

CLYDE NAVIGATION TRUSTEES . . . APPELLANTS.
 ADAMSON (INSPECTOR OF THE POOR OF
 THE CITY PARISH OF GLASGOW) AND
 OTHERS RESPONDENTS.

1865.
 May 1st, 2nd,
 June 22nd.

Poor Rate—Exemption.—Crown property as well as property devoted to or made subservient to the Queen's Government, is exempt from poor rate; but property held upon trust to create or to improve docks and harbours in seaport towns, though having a public character and though devoted to public purposes, is nevertheless subject to be rated for relief of the poor. The law of England and the law of Scotland are on these points the same.

THE action was instituted by the above Respondents to have it found and declared that under the 8 & 9 Vict. c. 83. (the Scotch Poor Law Act), the Clyde Navigation Trustees were liable to be assessed for the support of the poor in respect of lands and heritages belonging to and occupied by them in the City parish of Glasgow.

The defence of the trustees was mainly that they held their property for public purposes, and not as beneficial owners.

This defence the Court of Session (Second Division), after having consulted the other Judges, repelled; the *Lord Justice* observing that in this country there is no exemption from taxation of any property whatever, except Crown property; in other words, property belonging to the State, or devoted to State purposes, and in the hands or under the administration of Government departments (*a*).

Against this judgment the Clyde Navigation Trustees appealed to the House.

(*a*) See the Court of Session Reports, second series, vol. 22, p. 607, where the case is given at length.

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The *Lord Advocate* (a) and Sir *FitzRoy Kelly* appeared as Counsel for the Appellants.

Mr. *Rolt* and Mr. *W. M. Thomson* for the Respondents.

The following opinions were delivered by the Law Peers :—

Lord Chancellor's opinion.

The LORD CHANCELLOR (b) :

My Lords, the issue raised in this action is not at all distinguishable from the issues raised in the two cases upon which your Lordships have just delivered judgment (c).

(a) Mr. Moncreiff.

(b) Lord Westbury.

(c) The cases referred to by the Lord Chancellor, and decided by the House on the 22nd June 1865, are *Jones v. Mersey Docks*, and *Mersey Docks v. Cameron*. They will appear in Mr. Clark's forthcoming number of House of Lords English cases, and the heading or rubrics will be as follows :—“The occupier of property which is capable of beneficial occupation is liable under the Statute 43 Eliz. c. 2. to be rated in respect of it, though such occupation is for the benefit of the public, and the profits of such occupation are to be devoted to the benefit of the public. The only exception is in the case of occupation of property in the service of the Crown, the Crown not being named in the Statute, and therefore not being bound by it.” See also Weekly Reporter, vol. 13, p. 1069, where the side note is as follows :—“The only occupier exempt from the operation of the 31 Eliz. c. 2. is the King, because he is not named in the Statute ; and the direct and immediate servants of the Crown, whose occupation is the occupation of the Crown itself, come within the exemption. But this ground of exemption does not warrant many decisions which have held that property used for public purposes is not rateable. So also trustees who are in law the tenants or occupiers of valuable property upon trust for charitable purposes, as hospitals or lunatic asylums, are on principle rateable, though the buildings are actually occupied by paupers who are sick or insane. Held, consequently, that the Mersey Dock and Harbour Board were liable to be rated for the relief of the poor under the 43 Eliz. c. 2. in respect of docks in their occupation.” See likewise the Law Times Reports, vol. 12, N. S., p. 643, where the following note appears :—“The Courts, in the time of Lord Kenyon, if not in that of Lord Mansfield, and subsequently in the time of Lords Ellenborough and Tenterden, made the mistake of confounding occu-

By the 34th section of the Act of 1845 (a), the general Poor Law Act of Scotland, it is enacted that where an assessment is to be imposed, the parochial board may resolve "that one half of such assessment shall be imposed upon the owners and the other half upon the tenants or occupants of all the lands and heritages within the parish or combination, rateably according to the annual value of such lands and heritages."

