That, under the local Act regulating the port and harbour of Glasgow, these appellants are owners and occupiers of the property in respect of which they are rated, cannot be disputed; but they contend, that they are not such owners and occupiers as were contemplated by the Poor Law Act, for that their ownership and occupation are not beneficial to themselves; that they are merely owners and occupiers for the benefit of the public.

This is the very question which the House decided in the last case. The principle is the same. The Scotch Act does not, any more than the English Act, make an exemption in favour of those who occupy only for the benefit of the public. And on the same grounds on which trustees or commissioners of public docks and harbours are made liable in England they must be made liable in Scotland. I am therefore of opinion, that this appeal is unfounded, and ought to be dismissed.

LORD KINGSDOWN.—My Lords, I was not present at the hearing of the English cases, and I have only to express my entire concurrence in the principles which have been laid down in the judgment in this case.

Interlocutors affirmed with costs.

Appellants' Agents, Hamilton and Kinnear, W.S.; Grahames and Wardlaw, Westminster.—*Respondents' Agents*, W. Burgess, S.S.C.; H. Ward, Westminster.

JUNE 22, 1865.

CALEDONIAN RAILWAY COMPANY, *Appellants*, *v.* STATUTE LABOUR ROAD TRUSTEES OF KILMACOLM, *Respondents*.

Statute Labour—Assessment—Conversion—Poll Tax—General Statute Labour Act, 8 and 9 Vict. c. 41, §§ 13, 14—*The Statute* 8 *and* 9 *Vict. c.* 41, §§ 13, 14, *authorizes the abolition of the personal performance of Statute service, and of the levying of the conversion thereof in money, or any assessment in lieu of such conversion as a poll tax; and thereafter trustees are, in lieu thereof, to assess any sum not greater in amount on all lands, buildings, &c.*

HELD (affirming judgment), *That the word "poll tax" is used in the Statute in a comprehensive sense as denoting all kinds of assessments on occupiers, which were substitutes for Statute labour. Therefore a railway company is subject to the assessment, though, by the local Acts, some of the assessments were not, in a strict sense, a poll tax.*[1]

This was an appeal from interlocutors of the First Division. The question involved turned upon the meaning of the word "poll tax," in the Statute 8 and 9 Vict. c. 41; and whether the Caledonian Railway Company were assessable as occupiers to the highway rate of the parish of Kilmacolm.

The sections of the Statute 8 and 9 Vict. c. 41, were as follows:—§ 13. "And be it enacted, that in all cases in which a sum of money, heretofore exigible as conversion of Statute service, or assessment in lieu thereof, shall, under this Act, cease to be so exigible, it shall be lawful for all such trustees, at a general meeting assembled, to assess, in any county or district of a county, any sum not exceeding the amount of the conversion or other money which, by reason of this Act, shall cease to be exigible, and to cause the same to be levied upon all lands, buildings, and other heritable subjects not hereinbefore exempted from assessment, or to be added to the sums otherwise assessable by any local Act, and that notwithstanding the rate of assessment should be thereby raised above the maximum amount authorized by such local Act; and all such sums so assessed or added shall be levied and applied in the same manner as the money might have been levied and applied, in lieu of which the said sums are assessed; and all such sums shall be payable, one half by the owners, and the other half by the occupiers of the lands, buildings, or other heritable subjects so assessed; and it shall be competent to levy from the occupiers the half payable by the owners, and such occupiers shall be entitled to deduct such half from the rent payable to the owners or other parties having right to such rent."

§ 14. "And whereas it is expedient to abolish the personal performance of Statute service, and the levying of the conversion thereof in money, or any assessment in lieu of such conversion, as a poll tax, be it enacted, that from and after this present year 1845, it shall and may be lawful for all such trustees, at a general meeting assembled, if they shall think fit, to order and direct,

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[1] See previous report 2 Macph. 355: 36 Sc. Jur. 93. S. C. 4 Macq. Ap. 937: 37 Sc. Jur. 513: 3 Macph. H. L. 34.

that in any county, or district of a county, all such performance of Statute service, and all such levying of conversion and assessment in lieu thereof, shall cease and determine."

