of that but the record of the decree of valuation. That record is made with reference to the proceedings of the Commissioners, and the record of the proceedings of the Commissioners will be the record of the valuation made by the Commissioners, and the valuation made by the Commissioners would be embodied in the decree of the Commissioners.

Some little attempt was made to found upon the language used this further observation, that the words do not warrant the implication or presumption of its being a decree of the Superior Commissioners, and that it might be a decree of the Sub-Commissioners never affirmed. That conclusion cannot be drawn, for if it was a decree of the Sub-Commissioners never affirmed, there would have been no record made of it in the proper sense of that word in the Scotch meaning of the word "register:" Therefore we are bound to assume that it was a final proceeding, because it appears to have been recorded, and this document appears to be an extract from that record. All these things are fairly to be inferred from the language which is here used. One cannot but admire the *nimia activitas* with which these things are regarded in the Court below, for I can assure your Lordships that if this had arisen in an English court of justice it might have been made the subject of observations for five minutes, and at the end of that period of time it would have been finally decided. There is no doubt that this document ought to be accepted in the manner in which it has been accepted in the Court below, and that this appeal ought to be dismissed, with costs.

Lord Colonsay—My Lords, I have nothing to add to the opinion which has now been expressed by my two noble and learned friends. I will merely observe, that I think that the language of this document on page 15 comprehends everything that is necessary in Scotland to a valuation of teinds. These words are inconsistent with any other supposition being entertained. All that we find here is not to be accounted for except as the necessary result of a regular valuation. I will just make one other remark with reference to what has been said by my noble and learned friend who spoke last, as to the use of the word "register," to the effect that the word "register" is very often substituted in Scotland for the word "record." I would remark that in the Act of 1707, the word used is "record:" Therefore the inference which my noble and learned friend draws is perfectly correct.

Interlocutor affirmed, and appeal dismissed, with costs.

Agent for Appellant—Warren H. Sands, W.S., and Loch & Maclaurin, Westminster.

Agents for Respondents—W. & J. Cook, W.S., and Connell & Hope, Westminster.

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## *Monday, July* 11.

### COMMISSIONERS OF SUPPLY FOR COUNTY OF LANARK *v.* NORTH BRITISH RAILWAY CO.

(*Ante*, vol. vi, p. 179.)

*Assessment — Railway — Police-Rates—5 Geo. IV, c.* 49—3 *and* 4 *Will. IV, c.* 114—5 *and* 6 *Will. IV, c.* 55. By a Railway Act it was provided that the grounds conveyed to the Company "shall not be liable for any duties or casualties to the superiors, nor for land-tax or any public or parish burden." *Held* (reversing decision of First Division, and in conformity with *Duncan* v. *S. N. E. Railway*, *ante*, p. 459) that the Railway Company were liable for police and prison rates in respect of the land conveyed to them for the purposes of their undertaking.

In 1867 the North British Railway Company raised an action of declarator against the Commissioners of Supply for the county of Lanark, seeking to have it declared that the Company was exempt from certain assessments made by the defenders upon the Company. The Act for making the Monkland and Kirkintilloch Railway, passed in 1825, provided "that the rights and titles to be granted in manner above mentioned to the said company of proprietors to the premises therein described shall not in any measure affect or diminish the right of the superiority of the same; but notwithstanding the said conveyances, the rights of superiority shall remain as before entire in the persons granting the said conveyances; and the grounds so conveyed to the said company of proprietors shall not be liable for any duties or casualties to the superiors, nor for land-tax nor any public or parish burden." The Act for making the Slamannan Railway, passed in 1835, also provided that the grounds should not be liable in payment of cess, stipend, schoolmaster's salary, or other public or parochial burdens, but the same should be paid by the original proprietors of such grounds. These railways now belonged to the North British Railway Company. Notwithstanding these exemptions, the Commissioners of Supply had made an assessment on the Railway Company for prison and county police purposes.

The Lord Ordinary held that the Company were exempt from these assessments, and the First Division adhered to his interlocutor.

The Commissioners appealed.

Sir R. Palmer, Q.C., and Mellish, Q.C., for them, argued—Since the judgment was delivered in the Court of Session in this case the House has decided the case of *Duncan* v. *The Scottish North-Eastern Railway Company*, and held that similar exemptions in old railway Acts were repealed by the General Poor-Law Act of 1845, and the present case is not substantially different from that case. It follows that the interlocutor in the present case must be reversed, for though the case of *Duncan* turned on the Poor-Law Act, and the present case turns on the Valuation and Prison Acts, still there are no differences in principle between these Acts, and the same rule must apply to both.

Lord Advocate and Anderson, Q.C., for the respondents, answered—The case of *Duncan* turned on peculiarities of the Poor-Law Act, which was held to have so entirely altered the mode of assessment as to amount to a new enactment and a new burden. But here the County Police and Valuation Acts were not intended to make any substantial difference in the mode of valuation, and not to alter the liability to assessment. The judgment, therefore, was right.

