

III. LEITH BURGH PROVISIONAL ORDER.

25th to 30th April 1907.

(Before Mr John A. Dewar, M.P., *Chairman*, Lord Saltoun, Lord Torphichen, and Viscount Dalrymple, M.P.)

Provisional Order—Burgh Rates—Exemption from Burgh Rates in Favour of Harbour and Dock Commissioners—Repeal of Exemption—Leith Burgh Police Act 1848 (11 and 12 Vict. c. cxxvii), sec. 45—Burgh Police (Scotland) Act 1892 (55 and 56 Vict. c. 55), sec. 373.

This Order was promoted by the Leith Town Council. Its objects were—1. To reimpose upon the Leith Harbour and Docks the Public Health Assessment which had been paid by them from 1867 down to 1905, but which, following on a decision of the Court, had not been paid since that date. 2. To impose upon the Leith Harbour and Docks liability for the ordinary local rates of the Burgh of Leith from which they had hitherto enjoyed a certain statutory exemption. 3. To enable the Corporation of Leith to choose representatives for the Harbour Board from amongst the members of the Corporation as well as from persons outside the Council; and (4) to give the Corporation powers to borrow for a suspension account in connection with its tramways.

The Order was opposed upon all of these points by the Commissioners of the Harbour and Docks of Leith, but opposition was withdrawn upon the fourth, and eventually upon the first point.

After the opening statement of counsel for the promoters evidence was led for the promoters and for the Dock Commissioners. The circumstances attending the exemption in question, as brought out in evidence and in the statements of counsel, may be summarised as follows:—In the end of the eighteenth and beginning of the nineteenth century Leith was a burgh of barony subject to Edinburgh, and possessing no separate corporate existence. There was also the harbour of Leith, which Edinburgh about this time began to develop, assisted largely by Government loans, as the needs of commerce required. In 1771 certain Commissioners were appointed to attend to certain town matters in Leith, reserving to the City of Edinburgh “all jurisdiction, rights, &c., competent and belonging to them, belonging to the village of Leith. . .” In 1806 (46 Geo. IV, c. 36) the Commissioners of Leith had certain powers conferred upon them with regard to watching, paving, &c., and a limited authority to rate. This Act (sec. 15) contained the reservation that nothing therein should relieve Edinburgh of burden of paving the streets and shore of Leith, or in any other respect whatever.

In 1826 (7 Geo. IV, cap. cv), separate Leith Dock Commissioners were appointed, and in the following year, 1827, an Act to Provide Municipal Government for Leith (7 and 8 Geo. IV, cap. cxii), appointed

Police Commissioners to conduct the administration of the burgh, with power to impose an annual assessment for the purposes of the Act not exceeding 1s. 6d. on the valued rental. This Act (sec. 49) contained the following reservation—“Provided always that nothing in this Act contained shall authorise the imposition of the assessment hereby authorised upon any parts of the rates and duties leviable by the Harbour and Docks of Leith, nor alter or affect any existing obligations upon the Lord Provost, Magistrates, and Council of the City of Edinburgh, or the Commissioners for the Docks and Harbour of Leith, to watch and light the docks and harbour foresaid, or any part thereof.” In 1833, after the Reform Act of 1832, Leith was created a Parliamentary Burgh. In 1838 the financial difficulties of Edinburgh led to the passing of the Agreement Act of that year (1 and 2 Vict. cap. 55). Under this Act (further referred to below) the Burgh of Leith was finally separated from Edinburgh, and the Leith Harbour and Docks were transferred to and vested in Commissioners appointed by the Act. The Leith Burgh Police Act of 1848 (11 and 12 Vict. cap. cxxiii), repealed the former Police Act of 1827, but by section 45 re-enacted the exemption from assessment in favour of the docks in practically the same terms as section 49 of the Act of 1827 above quoted. Since that date various attempts had been made by Leith to get rid of the exemption in question. (a) In 1863 the burgh of Leith applied for and obtained a Provisional Order which, *inter alia*, repealed section 45 of the Leith Burgh Police Act 1848. But the confirming Statute (26 and 27 Vict. cap. 60) in section 3 re-enacted the exemption in the following terms—“The exemption contained in the 45th clause of Local Police Act recited in the Provisional Order shall continue in full force notwithstanding the General Police and Improvement Act of 1862, and shall extend to all assessments to be made under the same.” (b) In 1871 the Corporation of Leith were advised that the provisions in dispute exempted only the rates and dues of the docks from liability to assessment, but did not apply to lands and heritages. They accordingly raised an action in the Court of Session in which they sought declarator that the whole piers, docks, buildings, lands, &c., belonging to the Commissioners and situated within the burgh of Leith were liable to be assessed for police purposes, and for the general improvement rate under the General Police and Improvement (Scotland) Act 1862. In this action they were unsuccessful, the Lord Ordinary (Gifford) holding that the exemption applied to lands and heritages. (c) In 1875 the Leith Dock Commissioners promoted a Bill in Parliament which contained a clause continuing the exemption. The Burgh of Leith appeared and asked for its abolition. Evidence was led before Committees of both Houses, and it was ruled that the clause of exemption should stand, the Chairman of the Committee of the House of Commons stating that this was “a very important question,

