

LORD CHANCELLOR.—I was glad to hear my noble and learned friend propose, that the judgment should be without costs. I should hardly have ventured to propose it myself, but I rejoice in it.

Interlocutors in both appeals affirmed.

For Appellant, Spottiswoode and Robertson, Solicitors, London; H. M. Inglis, W.S., Edinburgh.—*For Respondents*, Deans and Rogers, Solicitors, London; Wotherspoon and Morison, S.S.C., Edinburgh.

MAY 14, 1860.

MRS. JANE MARSHALL or HOUSTON (Executrix of the late Robert Houston),
Appellant, v. THE MAGISTRATES OF GLASGOW, Respondents.

Burgh—Minister's Stipend—Common good of Burgh—Statute, Construction of—Glasgow Municipal Act, 9 and 10 Vict. c. 289, § 14—*By the act 9 and 10 Vict. c. 289, the municipality of Glasgow was extended over Gorbals parish; and by the 14th section "the common good and property, heritable and moveable, and means and revenues, and income of every description," belonging to the barony of Gorbals, was transferred to, and vested in, the town council.*

HELD (affirming judgment), *That in construing the Statute, the corporation of Glasgow were not liable for the arrears of stipend due to the minister of the parish of Gorbals, the parish having been constituted by decree of the Teind Court, and the property yielding stipend not having been part of the common good of the barony.*¹

The judgment of the Court of Session having been brought under the review of the House of Lords, the appellant maintained, in her *printed case*, that the judgment should be reversed—
1. Because, according to the sound interpretation of § 14 of (the Glasgow Municipality Extension Act) 9 and 10 Vict. cap. 289, the whole property of the barony of Gorbals, including the subjects in question, was subject to the liabilities thereof, transferred to and vested in the council of the extended city of Glasgow. 2. Because the distinction relied on by the respondents between the "barony of Gorbals" and the "village of Gorbals" had no foundation in point of fact, so far as related to the application of the 14th section of the statute. 3. Even if the respondents could establish that the village of Gorbals still existed as a separate corporation, distinguishable from the barony of Gorbals, and that the church and other property belonged to the village and not to the barony, the property would be carried to the respondents by the Municipality Extension Act.

The respondents, in their *printed case*, supported the judgment on the following grounds:—
1. The property in question never having formed part of the common good or property of the barony of Gorbals, and never having been held or administered for its behoof, was not transferred to the respondents by the 14th section of the Glasgow Municipal Extension Act. 2. The property, rights, and liabilities in question were expressly excluded from the operation of the said act. 3. According to the sound construction of the act, the respondents were not bound to take over the said property, or to make payment of the arrears of stipend concluded for. 4. The appellant had not averred any case relevant or sufficient to entitle her to maintain the opposite construction. On the contrary, her own allegations, taken in connexion with the statutory provisions founded on, as well as the documents or writings in process, shewed conclusively that her pleas were all untenable in law and fact.

R. Palmer Q.C., and *Neish*, for the appellant.—According to the true construction of the act 8 and 9 Vict. c. 289, § 14, the whole property of the barony of Gorbals passed to the city of Glasgow, subject to its liabilities. The question is, whether this church was part of the common good belonging to the barony of Gorbals. All the formal titles of the lands represent, that these lands are to be held for the use of the inhabitants or feuars of Gorbals, and it cannot be said, that it was part of the property belonging to the village of Gorbals. There is, in fact, no distinction between those two expressions, for the village was merely the name given to the barony in its earlier and transitional stage. But even if the village was something distinct from the barony, still the property belonging to both passes by the words of the Statute 8 and 9 Vict. c. 289, § 4.

The *Lord Advocate* (Moncreiff), and *Sir H. Cairns* Q.C., for the respondents, were not called upon.

