CALEDONIAN RAILWAY COMPANY, APPELLANTS.
KILMACOLM STATUTE LABOUR ROAD TRUSTEES, ... RESPONDENTS (*a*).

1865.
March 24th.
June 22nd.

Statute Service—Conversion—Assessment—Liability of a Railway Company.—Case in which the House (affirming the decision below) *held* that a railway company, whose line passed through a parish, were properly subjected to an assessment for the maintenance of its highways, although such highways were wholly without use to the Company, and although they had no station or buildings in the parish, nor any servants who would under the old local Acts have been liable to perform statute service.

Poll Tax.—This word, as used in the General Highway Act of Scotland, embraces all kinds of assessments for conversion money in lieu of the old statute service.

Per the Lord Chancellor (*b*): The argument that a statutory corporation is not liable for statute labour conversion money is an ingenious subtlety, but without foundation.

THE question was, Whether the Caledonian Railway Company had been properly assessed for the maintenance of the statute service roads in the parish of Kilmacolm under the General Statute Service Act, 8 & 9 Vict. c. 41.

The road trustees contended that the Act empowered them to discontinue the old personal performance of statute service, and also to discontinue the levying of the conversion money of such statute service. They further urged that they had authority under the Act to assess and levy on lands and heritages within the parish a sum not exceeding the amount of such conversion money.

They maintained that the personal performance of statute service, and the conversion thereof into money,

(*a*) See Third Series of Scotch Session Cases, vol. 2. p. 355.
(*b*) Lord Westbury.

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were in the nature of a poll tax; and they insisted that under the Lands Valuation Act railways were placed in the category of lands and heritages.

The railway company, on the other hand, insisted that, inasmuch as they were not liable for statute service, they could not be assessed for conversion money in lieu of statute service. They maintained that the road trustees had no authority to abolish *in toto* the conversion of statute service or the assessment in lieu thereof; the fourteenth section importing not a total cesser of conversion of statute service or assessment in lieu thereof, but simply the abolition of such conversion or assessment in lieu thereof, *qua* poll tax. They urged that the road trustees were authorized to levy and did levy conversion of statute service or assessments in lieu thereof, which were not in the nature of a poll tax.

They urged that the assessment authorized by local Acts must still be levied from the occupiers of land and the keepers of horses, the General Statute Service Act only authorizing the imposition of an additional assessment to make up the deficiency created by the abolition of the poll tax. And, finally, they contended that, being a statutory corporation, they were not liable for statute service conversion money, or any assessment in lieu thereof.

The *Lord Ordinary* (*a*) having heard Counsel in the Court below, and having duly considered the whole case, on the 10th February, 1863, pronounced the following Interlocutor:—

Finds (1st), that this is an action at the instance of the statute labour road trustees of the parish of Kilmacolm for payment of the sum of 43*l.* 8*s.* 4*d.*, as the proportion effeiring to the heritable subjects belonging to the Defenders in said parish, of an assessment of 5*d.* per pound on the real rental of lands buildings, and other heritable subjects in said parish, for the year from June 1859 to June 1860: Finds (2nd), that the Pur-

(*a*) Lord Barcaple.

suers seek to enforce the said assessment as having been duly imposed under the authority of the General Statute Labour Act for Scotland, 8 & 9 Vict. c. 41, and particularly under the powers conferred by the 13th section of said Act: Finds (3rd), that in the year 1846, after the passing of said Act, the whole powers which the 14th section thereof conferred upon statute labour trustees 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, were put in force in the parish of Kilmacolm: Finds (4th), that for said year, from June 1859 to June 1860, the statute labour trustees did assess, according to law, lands, buildings, and other heritable subjects in said parish at the rate of 5*d.* per pound, but exempting from such assessment all who were not proprietors or occupiers of lands, buildings, or other heritable subjects of the yearly value of 5*l.* sterling; the said exemption being conferred in virtue of power to that effect contained in the 11th section of said statute: Finds (5th), that the said assessment, in so far as the same was legally imposed, falls to be levied according to the provisions of the Lands Valuation (Scotland) Act, 17 & 18 Vict. c. 90: Finds (6th), that the Defenders have not stated any objection to the amount of said assessment sought to be recovered from them on the ground that the same has not been accurately assessed on the value of the heritable subjects in the said parish according to the provisions of the said Lands Valuation Act, and that no such objection has been established by proof: Finds (7th), that the whole powers conferred by the 14th section of the said General Statute Labour Act having been put in force in the parish of Kilmacolm, all conversion of statute service, or assessment in lieu of such conversion, thereby ceased to be exigible in said parish, and in consequence thereof the statute labour road trustees held power to assess in said parish any sum not exceeding the amount of the conversion or other money which so ceased to be exigible, along with the amount of deficiency created by the exemption from assessment of all who were not proprietors or occupiers of lands, buildings, or other heritable subjects of the yearly value of 5*l.* sterling: Finds (8th), that the said assessment for the year from June 1859 to June 1860 was legally imposed under the authority and according to the provisions of the 13th section of said Act, and that the said sum of 43*l.* 8*s.* 4*d.* is the proportion of said assessment which falls to be levied upon the heritable subjects belonging to the Defenders in said parish: Finds (9th), that neither the Defenders as a railway company, nor their said heritable subjects as forming a portion of a railway, are exempted from said assessment: Repels the defences: Decerns and ordains the Defenders to make payment to the Pursuer, Robert Watson, as clerk and collector of the Pursuers