and one which we consider ought to be dealt with by a Public General Act, inasmuch as it relates to a great number of bodies throughout the country." (d) During the passing of the Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55) an endeavour was made to have the matter dealt with. That Act provides (sec. 373)—"No assessment authorised by this Act shall be imposed on any lands or premises exempt by Act of Parliament at the commencement of this Act, from any corresponding assessment authorised to be imposed by the General Police Acts or the Local Police Acts respectively applicable to the burghs named in Schedule II of this Act annexed, or any portion of a local Police Act expressly saved by this Act, unless and until such exemption is repealed by Provisional Order, confirmed by Parliament, as hereinbefore provided." The exemption was again continued in the Burgh Police (Scotland) Act 1903 (3 Ed. IV, cap. 33), section 98.

In connection with the financial position of the Leith Docks, the following circumstances were also referred to. As has been already stated, the development of the docks was originally entirely undertaken by Edinburgh assisted largely by Government loans, and especially in 1800 (39 and 40 Geo. III, cap. 57), and again in 1805 (45 Geo. III, cap. 104), when certain advances were authorised by the Treasury to the City of Edinburgh for this purpose. These Acts provided that the rates of the harbour and all estate therein should be assigned to the Barons of Exchequer in Scotland in security for the said advances. In 1825 (6 Geo. IV, c. 103) the Treasury advanced a sum of £240,000 to the City of Edinburgh to pay off money borrowed from the general public (the existing Government debt being extinguished to the extent of £25,000 in consideration of the conveyance to the Crown of a site for a naval base). In security of this advance an assignment of the rates and property of the docks was made to the Barons of Exchequer in Scotland. In 1838 the general debt of the City of Edinburgh amounted to £800,000, including the £240,000 of Government debt, and the financial confusion of the City led to the passing of the Agreement Act of that year (*supra cit.*) The provisions of this Act were to the following effect. The burgh of Leith was finally separated from Edinburgh, separate Commissioners were appointed to administer the Leith Docks, an obligation was laid upon the Dock Commissioners to pay annuities amounting to £7680 per annum to certain of the creditors of Edinburgh, the petty customs from Leith Docks hitherto collected by Edinburgh were transferred to Leith, the Government debt of £240,000 was postponed to that of the other creditors, the whole surplus revenue of the harbour and docks was assigned to the Treasury for payment of the interest upon and in extinction of the capital of the said Treasury debt. In 1860 the debt to the Treasury stood at about £228,000. In that year the debt was extinguished by pay-

ment of a composition of £50,000 authorised by special Act of Parliament (23 and 24 Vict. cap. 48).

Argued for the promoters—In making the present application the promoters were adopting the method of dealing with the question which was contemplated by the Legislature in the Burgh Police Act, section 373. The exemption which it was sought to repeal had been granted in special circumstances which no longer exist. It was originally granted in the interests of the Crown, in whom the property and revenue of the docks were vested in security for money advanced. The interest of the Crown ceased in 1860, when the exemption might reasonably have ceased. The Court had taken this view of the position of the docks in deciding their liability for assessment for poor rate, as illustrated by two decisions before and after 1860 respectively, viz., *Inspector of North Leith v. Leith Dock Commissioners*, 1852, 15 D. 95, *aff.* 2 Macq. 100 (*commented on in Adamson v. Clyde Trustees*, 1860, 22 D. 606); and *Gardiner v. Leith Dock Commissioners*, 1864, 2 Macph. 1234, *aff.* 4 Macph. (H.L.) 14. Upon the merits of the case it was not equitable to the community of Leith that the exemption should continue. It could not be contended that the nature of the docks as a public or national concern should entitle them to free use of the streets and enjoyment of the other advantages of municipal expenditure of the burgh without contributing their share to that expenditure. The result would be to throw upon the ratepayers of Leith the burden of the upkeep of their streets, &c., for the benefit, *pro tanto*, of this national concern. Other docks, such as Glasgow, Grangemouth, and others, bore the burden of local rates. The Agreement Act of 1838 could not be founded on as making a settlement for all time—circumstances had entirely changed. The docks were now free from debt and financially successful, and were fully able to bear a due share of the burgh rates. The promoters were willing to make allowance to the docks either by way of money payment or by way of rebate in respect of the watching, cleansing, &c., which they at present undertook.