At advising—

Lord Chancellor—My Lords, in this case it appears to me that we are bound by the conclusion at which we have already arrived in the case of *Duncan* v. *The North Eastern Railway Company of Scotland*, for, so far as the case now before us differs

from that case, it appears to me that the difference is not favourable to the contention of the North British Railway Company to be entitled to this exemption. The clauses in the two Acts which have been referred to, the Monkland Act and the Slamannan Act, are somewhat different in their wording, the one Act, namely, the Monkland Act, containing simply a declaration as to exemption, by which it is stated that the Railway Company are not to be entitled to the superiority when they purchase land; "but notwithstanding the said conveyance, the rights of superiority shall remain as before, entire in the persons granting the said conveyances; and the ground so conveyed to the said Company shall not be liable for any duties or casualties to the superiors, nor for land-tax, nor any public or parish burden." In the other Act, the Slamannan Railway Act, the clause is more like that which is contained in one of the Acts which were before us on the former occasion, for it states "that the grounds to be acquired for the purposes of this Act shall not be liable in payment of any feu-duty, casualties of superiority, cess, stipend, schoolmaster's salary, or other public or parochial burdens, but the same shall be paid by the original proprietors of such grounds, except in case the said Slamannan Railway Company shall purchase and acquire the whole grounds."

Now, in the case that was before us upon the former occasion, we came to the conclusion, though one of your Lordships (Lord Colonsay), while agreeing in the conclusion come to, did not altogether adopt the same grounds for that conclusion, that inasmuch as this exemption was made in respect of the charges which were payable by the then owners of lands, as the owners of lands were then chargeable, inasmuch as a subsequent Act of Parliament was passed which entirely changed the mode of assessment, and the incidence of the charge of the particular rate was then in question, namely, the poor rate, that whatever might have been the effect of the preceding exemption, that exemption came to an end upon the passing of the Act of 1845, which so largely modified the mode in which the burden was to be imposed and borne.

In truth, according to both these Acts now before us it would appear—assuming that the Monkland Act left the proprietors of the superiority liable to the charge—that the original proprietor would be left liable to a charge of this description, namely, the charge, which he would bear according to the then valued rent (not the actual rental) of the property which he had disposed of to the Company, of all burdens assessed at that time upon the Company. We thought that it was not intended that any different burden, or even any modification of the same burden, which became so complete a modification as wholly to alter the incidence and character of that burden, would be included in the exemption which the Company contended that they were entitled to. We came to the conclusion in that case that the Company were exempted on the one hand, and the proprietor burdened on the other, with the payment of an assessment made according to the principles contained in the Valuation Act. Instead of paying upon a valued rent of the property which he had disposed of to the Railway Company, he would pay an assessment which was wholly independent of the extent of acreage of that land, which was wholly independent in fact of what the valued rent of that land had been, but which was dependent upon the success of the speculation of the Railway Company, not in that parish only, but in other parishes, and to an apportioned part of the burden imposed upon the whole profit of the railway by its successful speculations, as carried on to any extent, quite irrespectively of what might have happened in the particular parish itself.

It appears to me that the vendor, upon the proper construction of this Act, would remain subject to, and that the Company would remain exempt from, every burden which was then imposed upon the land, notwithstanding the increased amount of rate that the land might become liable to in respect of the improved value of that land. Supposing, for instance, as I took occasion to observe in the former case, that a cotton mill, or some other valuable property, had been erected upon the land, the burden in respect of that cotton mill would be a burden which, according to the existing laws, the property was to be taken to be subject to and which it was well known to be subject to, at the time, it being assessable according to its true value. And as long as things remained in that state, and no change was made by the Legislature, and no further Act of Parliament was passed in any way to impose a new duty, that would be the state of the obligations between the Railway Company on the one hand, and the proprietor who had sold his land to the Railway Company on the other. But when a new burden was imposed, of such a character as I have described, the whole relation of the parties was entirely changed, and to say that under a parliamentary contract, to be subject to the burden then existing, and to be subject to all such alterations and changes as the existing state of the law would authorise in those burdens, a person was to be subject to increased burdens consequent upon and occasioned by a totally new system of legislation, would have the effect of entirely violating the principles of the contract entered into between the parties.

In this case there is the additional circumstance that every one of the burdens here is an entirely new burden in this sense; that at the time the Railway Acts were passed the particular charges here in question, namely, those as to weights and measures, and as to prisons and police, were not charges at all affecting the land purchased of the different proprietors in the mode in which they have now been made to affect them. They were charges which had to be raised according to different modes and different courses of procedure. In some cases, as I understand it, from the facts of the case, the different burghs had to bear certain charges as to the police, and the counties had to bear the charges in a different mode. But the mode adopted with respect to the charge for police in the present Act, and the mode of a charge adopted in the other Act, seem to have been of a totally different character from anything that existed at the time of what I may call this parliamentary contract being carried into effect.

