for which he had entered in the roll the sum of £760. That valuation is supported by comparison with similar laundry premises throughout the city. The figures given by the Assessor were not challenged, with the exception of the cost of the buildings, which the appellants stated did not exceed £9000. The Assessor accepted that alteration on his figures, and in respect thereof he intimated that he was willing to reduce his valuation to £730.

"6. Prior to the meeting of the Appeal Court the Assessor had several meetings with Mr John Bell and his agent, at which the foresaid valuation was discussed, without any reference being made to the existence of a lease. It was only when the Assessor definitely refused to reduce his valuation that the appellants' agent for the first time mentioned a lease.

"7. The said lease was not produced to the Assessor before the meeting of the Court, and is dated only a few days before the date when the Court was held."

The appellants contended that the lease produced was a *bona fide* one, and that the entry in the roll should be altered accordingly to £360. The Assessor denied that the lease was *bona fide*, and the Magistates upheld his contention and fixed the valuation at £730. The appellants obtained a case.

Argued for the appellants—(1) The Assessor should have taken the lease as the basis for valuation; it was a *bona fide* lease, and it lay on him to prove that it was not. It was immaterial that the lease was between relatives, or that the majority of the shares in the limited company, the lessees, were held by the lessors—*M'Lachlan* v. *Assessor for Ayr*, 24 R. 734, 34 S.L.R. 618. (2) In any case, the figure arrived at by the Assessor was excessive, and the case should be remitted to the Magistrates for inquiry into the value of the subjects.

Argued for the Assessor—(1) The lease was not *bona fide*. The date at which it was entered into, and the fact that virtually all the shares were held by the lessors, proved this. In *M'Lachlan's* case the lessor was interested only to the extent of one-third. (2) It was now too late for inquiry; appellants should have led their evidence when the case was before the Magistrates.

LORD STORMONTH-DARLING — We have heard nothing to justify us in disturbing the decision of the Magistrates. They have disregarded the lease as the basis of valuation on the ground that it was not a *bona fide* one. Now, Lord Kyllachy, in the case of *M'Lachlan* v. *Assessor for Ayr*, 24 R. 734, mentioned as one of the grounds on which a lease might be so disregarded, a case "where it appeared that the landlord and tenant were in substance the same person." That is obviously the ground on which the Magistrates have proceeded here, without imputing to those responsible for the transaction anything like bad faith in a moral sense. The facts show that the two gentlemen who were proprietors of the subjects let had themselves so overwhelming an interest in the company to which the subjects were leased, that the amount of rent payable for the subjects came to be a matter of no importance; and in these circumstances I cannot hold that the Magistrates were wrong in refusing to regard the lease as a proper commercial transaction.

With regard to the appellants' second point, viz., that the Magistrates, after disregarding the lease, arrived at a wrong figure for the valuation, I think the answer is that the objection comes too late. The proper time for satisfying the Magistrates that the Assessor proposed too high a figure was when the case was before them. But no evidence was led to that effect, and I think, therefore, that it would be *pessimi exempli* if we were at this stage of proceedings to remit the case to the Magistrates for further inquiry.

LORD KYLLACHY—I concur.

The Court were of opinion that the determination of the Magistrates was right.

Counsel for Appellants — James Clark Burt. Agent—John Baird, Solicitor.

Counsel for Respondent—Cooper. Agents —Wishart & Sanderson, W.S.

HOUSE OF LORDS.

Tuesday, May 17.

(Before the Lord Chancellor (Halsbury), Lords Macnaghten, Davey, and Robertson.

PARKER AND OTHERS *v.* THE LORD ADVOCATE.

(*Ante*, March 18, 1902, 4 F. 698, 39 S.L.R. 537.)

Crown—Mussel-Fishing—Property.

Mussel-scalps on the foreshore and bed of the estuary of a public navigable river belong to the Crown as a patrimonial right, and not merely in trust for the public.

The case is reported *ante ut supra.*

The pursuers appealed.

At delivering judgment—

LORD CHANCELLOR—In this case I think the judgments of the Lord President and the Lord Ordinary are complete and exhaustive, and I do not wish to add a single word to them. The Lord President has, I think with great precision, traced the origin and the application of the Crown rights, and I do not think there is any difference in the law applicable to those Crown rights between the law of England and the law of Scotland. I am therefore of opinion that the judgment of the Lord President and his colleagues should be affirmed and this appeal dismised with costs.