Argued for the Dock Commissioners—No cause had been shown for the repeal of the exemption. Its origin was not in the interests of the Crown, as argued by the promoters, but in the following circumstances—(1) It was Edinburgh that made the docks, not Leith. Leith put no capital into them and expended no municipal care in fostering their trade. (2) Edinburgh had borne the burden of lighting, cleansing, watching, &c., until the docks were separated, since which date these duties had been performed by the docks for themselves. (3) In the general parliamentary view docks were in a sense a class of entity by themselves. In view of these circumstances, and in view of the fact that no statutory exemption had ever existed as regards poor-rate, the argument of the promoters upon the poor-rate had no application. The arrangement under the Act of Agreement of 1838 (above

referred to) had finally determined the independence of the docks of either municipality and recognised them as an independent national concern. No change of circumstances had arisen to justify the revival of that agreement; on the contrary, the question of the existing exemption had been repeatedly under Parliamentary consideration down to as late a date as 1903, and on every occasion the exemption had been continued. It was impossible that the docks which did their own lighting, cleansing, and road-maintaining were to be assessed for these purposes in the town of Leith.

The Commissioners found the preamble proved by the casting vote of the chairman in regard to the repeal of the exemption of the Dock Commissioners from liability for the burgh general assessment, the general improvement rate, the burgh sewerage rate, and the roads and bridges assessment, in respect, in all cases, of one-half the annual value of the lands and premises of the dock undertaking as appearing on valuation roll. The Chairman and Lord Torphichen voted for the repeal of the exemption *quoad* one-half of these rates and assessments, and Lord Saltoun and Viscount Dalrymple voted against such repeal.

The Commissioners, unanimously, also found the preamble proved as regards the public health assessment and as regards the tramways account, but not proved as regards the proposal to repeal the provision that the persons elected Dock Commissioners by the Town Council of Leith should not at the time be members of the Town Council.

In the House of Commons on 16th July 1907, on the second reading of the Confirmation Bill of this Order, a motion was made that the Order be remitted to a Committee of both Houses for rehearing. The motion was supported on the ground that the Commissioners had been equally divided in opinion upon the question of exemption; the question was one of general importance and vitally affected the financial position of the docks, and it was not expedient that the *status quo* should be reversed only by a casting vote. This was clearly a case to which the provisions of the Private Legislation Procedure Act for a rehearing should apply.

The motion was opposed upon the merits of the decision, and also upon the ground that a rehearing should not be granted unless either new facts had emerged or a case of flagrant injustice had been made. The motion was defeated by a majority of 156 (80-236).

In the House of Lords on August 2nd, on the motion for the second reading of the Bill, Lord Saltoun moved its rejection on similar grounds to those advanced in support of the motion for rehearing in the House of Commons. Lord Balfour of Burleigh regretted that a rehearing had not been ordered. He deprecated throwing out the Bill lest injustice should thus be done to one or other party. He instanced the case of the *Rutherglen Burgh Order* of

1906 (reported *ante*), where a decision had been given contrary to justice, but where, under pressure of the House of Lords, an agreement had been arrived at between the parties. He moved for an adjournment, that such an opportunity might be given here. The motion for adjournment was agreed to.

On August 7th, parties not having come to an agreement, the Bill was read a third time. On the question that the Bill do pass the Earl of Plymouth moved that clause 4 (repeal of existing exemptions) be struck out of the Bill. This motion was carried by a majority of 8 (45-37).

Counsel for the Promoters—Wilson, K.C.—Murray. Agent—T. B. Laing, Town Clerk, Leith.

Counsel for the Leith Harbour Commissioners—Dickson, K.C.—Clyde, K.C.—J. H. Millar. Agent—Victor Noel Paton, W.S.

IV. PORTOBELLO AND MUSSELBURGH TRAMWAYS (LEVENHALL EXTENSION) ORDER.

The object of this Order was to enable the Musselburgh and District Electric Traction Company, Limited, to construct a tramway from Levenhall, in the burgh of Musselburgh, for a distance of about half a mile to the eastern boundary of the burgh, thus completing an extension of the company's line from its present terminus at Levenhall eastwards as far as Cockenzie and Port Seton.

The Order was opposed by the Town Council of Musselburgh, who sought to impose upon the Tramway Company an obligation to widen certain parts of the road at their own expense. After hearing evidence the Commissioners found the preamble proved, and after further discussion the Commissioners decided that in the event of the Board of Trade requiring the road to be widened as a condition of sanctioning the tramway the Tramway Company should execute the widening at their own cost, but if the Board of Trade did not impose that condition and the Town Council resolve to execute the widening the Tramway Company should contribute one half of the cost, not exceeding £1000.

Heard in Edinburgh 29th and 30th April 1907.

V. EDINBURGH AND DISTRICT WATER.

This Order was promoted by the Edinburgh and District Water Trustees. Its objects were, *inter alia*, the construction of certain subsidiary works, definition of the height to which the trustees might be called on to supply water, the authorisation of retiring allowances to officials, alteration of certain provisions as to sinking fund. Upon these points the Order was unopposed. The Order further sought powers in connection with a rail-