The *Attorney General* (Palmer), and *Anderson* Q.C., for the appellants.

The *Lord Advocate* (Moncreiff), and *Rolt* Q.C., for the respondents.

Cur. adv. vult.

LORD CHANCELLOR WESTBURY.—My Lords, the contention of the appellants is, that the rate of 5*d.* in the pound made by the respondents is not warranted by the 13th section of the General Road or Statute Labour Act of 1845, inasmuch as, being the only assessment imposed by the pursuers for the year from June 1859 to June 1860, it includes or rather comes in lieu of assessments or highway rates, which it is alleged may still be made under the local Acts applicable to the shire of Renfrew, and which cannot be properly denominated a poll tax. They insist, therefore, that the rate of 5*d.* is bad, because it is substituted for something which could not be abolished under the 14th section of the Act of 1845, viz. the 8 and 9 Vict. c. 41.

The question turns on the true construction of the 13th and 14th sections of the General Statute Labour Act, on which the Act is founded; but to determine the true meaning of these sections it is necessary to have some knowledge of the subject to which they relate.

By the original Highway Act of Scotland, passed in the year 1669, power was given to the Sheriff to call and convene all tenants, cottars, and their servants within the bounds appointed for their parts of the highways, for the personal performance of the necessary labour for repairing the highways. In aid of this personal service the Act contained supplementary provisions for stenting the heritors to the extent of what should be necessary for the repair, but not exceeding 10*s.* Scots upon each hundred pound of valued rent in one year.

In the next year, 1670, another Act was passed, which allowed the attendance of persons at a distance to be dispensed with on paying 6*s.* Scots yearly for every man, and 12*s.* Scots for every horse, to be expended in providing substitutes. This was the first instance of the conversion or commutation of Statute labour. After this year 1670, there was no general Highway Act in Scotland, until we arrive at the General Road Act of the 8 and 9 Vict. c. 41.

In the interval, however, a great number of local Acts were passed applicable to different parts of the country.

With respect to the Acts that apply to Renfrewshire, they substitute from time to time different rates of conversion, to be levied in lieu of the Statute labour imposed by the original Act, and these assessments or conversions being money payments in lieu of individual personal service, acquired the name of Poll tax, which is not an improper denomination of a money rate imposed on individuals as a substitute for personal labour. I have gone through the local Acts which are printed in the case, and they appear to me to be occupied with imposing different rates of conversion in lieu of the original Statute labour, and of the commutation rates imposed by the original Acts of 1669 and 1670, and I think, therefore, that the statutory provisions for the repair of the highways at the time of the passing of the General Road Act of the 8 and 9 Vict. were, (in addition to the right of stenting the heritors, which is an independent thing,) the original duty of Statute labour, and certain assessments by way of conversion or commutation thereof, and all which conversions or assessments would fall under the original denomination of poll tax. Every assessment which is authorized to be made is found on examination to be either in lieu of Statute labour, or of some substitute for or conversion of Statute labour, which had been previously imposed, and the provisions for keeping the highways in repair may be ranked under these three general denominations, Statute labour, poll tax, and tax on the heritors.

If these conclusions are so far correct as to warrant or account for the use and application of the general term "poll tax," it will be easy to understand the meaning of the 13th and 14th sections of the General Road Act. Your Lordships will find the 14th section is in these terms: "And whereas it is expedient to abolish the personal performance of Statute service, and the levying of the conversion thereof in money, or any assessment in lieu of such conversion, as a poll tax, be it enacted, that from and after this present year 1845, it shall and may be lawful for all such trustees, at a general meeting assembled, if they shall think fit, to order and direct, that in any county, or district of a county, all such performance of Statute service, and all such levying of conversion and assessment in lieu thereof, shall cease and determine."

The appellants insist, that under this section there is no power to abolish any conversion in money of Statute labour, or any assessment in lieu of such conversion unless such conversion and assessment respectively may be denominated a poll tax. And, secondly, they assert, that under the local Acts applicable to Renfrewshire assessments may be still made, which do not come under that denomination. And therefore they contend the personal assessment, which is in lieu of Statute labour and of all conversions and assessments or highway rates except the tax on the heritors, (which it is admitted is not included or intended to be affected,) is bad in law.

