to be imposed.

We know that in this country the assessment is imposed upon the occupiers; but in Scotland the parochial board may determine to adopt one of three modes of rating:

> And it shall be lawful for any such board to resolve that one half of such assessment shall be imposed upon the owners, and the other half upon the tenants or occupants of all lands and heritages within the parish or combination, rateably, according to the annual value of such lands and heritages; or to resolve that one half of such assessment shall be imposed upon the owners of all lands and heritages within the parish or combination, according to the annual value of such lands and heritages, and the other half upon the whole inhabitants, according to their means and substance; or to resolve that such assessment shall be imposed as an equal per centage upon the annual value of all lands and heritages within the parish or combination, and upon the estimated annual income of the whole inhabitants from means and substance.

The distinction, therefore, or one of the distinctions between the Scotch and the English Poor-law Acts is this—that whereas the principle of assessment is conclusively fixed by the legislature in England, it is not conclusively fixed by the legislature in Scotland; but the parishes or unions in the latter country may settle

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amongst themselves which of three different forms of rating shall be adopted.

Your Lordships' attention has been called to the progress of Scotch legislation upon this subject, which, so far as it is necessary for me to advert to it, was this. The first enactments were in the reign of James V. of Scotland (contemporaneously with our Queen Elizabeth) in the year 1579; and by that Act the assessment was obliged to be simply upon the inhabitants according to their means and substance. In 1663 an alteration was made in the rating upon landward parishes, or agricultural parishes, exclusively of cities and towns, by which one-half was to be charged upon the owners of the land, or the heritors, and the other half upon the inhabitants according to their means and substance. A further, though slight, alteration was made in the reign of William III., but in a manner which it is not important for us now to consider; and so things continued until this statute of her present Majesty was passed, in which, for the first time, authority was expressly given to the parties if they thought fit to charge the rating wholly upon the land under these circumstances, that one-half was to be charged to the owner, and the other half to the occupier. There were two other modes of rating which it was open to the parish to adopt, and to which I need not advert.

In the present case, the parties having met under the authority of the 34th section, did resolve that the rate should be imposed one-half upon the owners, and the other half upon the occupiers; and having come to that resolution, the question is, whether the Edinburgh Water Company, who have works whereby they supply the city of Edinburgh with water, and as part of those works have main pipes running along the streets of Edinburgh, from which they supply the inhabitants

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with water, are or are not liable to be rated as owners and occupants. They have been rated as owners and occupants of lands and heritages within the city of Edinburgh. The Court of Session have held that they are liable; from that decision the Company has appealed to your Lordships, and the question is, whether the Court of Session have decided rightly, the Court of Session having decided that they are owners and occupiers of lands and heritages within the meaning of the Scotch Poor-law Act.

Now, my Lords, if this matter had been entirely untouched by decision, either in England or in Ireland, it might have been open to a very grave question, whether a party who had merely the right of conveying water by pipes along a street or any land, and so using it for the purpose of conveying water to sell, so to speak, to the houses, for his profit, was or was not in the position of an owner or occupier of land within the meaning of the statute. But it is not a new question, because it has arisen in innumerable instances in this country upon the true construction of the statute of Elizabeth (*a*), in which the language is general that the churchwardens and overseers were to meet together to raise a stock by an equal assessment upon the occupiers of all lands, messuages, and so on, in each parish. The question arose more than half a century ago, whether persons in the position of this Water Company were occupiers of lands within the meaning of the statute of Elizabeth; and it was very strongly pressed that all they had was what we call in this country an easement, and what in Scotland is called a servitude, namely, the right of conveying water along a channel or through pipe of any description, and that they were not occupiers of the land itself. But that point was elaborately argued before the Court

(*a*) 43 Eliz., c. 2.

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of King's Bench in 1808, in the case of *The King* v. *The Corporation of Bath* (*a*) (there had been a previous case in which the right was very fully discussed) (*b*), and Lord *Ellenborough* held that, within the meaning of the statute of Elizabeth, the object of which was to impose an equal rate for the relief of the poor, they were occupiers of land; that the right of placing their pipes along the streets, and conveying their water along those pipes, made them within the meaning of that statute the occupiers of land. I allude to that case particularly, but there are a great number of other cases which have followed it. But I need only advert to the case of *The King* v. *The Chelsea Waterworks Company* (*c*), in which Mr. Justice *Littledale* and Mr. Baron *Parke*, then Mr. Justice *Parke*, in the Court of King's Bench of that day, held that the Court was quite right in the former case, and those which had followed, in holding that within the meaning of the statute of Elizabeth a Waterworks Company having pipes under the surface, were the occupiers of the lands through which their pipes were conveyed. They held that it made no difference that a large portion of the pipes ran under some part of St. James's Park in respect of the whole of the surface of which the Ranger was actually rated. It was contended that rating the Water Company would make a double rate; but the Court held that that was utterly immaterial, because the Ranger was rated in respect of the surface, and the Waterworks Company were rated in respect of that portion of the land which they occupied. The Court adhered strictly to the doctrine which had been laid down in the former case upon the construction of the statute.