Therefore, so far as I see, this case is not merely subject to the difficulties which we should have had in holding the Railway Company to be exempted in the case of *Duncan* v. *The North Eastern Railway Company of Scotland*, but it is also subject to other difficulties, and it is not to be distinguished by any sound distinction that can be drawn between the two cases; and the distinctions which have been referred to upon the present occasion, I think, will hardly warrant us in coming to the

conclusion of there being a substantial difference between this case and the case referred to at the beginning of page 32 of the respondent's case, with respect to which, after setting out the judgments of your Lordships, it is said—"The two grounds of decision, therefore, in the *St Vigeans* case were the statutory creation of a totally new subject of assessment, under the name of "Railway," and the distinct abrogation by the Poor-Law Act of 1845 of all laws, statutes, and usages at variance or inconsistent with its provisions. Neither of these grounds can apply to the present case. It is no part of the purpose of the Lands Valuation Act of 1854 to introduce any new subject of assessment. It merely introduces a new mode of assessment, and expressly declares that it is not to alter or affect any exemption or liability previously existing. Although, therefore, that Act necessarily alters the statutory value of the lands and the heritages belonging to them for police and prison purposes, neither that Act nor the Police and Prison Acts which adopt it in any way affect the subject or the character of the assessment, or take away the privilege of the Railway Company of exemption from the burden.

I think that distinction is far more in words than in any real principle; because, in substance, what we said on the former occasion, with reference to the mode of valuing the Railway, applies exactly in terms to what has been done under these different Acts, namely, the Railway is directed to be assessed in a manner totally different, and with a burden totally different from that which, as it appears to me, was created by the original statutory arrangements between the parties.

As to the clause "that it is not to alter or affect any exemption or liability previously existing," I apprehend that that does not refer at all to any arrangement of a character such as we found in the previous Acts, but to a case where there was a real exemption from all liability, past, present, or to come, which of course is a conceivable case. Where there were certain special grounds of exemption distinctly pointing to the future as well as to the past, it was meant that was not to affect that exemption, or any arrangement of the kind.

The argument was put before us very ingeniously of the possible case of a railway running through a whole county, and one county only, in which case the provisions as to valuation would not come into effect. That was an argument pressed by one of your Lordships (Lord Colonsay) in his opinion upon the case of *Duncan* v. *Scottish North Eastern Railway Company;* and no doubt there is much to be said in that view of the case of the possibility of such a state of circumstances arising that the burden of assessment might be supposed to take a character not so entirely different from that of the original burden as it existed at the date of the original Act. But, at the same time, if I may humbly say so, in my judgment I think that could hardly amount to any such conclusion in substance, because I apprehend that these regulations about valuation in the Railway Acts contemplate all the possible cases of railway companies existing, of course including this possibility of a railway company passing from one county into another; and what is more, they contemplate the possibility of a railway being extended—as probably it will from time to time be extended—and as it has in fact in these cases of the railways before us been extended, from one county into another; and they point out that which is to be the relation between the parties for all time.

I think therefore, in substance, that there is no difference between the two cases, except that, as I have said, there is a somewhat additional circumstance in favour of the view taken by your Lordships in the case of *Duncan* v. *The Scottish North Eastern Railway Company*, that the special burdens now before us are burdens which must have been imposed since the passing of the original Acts under which the Monkland and Kirkintilloch and the Slamannan Railway were constructed and carried into execution. It appears to me, therefore, that the only course we can take upon the present occasion is to reverse the interlocutors complained of, and to pronounce an absolvitor.

Mr ANDERSON—In the other case it was a remit, my Lords, to the Court below. Probably your Lordships will pronounce the same judgment in this case *mutatis mutandis*, as in the former case.

LORD CHANCELLOR—We have not yet carefully considered how our decision should be framed.

Mr ANDERSON—I think your Lordships will be of opinion that it must be framed as it was in the case of *Duncan* v. *The North Eastern Railway Company.*

LORD COLONSAY—My Lords, I concur in the judgment which is proposed to be pronounced; and I have only to add that, although I did not concur in the reasons assigned for the judgment pronounced in the *St Vigeans* case, yet I think the principles recognised in that judgment, and the grounds on which the majority of your Lordships who gave your opinions were rested, are the principles on which this case must be decided. I hold them to be settled principles; and they must govern the case before us. I apprehend that the judgment in substance must be, in the first place, as regards the declarator, an absolvitor from the conclusions of the action; and, in the next place, as regards the reasons of the suspension, repelling the reasons of suspension. There is an exception with reference to a small sum, some £14 or £15, which is a matter on which the judgment of the Court below is not appealed from; but in the former case I think there was a remit with a declaration by the House of the grounds on which that judgment ought to proceed, and of the results at which the judgment ought to arrive; and perhaps that may be done here. If that be so, it will be necessary merely to remit the case to the Court of Session, to repel the reasons of suspension.

LORD O'HAGAN—My Lords, if this question had been still open to controversy, I should have liked to have had time to consider the very ingenious and persuasive argument which has been presented on the part of the respondents. But after listening carefully to the able argument at the Bar, I do not think that the case is distinguishable from that which has been already decided. It appears, indeed, not only to be in reality undistinguishable, but to be confessedly undistinguishable. In fact, it appears to me to be an *a fortiori* case; therefore I concur in the judgment proposed to be pronounced.

Interlocutors reversed, with finding and remit.

Agents for Appellants—Tods, Murray & Jamieson, and Loch & Maclaurin, Westminster.

Agents for Respondents—Hill, Reid & Drummond, W.S., and Connell & Hope, Westminster.