Strictly speaking, it is necessary to examine the first propositions of the appellants as to the construction of the 14th section, because, in my opinion, the second proposition is not true in fact; but I think it clear, that the words "as a poll tax" were introduced for the purpose of

denoting all parochial rates or assessments on the occupiers, which certainly are, in some way or other, substitutes for, or commutations of, the primary impost of Statute labour or personal service, and therefore may, with propriety, be included under the general name "poll tax" by way of distinction from the county assessment.

The historical account of the enactments on this subject of highway labour and highway rating in the shire of Renfrew illustrates the meaning of the terms.

On these grounds I am of opinion, that the contention of the appellants is wholly unfounded, and that there is no legal objection to the assessment made by the defendants. A further objection was taken by the appellants in the Court below, but which was scarcely raised at the bar, that the appellants, being a statutory corporation, are not liable for Statute labour conversion money, or any assessment in lieu thereof. This is an ingenious subtlety, but without foundation.

The appellants are owners and occupiers of land within the district, and as such are clearly liable to be assessed under the Act of 1845.

I think the appeal should be dismissed with costs.

LORD CRANWORTH.—My Lords, the object of this action was to get rid of a rate imposed on the appellants by the Statute labour trustees for the parish of Kilmacolm in Renfrewshire.

At a meeting of the trustees duly held on the 2d June 1859, they assessed the appellants in a sum of £43, 8*s.* 4*d.* for the year ending on the 2d of June 1860, being at the rate of 5*d.* in the pound on the sum of £2084. This sum of £2084 was the sum, at which that part of the Caledonian Railway traversing the parish of Kilmacolm was valued for the year in question under the provisions of the 17th and 18th Vict. c. 91, § 22, called the General Valuation Act.

The authority under which the trustees imposed this rate is derived from the 8 and 9 Vict. c. 41, being the Scotch Highway Act. The first general Act, providing for the repair of highways in Scotland, was passed in the year 1669, and is entitled, An Act for repairing highways and bridges. The machinery which it provides is of the widest kind. The Sheriff, with certain other functionaries, were directed to meet and to divide into districts the parishes through which the roads passed, and to appoint overseers, whose duty it was to call together, at stated times and places, all tenants and cottars, and their servants, in every district in which there were roads to be repaired. The tenants, cottars, and servants so summoned were then bound to attend at the appointed place with horses, spades, mattocks, and other instruments necessary for making or repairing the roads, and to give their labour for that purpose during not more than six days in the year. There was then a provision for stenting the heritors to make good by a rate whatever might be necessary to supply what had not been accomplished by the personal labour afforded by the tenants, cottars, and servants.

In the following year, 1670, the Act of 1669 was modified by entitling persons thus bound to Statute labour, who might be residing more than three miles from the road, to relieve themselves from the obligation of personal attendance by paying 12*s.* Scots for every horse, and 6*s.* for every man who, under the prior Statute, ought to have attended.

These enactments, with very slight modifications introduced from time to time by the Legislature, were the only general Acts regulating highways in Scotland, not being turnpike roads, until the year 1845, when the 8 and 9 Vict. c. 41 was passed, under which the assessment now in question was made.

Though, however, there had been no general Act, there had been many local Acts, putting the management of the roads in various counties or districts on a footing more convenient with reference to the wants and habits of modern times than was furnished by the two old Statutes to which I have referred. What was the nature of the regulations introduced by these local Acts may be, to some extent, discovered from the language and enactments contained in the 8 and 9 Vict. c. 41. That Statute speaks, for instance, of the conversion of Statute labour into the payment of money, called conversion money, or into an assessment in lieu of the conversion. We have a right, therefore, to assume that, when the Act passed, these were modes of dealing with the subject well known and generally recognized.

The Statute does not give any definition of conversion money, or of assessment in lieu thereof, but deals with them as things well known and not requiring explanation, though they were not, so far as I can discover, the creations of any general enactment.