LORD CHANCELLOR CAMPBELL.—My Lords, this is an action brought against the magistrates of Glasgow for a stipend alleged to be due from them to Mr. Houston, late the minister of the

¹ See previous reports 19 D. 734 : 29 Sc. Jur. 331. S. C. 32 Sc. Jur. 516.

parish of Gorbals. The pursuer below seeks to make out his case by shewing, that certain property was vested, by act of parliament, in the magistrates of Glasgow as Lords of this barony, being part of the common good of the barony, and that that being so, they became liable to pay the stipend in question. The first thing to be done is to prove, that this property was part of the common good of the barony. Now, it seems to me, not only that there is no such evidence, but that there is clear evidence to shew, that it was not part of the common good of the barony. It was bought by individuals, and administered by individuals, and it never was, so far as I can discover, part of the common good of the barony. But it is upon that ground, that the liability is alleged. And unless that first step is made out, unless that foundation is laid, that this property was the common good of the barony, there is no ground for alleging the liability.

It is unnecessary for me to go through all the minute details of the case. Many observations have been made by several members of your Lordships' House as the argument proceeded; and upon the grounds which have been so suggested, I am satisfied, that this appeal is an entire mistake on the part of those who seek to charge the Corporation of Glasgow with this stipend; and that the remedy, whatever the remedy may be, is not against the Corporation of Glasgow, but that those must be selected who still represent this property in respect of which the liability for the minister's stipend is alleged. The 17th section of the act of parliament has been particularly called to our attention, but that clearly does not at all vary the case nor support the liability alleged by the pursuer. I shall therefore advise your Lordships, that the appeal shall be dismissed with costs.

LORD CRANWORTH.—My Lords, I have nothing to add, as I concur entirely with the view taken by my noble and learned friend. I confess at one time I was a little staggered with the argument that Lord Curriehill used, and if I could have found, that the 14th section of the act of parliament contained anything like a recital, that there was property belonging to the barony, I should have been very much inclined to say, that although that was not strictly borne out, yet inasmuch as there was property in which the barony had to some extent an interest, the recital might be taken to have referred to that; but, on looking at that clause, we find, that there is no such assertion at all. The words are, "That the common good and property belonging to the city of Glasgow, to the barony of Gorbals, to the burgh of Calton, and to the burgh of Anderston, shall be all vested" in the new body. That is just in the same way as with regard to the trust of the 17th section, and just in the same way as with regard to the police fund in the other section; that is to say, that the property would be vested if there was any. They are merely general words introduced in order to meet the case of there being such property—if there was any.

LORD WENSLEYDALE.—My Lords, I am entirely of the same opinion. It is incumbent upon the pursuer to prove, that this was common good, the property of the barony, and he certainly has failed upon the evidence in proving that. It is not proved to be the common good, the property of the barony; and therefore it is not vested in the corporation of Glasgow. The pursuer has the same remedy, that he had before the passing of this act. If there had been any weight in the argument of Lord Curriehill, that the act of parliament purported to pass to the Corporation of Glasgow some public property in the barony of Gorbals, then I think there might have been a question. It might then have been contended, that inasmuch as there was no public property in the primary and true sense of the word, which passed, this, which might be said to be public property in a secondary sense, might have passed. But the act of parliament only says, that if there be any public property in any of these parishes, it shall pass. It is not to be read as saying, that there was public property in each and every one of them. If it had said that, there would have been some weight in that argument, but it does not say that; it merely says, that all public property, that shall happen to be in any of these districts, shall pass to the corporation of Glasgow. Therefore I entirely concur with my noble and learned friends who have preceded me, in the opinion, that this appeal ought to be dismissed.

LORD CHELMSFORD.—My Lords, I entirely concur in the opinions which have been expressed by my noble and learned friends; and I think it quite unnecessary for me to add to what they have said.

Interlocutors affirmed with costs.

For Appellant, Holmes, Anton, and Turnbull, Solicitors, London; David Crawford, S.S.C., Edinburgh.—*For Respondents*, Loch and Maclaurin, Solicitors, London; Simon Campbell, S.S.C., Edinburgh.