These it is true are English authorities; but we

(*a*) 14 East, 609.

(*b*) *Atkins* v. *Daris*, Cald. 313. (*c*) 5 Barn. & Ad. 156.

must bear in mind that the result of them must be supposed to have been known to the legislature when it passed this Act relating to Scotland. The result of them I take to be this—that a Company occupying or owning waterworks, under the circumstances to which I have adverted, are, within the meaning of the law relating to the relief of the poor, the occupiers of the land under which their pipes pass. The legislature must have had the result of those authorities present to its mind, and with that knowledge it has enacted that after the passing of the Act the 8th & 9th of Victoria, chap. 83, it shall be lawful for one-half of the assessment to be imposed upon the owners, and the other half upon the tenants or occupants of all lands and heritages. Now it is impossible to believe that the legislature could intend that the word "lands" should mean one thing in an Act with reference to Scotland, and another thing in an Act with reference to England; more particularly in passing a statute, the object of which was to introduce into Scotland enactments not exactly identical with, but very much analogous to, those which had prevailed in England. The inconvenience of such a diversity of interpretation would be excessive. I do not mean to say that the same word may not mean a different thing with reference to Scotland from what it means with reference to England; but here the only question is, whether in the nature of things parties conveying their pipes through lands are the occupants of those lands. That question having been decided and acted upon in England for so long a time, and the legislature, with the knowledge of the decision, having enacted that it shall be lawful to assess *inter alios* the occupants of lands in Scotland, I think it must have been understood that the same class of persons who were held to be occupants in England should be held

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to be occupants in Scotland. That being so, I do not think your Lordships are at liberty to rely upon that which has been pointed out as a distinction, and which I think is a great distinction, in favour of the construction which has been put upon the statute by the Court of Session. In the statute of Elizabeth the parties were obliged to be the occupants of lands, messuages, mines, woods, and a number of enumerated corporeal hereditaments, otherwise they were not liable to be rated. But here that is not so, because the legislature with respect to Scotland has said that the rate is to be imposed upon the tenants or "occupants of all lands and heritages." Now it was pressed upon your Lordships in the argument at the Bar, and, I think, very properly, that even if this be an easement it is a heritage, which I understand to mean a matter of property capable of inheritance. There can be no doubt in the world that if I grant to another and his heirs the right for ever of conveying water through my land, that is a heritage.

I very much doubt, therefore, whether it is necessary for me to draw your Lordships' attention to any of the constructions which have been put upon the English Act in order to show that these parties are liable to be rated, although I think they furnish a conclusive argument. We must understand the legislature to have used the term "occupants of lands" in the same sense with reference to the New Poor-law Act which was introduced into Scotland, as that in which it had been used with reference to the Poor-law Act in England. I think upon that ground, independently of the use of the word "heritage," it is clear that the decision at which the Court of Session have arrived is perfectly correct.

My Lords, that being so, the whole subject is exhausted except upon this point. It is said that there

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has been no decision that any person in the position of this Water Company is the owner of the land. The word "owner," by the Interpretation clause, I understand to mean, a party owning, so to say, any interest—it is not confined to the owner of the fee simple. What Sir *Frederick Thesiger* pressed upon your Lordships is quite right, that it merely means that a tenant for life, or a tenant for years, or any man, in fact, who is possessed of any interest whatever, is to be an owner. Then it is said that no decision can be found which at all points to any person having an interest in pipes under the soil as the owner of that land. I do not feel the force of that argument. It was no doubt not necessary to come to any such decision upon the statute of Elizabeth. The difficulty was not whether he was an owner and occupier, but whether the right was a right adequately described under the words "occupant of land." When there has been a case decided with regard to occupation, it seems to follow as of course, with no distinction between the occupier and the owner, the same party having both interests—he being both owner and occupier—that the decision of the point bears upon both ownership and occupation.

My Lords, although I think the decision of the Court of Session was perfectly right, no doubt the very able argument of Lord *Moncreiff* (*a*) suggests very considerable doubts upon the subject; and if the matter were newly reasoned over, and if no statute of Elizabeth had ever passed, I should have felt much weight in the arguments of that learned Judge. It would be very dangerous for us to be refining upon a matter of such every day necessity. I think that what we understand to be the law should be acted upon as being the law. The construction of the statute being in conformity

(*a*) Lord Moncreiff dissented.

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with perfect justice, namely, the equal rating of all persons who have a beneficial interest in the works in question for the relief of the poor, I think the decision to which the majority of the learned Judges (four out of five—the *Lord Ordinary* and three of the Judges of the Court of Session) have come is conformable to precedent, conformable to principle, and is a decision which your Lordships ought to have no hesitation in affirming. I shall therefore move your Lordships that the decision of the Court below be affirmed with costs.

*Interlocutors affirmed, with Costs.*

RICHARDSON, LOCH, & MCLAURIN—DODDS & GREIG.