ceased to have any interest in either of the documents. And, in any proceeding instituted for the purpose of reducing those documents, the Sheriff was clearly a person who had no interest, and therefore, as to him the action would be incompetent.

But then it is said, that there were upon the record here averments of malice and want of probable cause on the part of the Sheriff, in making the order and granting the licence. But when we turn to the conclusions of the summons we find, that the summons contains no petitory conclusions against the Sheriff, that it is not a proceeding against the Sheriff of the nature of a proceeding for damages for the wrongous making of the order ; and without saying whether, upon these averments, there would or would not be a case for damages against the Sheriff, I think it is quite sufficient to say, that, in my opinion, if there be any right to proceed against the Sheriff at all, it must be a right to proceed against him for damages, and not a right to proceed against him for reduction of this order and licence.

I think, therefore, that the decision of the Court below was entirely right, and I move your Lordships, that the appeal, being as it seems to me without foundation, be dismissed with costs.

LORD CRANWORTH.—My Lords, I so entirely concur in what has fallen from my noble and learned friend, that I shall not trouble your Lordships by adding a single observation.

LORD CHELMSFORD.—I entirely concur in all that has been said by my noble and learned friend.

LORD WESTBURY.—My Lords, it must be recollected, that the judgment of the Court below proceeded entirely on the question of competency. The relevancy of the averment, therefore, is not at all to be considered. Now the question of competency is material on this ground : A civil action for the reduction of an instrument in Scotland must be brought against the party having an interest in that instrument. The instrument is the judgment of a Judge, pronounced under statutory jurisdiction. The Judge would have an interest in that instrument, if his conduct in pronouncing it were challenged, and it were sought to make him liable to damages for having so acted judicially. But if that be not done, if that be wholly excluded by the form of the action, then the Judge has no personal interest whatever in the order which he has made in the exercise of his judicial authority ; and an action could no more lie against him than it would lie against a person who is appointed by law to have the custody or to keep the record of such decree or judicial order. That is the simple ground on which the Court of Session proceeded ; and I think it is a ground which approves itself to one's understanding. It is idle to say that hereafter the pursuer may bring an action for damages against the Judge. It is necessary for him to give to his present action a condition of competency. And that can only be done by alleging the liability of the Judge and seeking to enforce that liability.

Upon these grounds, I am clearly of opinion, that the decision of the Court below was perfectly correct, and that this appeal, which is a wholly mistaken proceeding, ought to be dismissed with costs. It is to be regretted that it is competent by the law of Scotland to raise a question of this kind, after the lapse of so long a period as fourteen years after the order was pronounced and carried into execution.

LORD COLONSAY.—My Lords, I have nothing to add to what has been said. I entirely concur in the judgment proposed, and in the grounds which have been stated for it.

Interlocutors affirmed, and appeal dismissed with costs.

Appellant's Solicitors, James Somerville, S.S.C. ; Simson and Wakeford, Westminster.—*Respondent's Solicitors*, Macrae and Flett, W.S. ; J. J. Darley, Gray's Inn.

MAY 28, 1868.

PETER MACLAREN, Collector for Heritors of Renfrew, *Appellant*, *v.* THE TRUSTEES OF THE CLYDE NAVIGATION, *Respondents.*

Valuation of Lands Act—Church, Rebuilding—Exemption from Assessment—*The C. trustees before the Valuation Act* 17 *and* 18 *Vict. c.* 91, *were not liable to assessment, being only lessees. By that Act lessees for more than* 21 *years were directed to be entered in the roll as proprietors. An assessment for rebuilding a parish church, which falls on heritors, having been imposed on the C. trustees as proprietors, because they were long lessees :—*

HELD (affirming judgment), *That they continued exempt notwithstanding the Act.*[1]

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[1] See previous report 4 Macph. 58 ; 38 Sc. Jur. 28. S. C. 6 Macph. H. L. 81 ; 40 Sc. Jur. 484.