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the statute labour road trustees of the parish of Kilmacolm, of the said sum of 43*l.* 8*s.* 4*d.* sterling, with the interest of the said sum at the rate of 5 per cent. per annum from the 30th day of November 1859, being the date of citation in this action, until payment: Finds the Pursuers entitled to expenses; allows an account thereof to be given in, and when lodged, remits the same to the auditor to tax and report.

To this Interlocutor of the *Lord Ordinary* the First Division of the Court of Session on the 5th Dec. 1863 adhered, with an award of costs against the Railway Company, who thereupon appealed to the House.

The *Attorney-General* (*a*) and Mr. *Anderson* appeared as Counsel for the Appellants.

The *Lord Advocate* (*b*) and Mr. *Rolt* for the Respondents.

The following opinions were delivered by the Law Peers on the motion for Judgment:—

Lord Chancellor's opinion.

The LORD CHANCELLOR (*c*):

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 & 9 Vict. c. 41.

The question turns on the true construction of the

(*a*) Sir Roundell Palmer. (*b*) Mr. Moncreiff.
(*c*) Lord Westbury.

13th and 14th sections of the General Statute Labour Act, on which the action 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 and 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 Scotch General Highway Act of the 8 & 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 per-

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sonal labour. I have gone through the local Acts which are printed in the printed case on your Lordships' table, and they appear to me to be occupied with imposing different rates of conversion in lieu of the original statute service, 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 Highway Act of the 8 & 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 service, or of some substitute for or conversion of statute service, which had been previously imposed; and the provisions for keeping the highways in repair may be ranked under these three general denominations—statute service, 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. 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 performances 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 service 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 that the personal assessment, which is in lieu of statute labour and of all conversion 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 unnecessary to examine the first proposition of the Appellants as to the construction of the 14th section, because 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 term.

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 Respondents.

A further objection was taken by the Appellants in the Court below, but which was scarcely raised at the bar of this House, that the Appellants being a statutory corporation are not liable for statute labour conversion money or any assessment in lieu thereof.

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Lord Chancellor's opinion.

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's opinion.

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 2nd of June 1859, they assessed the Appellants in a sum of 43*l.* 8*s.* 4*d.* for the year ending on the 2nd of June 1860, being at the rate of 5*d.* in the pound on 2,084*l.* This was the sum at which that part of the Caledonian Railway which traverses the parish of Kilmacolm was valued for the year in question under the provisions of the 17 & 18 Vict. c. 91. s. 22, called the General Valuation Act.

The authority under which the trustees imposed this rate is derived from the 8 & 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 rudest 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 ap-

pointed 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 & 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 & 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 conversion money. We have a right, therefore, to assume that when the Act passed there were modes of

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dealing with the subject well known and generally recognized.

The Statute does not give any definition of conversion money, or of assessments 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 creation 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 & 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 that "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;" 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

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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 these 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 was expedient to abolish personal service, and the levying as a poll tax of the conversion of personal service in money; and, adopting this reading of the clause, they argue that the personal service referred to must be considered as confined to the 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 8 & 9 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

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would warrant this construction of it. The recital is that it is expedient to abolish personal performance of statute service, *i.e.*, all personal performance of 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 he 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 assessments 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 in the proposed decision.

Interlocutors affirmed, and Appeal dismissed, with Costs.

GRAHAMES & WARDLAW—SIMSON, TRAILL, & WAKEFORD.