These preliminary observations are necessary in order to enable us to construe the 13th and 14th sections of the Act 8 and 9 Vict. c. 41, under the first of which the assessment in question was made. And, *first*, as to the 14th: It begins with a preamble, "And whereas it is expedient to abolish the personal performance of Statute service and the levying of the conversion money thereof in money, or any assessment in lieu of such conversion as a poll tax;" and then it proceeds to enact "that it shall be lawful for the road trustees to direct, that, in any county or district, all such performance of Statute service, and all such levying of conversion or assessment in lieu thereof, shall cease and determine."

It is on the true construction of this section that the case turns. The appellants contend, that it gives no power to abolish personal service generally, or the conversion money substituted for it, but only such personal service and conversion money as, but for this clause, would be levied as

a poll tax. The road trustees on the other hand, say, that the clause gives them a right to abolish all personal performance of Statute service, and all commutations for the same, however designated.

I am of opinion that the trustees are right. What was the precise meaning of the Legislature when it used these words, "as a poll tax," I cannot say. They do not occur in any other clause of the Statute, nor in either of the two Acts of Charles the Second. It may be, that, in some of the local Acts, there may have been an assessment aptly described as a poll tax, and authorized to be imposed in lieu of personal labour, or, which is more probable, the words may be only a clumsy mode of expressing a money tax payable by the person on whom they are assessed. But whatever difficulty there may be in giving a sensible meaning to those words, I cannot think it would be a reasonable mode of dealing with them to treat them as cutting down the generality of the previous part of the sentence, and narrowing the power of putting an end, in all cases, to personal Statute labour, which, but for these words "as a poll tax," the section would certainly have conferred.

The appellants read the passage as if the words "as a poll tax" had followed the word "levying," and so as if the recital had been a recital, that it is expedient to abolish personal service, and the levying as a poll tax of the conversion of personal service into money. Adopting this reading of the clause, they argue, that the personal service referred to must be considered as confined to personal service of such persons as are provided for in the 17th, 18th, and 19th sections of the Renfrewshire Local Act, namely, innkeepers, cottagers not being day labourers, manufacturers, and tradesmen on whom by that local Act a tax, not inaptly described as a poll tax, is imposed as a substitute for personal Statute labour; but this would be an unwarrantable principle to adopt in construing a general Act. The 8th and 9th Vict. c. 41, applies to all Scotland, and it would be improper to interpret it by fixing on some prior local Act to qualify or explain its provisions, nor do I think that the mode of reading the clause contended for by the appellants would warrant this construction of it. The recital is, that it is expedient to abolish personal performance of the Statute service; but the construction contended for by the appellants, which I must think is a very forced and artificial construction, would confine the generality of those words within very narrow limits, in a mode which the language does not warrant. We may fairly suppose, from the preamble of the clause, that the Legislature meant to enable the trustees in all cases to get rid of the personal performance of Statute labour under the old inconvenient enactments of the Statute of 1669, which are obviously ill adapted to modern times and habits. The language seems to me sufficient to accomplish this object; and even if the payments in lieu of personal service, which the Act refers to as payments, well known by the name of conversion money, are not accurately described as a poll tax, this cannot justify us in cutting down the enactment so as to limit its operation to the very few and unimportant cases, within which the forced construction contended for by the appellants would confine it.

Such being, in my opinion, the true construction of the 14th section, it follows that the Court of Session was perfectly right, for the road trustees of the parish of Kilmacolm, in exercise of the powers given to them, did order and direct that the personal performance of Statute service, and the levying of conversion or assessment in lieu thereof, should cease and determine. What, therefore, would have been produced from these sources ceased to be exigible, and so the trustees were, by the 13th section, authorized to assess the amount on the lands and heritable subjects in the parish. The appellants were owners and occupiers of lands in the parish; and they have been assessed according to the value of those lands as ascertained under the provisions of the General Valuation Act. The appeal, therefore, in my opinion, wholly fails, and ought to be dismissed, with costs.

LORD KINGSDOWN.—My Lords, I concur also in the proposed decision.

Interlocutors affirmed, and appeal dismissed, with costs.

Appellants' Agents, Hope and Mackay, W.S.; Grahames and Wardlaw, Westminster.—*Respondents' Agents*, Patrick, M'Ewen, and Carment, W.S.; Simson, Traill, and Wakefield, Westminster.