This was an appeal from a decision of the Second Division of the Court of Session, reversing an interlocutor of Lord Jerviswoode. The parish church of Renfrew required rebuilding, and the heritors, estimating the expense at £5500, resolved to impose an assessment on the real rent of lands and houses within the parish at the rate of 6*s*. in the pound. The Clyde Trustees were lessees of two lots of ground, works, and workshops at Clyde Bank, under two leases for ninety-nine years, made near the end of the last century, and therefore having about twenty years to run. They stood on the Valuation Roll as proprietors of these subjects, valued at the annual value of £357; but this was by virtue of the Valuation Act 16 and 17 Vict. cap. 91, which made the lessees under long leases stand in the place of proprietors. Before that Act, Mr. Spiers of Elderslie, the landlord, was assessed at only about £39. The assessment on the Clyde Trustees for the rebuilding of the church amounted to £107. The heritors contended, that, under the Valuation Act, the Clyde Trustees came in place of the proprietor; whereas the Trustees contended, that that Act was not intended to put any new liability on persons not previously liable. And it was admitted, that before the late Act the lessees were not liable to pay such a demand. The Trustees having declined to pay the sum demanded, the present action was brought by the Collector. The Lord Ordinary (Jerviswoode) held, that the Trustees were liable; but the Judges of the Second Division reversed his decision, and dismissed the action; whereupon the present appeal was brought.

The question turned on the words of the Valuation Act. In the 6th section the lessee in long leases was declared to be proprietor in the sense of the Act, but was to deduct from his rent such assessment as was imposed upon him. The 33d section says that, where any county, municipal, parochial, or other public assessment is authorized to be made according to the real rent of lands and heritages, the valuation roll is to be taken as giving the just amount of real rent. Again, the 41st section says, that nothing contained in this Act shall exempt, or render liable to assessment, any person or property not previously exempt from or liable to assessment.

Lord Advocate (Gordon), and *Mellish* Q.C., for the appellant.—It is admitted the tax for rebuilding the parish church was leviable only on heritors before the Valuation Act—*Minister of Lauder*, Spott. Pract. 191; *Peterhead case*, *Harlow* v. *Merchant Maiden Govrs.*, 4 Paton, Ap. 356. The Valuation Act was intended, however, to put long lessees on the footing of heritors or proprietors. The 41st section was intended to retain the exemption as regards certain species of property liable to assessment, but not to save a case like the present.

Dean of Faculty (Moncreiff), and *Anderson* Q.C., for the respondents, were not called upon.

LORD CHANCELLOR CAIRNS.—My Lords, I should have been very glad in this case, and no doubt there would have been considerable convenience, if I had been able to advise your Lordships to go somewhat further than is necessary for the actual decision of the case brought before you, and to express an opinion upon various points which have been argued at your Lordships' bar with reference to certain contingencies as to the assessment of other property and other persons, which may hereafter arise. But I think your Lordships will agree with me, that it is always the most safe course, and perhaps the only proper course, to deal with the case which has been brought up for your Lordships' decision, and not to express opinions which might be held to operate upon other cases which at present have not arisen for judicial decision.

Now, looking at this case in that point of view, the case appears to me to be an extremely simple one. The respondents in this appeal are the Trustees of the River Clyde. They are the possessors of certain leasehold property, of which they have leases for a long term of years, which will not expire for several years to come. Those leases were in existence at the time of the passing of the Valuation Act for Scotland in 1854, and at that time the Clyde Trustees were the possessors of the leases. And it has been admitted by the counsel for the appellant in their argument, that before the passing of the Act of 1854, the Clyde Trustees, as the possessors of those leases, would not have been liable to an assessment of the character of that which the present appellant has been appointed to levy from those who are subject to it.

In that state of things the Act of 1854 no doubt introduced considerable alteration in the mode of valuation and of assessment in Scotland; but the whole of the enactments of that Act are governed by one clause, which is extremely important with reference to the present argument. The clause to which I refer is the 41st, and it is only necessary, that I should read the latter part of it. "Nothing" (says that clause) "contained in this Act shall exempt from or render liable to assessment any person or property not previously exempt from or liable to assessment."