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Lord Chancellor's opinion.

The Appellants, as trustees of the Clyde Navigation, are, on behalf of the subscribers or shareholders in that undertaking, the owners and occupiers of very large docks and other public works which have been erected by them on the river Clyde for the improvement of navigation. And the question raised by them, in answer to the demand that they should be rated to the poor, was precisely the same as the question raised by the Mersey Docks and Harbour Trustees. The plea in law for the Defenders, the Clyde Trustees, being thus expressed: "Any property vested in the Defenders, having been vested in them as trustees

for what are called public purposes with occupation by the Crown; but those decisions are henceforth over-ruled." See moreover the New Reports, vol. 6, p. 378, where the heading is in these terms:—"The occupation to support a poor rate must be beneficial; that is, the occupation must be of property yielding or capable of yielding a net annual value; viz., a clear rent over and above the probable average annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain the property in a state to command such rent. The Crown and the direct and immediate servants of the Crown whose occupation is the occupation of the Crown, are the only occupants who are exempt. Where valuable property is sought to be exempted on the ground that it is occupied by bare trustees for public purposes, the public purposes must be such as are required and created by the Government of the country, and are therefore to be deemed part of the use and service of the Crown." Neither Law Journal nor the Jurist have yet reported the Mersey Docks case.

(a) 8 & 9 Vict. c. 83.

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for public purposes, and the revenues derived therefrom, and from the trust under their management having been all appropriated by Statute to specific public purposes," (and so on. These grounds of defence are, I take it, identical with the defences raised by the Mersey Harbour and Dock Trustees.

Now, the local legislation applicable to the docks and harbour held by the Clyde Trustees appears to have had this for its object, that the property alleged by the Appellants to be appropriated exclusively to public purposes, is appropriated only in this sense, namely, that the revenues which the trustees are authorized to raise by the tolls and imposts upon shipping using the harbour and docks, are dedicated by the Act to the purposes of maintaining and improving the harbour and navigation of the river Clyde, and for paying the debt contracted in the formation of the works; and any surplus is directed by the Act to be applied in making additional improvements. Now, beyond the money required for the purpose of maintaining these docks and this harbour, there is a very large revenue, out of which the subscribers or shareholders receive the interest upon the money which they advance for the construction of these docks; and there is still a surplus which is applicable to the purpose of making additional improvements by way of the extension of the docks, and, if necessary, of the harbour.

The question therefore recurs in this case, Are these public purposes, in the sense of being Government public purposes, purposes connected with the use of the Crown so as to warrant the exemption of the trustees as the occupiers of this property from a liability to be rated to the relief of the poor? I apprehend that this case is not distinguishable either in

principle or in its details from the cases which have just been decided, and that consequently there is no ground for the exemption of the trustees.

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Lord CRANWORTH :

*Lord Cranworth's
opinion.*

My Lords, the question here is substantially the same as that in the *Mersey Docks v. Jones*, though it arises under a different Act of Parliament.

By the Scotch Poor Law Act, 8 & 9 Vict. c. 83., the parochial board in every parish may resolve to raise the necessary funds by assessment in any one of three different modes. The first mode is by assessment of one half on the owners and the other half on the occupiers of all lands and heritages within the parish. This was the mode of assessment adopted by the parochial board of the City parish of Glasgow ; and the rates now in question were imposed by that board on the Appellants as owners and occupiers of the quays, wharfs, and docks of the river Clyde at Glasgow.

That under the local Acts 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

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must be made liable in Scotland. I am therefore of opinion that this Appeal is unfounded, and ought to be dismissed.

*Lord Kingsdown's
 opinion.*

Lord KINGSDOWN :

My Lords, I have only to express my entire concurrence in the principles which have been laid down in judgment in this case.

*Interlocutors affirmed, and Appeal dismissed with
 Costs.*

GRAHAMES & WARDLAW—SIMSON, TRAILL, &
 WAKEFORD.