LORD MACNAGHTEN—I am of the same opinion. The judgment of the Lord President is so clear and complete that I do not desire to add a word to it.

LORD DAVEY—I concur. I have carefully considered the judgment delivered by Lord Kincairney in the Outer House and by the Lord President with the concurrence of his colleagues in the Inner House and the decisions which are therein referred to—and I think that the opinion unanimously expressed by those learned Judges is amply borne out by the authorities quoted by them. Whatever doubts may have been entertained or different opinions expressed in former times, it must now be taken to be established by a series of authorities extending from at least the beginning of the last century that mussel scalps and mussel fishings may be a competent subject of grant by the Crown. I do not think that the attempt made by the appellants to explain the grants of mussel fishings by attributing them to the exercise of the prerogative of the Crown over property held in trust for the public in supposed analogy to English law can be maintained; and I think that the better opinion is that which I consider to be now established law in Scotland, viz.—that mussel fishings are part of the heritable patrimonial property of the Crown. I cannot add anything to the reasons for their judgment expressed by the learned judges.

LORD ROBERTSON—I entirely agree in the judgment of the Lord President and in the appreciation of that judgment expressed by my noble and learned friend on the Woolsack.

Counsel for the Pursuers (Appellants)—Haldane, K.C.—Macmillan—Grant Sanders. Agents—J. A. B. Horn, S.S.C., Edinburgh—Bramall, White, and Roberts, London.

Counsel for the Defender (Respondent)—The Lord Advocate (Dickson, K.C.)—The Solicitor-General (Dundas, K.C.)—Vaughan Hawkins—Pitman. Agents—Davidson & Syme, W.S., Edinburgh—R. Ellis Cunliffe, London.

COURT OF SESSION.

Thursday, May 12.*

FIRST DIVISION.

[Lord Kincairney, Ordinary.

THE LORD PROVOST, MAGISTRATES, AND COUNCIL OF THE CITY OF EDINBURGH *v.* NORTH BRITISH RAILWAY COMPANY.

Road—Public Right-of-Way—Presumption—Prescription.

Where in an action for declarator of public right-of-way over a road which was originally a private road, use of the required character by the public during the later years of the prescriptive period is established, but the evidence as to the earlier years is indefinite or ambiguous, there can be no presumption that the use in the earlier years was of the same character as in the later, but the use must be established by distinct and positive evidence for the entire period.

Road—Public Right-of-Way—Prescription—Land Held for Statutory Purposes—Railway.

A railway company for the purpose of forming its line of railway acquired the *solum* of a private road and carried the road over the railway by a bridge. It subsequently acquired additional land, including the *solum* of a further portion of the road, for sidings and an enlargement of a goods station; but it did not at once use the portion occupied by the road, continuing to hold it until such time as it should be required. Some years later, the railway company having settled the private rights in the road, proposed to close it and to take down the bridge, which had become unsafe. In an action for declarator of public right-of-way over the road, based on the ground of prescriptive possession, *held* that such a right being inconsistent with the statutory purposes for which the railway company purchased and possessed the subjects could not be acquired, and that whether the lands had been purchased under compulsory powers or by agreement.

Road—Street—Private Street—Proprietor's Power to Convert to Other Uses—The Edinburgh Municipal and Police Act 1879 (42 *and* 43 *Vict. cap. cxxxii*), *secs.* 5, 112, *and* 151.

The Edinburgh and Municipal Police Act 1879, section 5, *inter alia*, defines "street" to include "any street, square, close, wynd, alley, highway, lane, road, thoroughfare, or other public passage or place and bridges open to be used by the public," and "private street" to mean "any street maintained by persons other than the Magistrates and Council."

Section 112, *inter alia*, enacts that the Magistrates and Council "shall have the charge, control, and superintendence of the carriageway of all streets and courts and foot-pavements and footpaths within the burgh by whomsoever maintained."

Section 151 provides—"No person shall make any encroachment, obstruction, or projection in, upon, or over any street, . . . or put up any steps, railings, gratings, erections, or projections which shall in any way interrupt, obstruct, limit, narrow, or interfere with same."

Held that while the owners of a private street must submit to the superintendence and control of the Magistrates for the safety and advantage of the community so long as the private street did in fact remain a street, the statute did not interfere with their right to convert their property to other uses if independently of the statute it

*Decided Thursday, March 17.