Now, as I have already stated, the respondents were persons not previously liable to assessment. Their leases (treating the leases as property) were property not previously liable to assessment; therefore, if we accept the whole of the argument at your Lordships' bar, (it is only necessary to accept it for the purposes of argument and not for decision,) that by the joint operation of the 6th and the 33d sections, in ordinary cases the owner of a leasehold exceeding twenty one years in duration would properly be put upon the Valuation Roll as a proprietor—I say if we assume the whole of that, yet in reading the 6th and 33d sections we should be obliged to read in at the end of either or of both of those sections the words that I have already read, which appear to me to be a saving clause for the benefit of any person standing in the position of the

present respondents. I think it would be violating the letter and the spirit of the Act if, with reference to persons so situated, who were lessees at the time when the Act was passed, and who had made their bargains on the footing of the law as to assessments as it then stood, we were to hold that they, notwithstanding these express words of the 41st section, were now to be liable to an assessment from which they were, previously to the passing of the Act, exempt. Upon this short and simple ground, I would advise and suggest to your Lordships, that the interlocutor of the Court below is correct, and that this appeal should be dismissed with costs.

LORD CRANWORTH.—My Lords, I have very little to add to what has been said by my noble and learned friend. The object of the Act, as stated in this preamble, was simply to obtain authority in all time coming for making a valuation roll which should shew what was the real value of the lands in Scotland, a matter which no doubt before the passing of the Act had often given rise to great discussion. It would be a strong thing indeed to construe the Act so as to make persons liable to pay the valuation assessment who were not liable to pay it before. I do not think there is any necessity for so construing it. I almost think, even if there had not been the 41st section, looking at the object of the Act as stated in the preamble, and the object of the 6th section as stated in the first line, that in estimating the yearly value of lands and heritages, such and such a course shall be taken, your Lordships would have felt, even without the 41st section, that you were at liberty to say, that it could not be the intention of the Legislature to do anything so unjust as to make liable to these assessments a class of persons who were not previously liable. But the 41st section, which, as it appears to me, must be read as if introduced into every clause of the Act, makes it abundantly clear.

LORD WESTBURY.—My Lords, I entirely concur in the judgment proposed.

LORD COLONSAY.—My Lords, I also concur in what has been said.

Interlocutors affirmed, and appeal dismissed with costs.

Appellant's Solicitors, J. & H. G. Gibson, W.S.; John Graham, Westminster.—*Respondents' Solicitors*, Simon Campbell, S.S.C.; Connell and Hope, Westminster.

MAY 29, 1868.

MRS. WEIR or WILSON, *Appellant*, *v.* MERRY AND CUNINGHAME, Ironmasters, *Respondents*.

Master and Servant—Fellow servants, negligence—Foreman of Coal Pit—Mines Act, 23 and 24 Vict. c. 151—*W. was engaged to work in the coal pit of M., and owing to defective ventilation, an explosion took place whereby W. was killed. In an action against M. by W.'s representatives, it was proved, that one N. was underground manager, and had superintended the making of the shaft for ventilation some days before W. was employed. M. took no part in the management, and N. was a suitable and competent manager, and furnished with proper materials by M.*

HELD (affirming judgment), *That there was no evidence to justify a verdict against M. the master for damages.*

The non-liability of a master to a servant, where the cause of injury is the negligence of a fellow servant, is only an example of the general rule, that a master is not liable unless he has neglected that which he has contracted to do; and in general he does not contract to execute in person the work connected with his business—*Per* LORD CHANCELLOR CAIRNS.

Semble, *Under the Mines Regulation Act, 23 and 24 Vict. c. 151, a cumulative penalty is imposed on a master for not ventilating a mine, but his liability at common law is not varied*—*Per* LORD CHELMSFORD.

This was an appeal from the First Division of the Court of Session. An action was brought by Mrs. Wilson, the widow of a miner employed in the respondents' coal mine at Haughhead, near Hamilton, to recover damages for the death of her husband, caused by the negligence of the respondents' servants. The condescendence alleged, that the respondents' manager, named Neish, had erected a scaffold in a certain part of the pit, which closed up the ventilation. This was done on 21st November 1863. On Monday following, the deceased, Henry Wilson, was

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[1] See previous report 5 Macph. 807; 39 Sc. Jur. 426. S. C. L. R. 1 Sc. Ap. 326; 6 Macph. H. L. 84; 40 Sc. Jur. 486.