HOUSE OF LORDS.

Thursday, December 18.

(Before the Lord Chancellor (Halsbury), and Lord Macnaghten, Lord Robertson, and Lord Lindley.)

GLASGOW COURT-HOUSES COMMISSIONERS *v.* LANARKSHIRE COUNTY COUNCIL.

(*Ante*, November 20, 1900, 38 S.L.R. 64, and 3 F. 103.)

Statute — Construction — Glasgow Court-Houses Act 1890 (53 *and* 54 *Vict. c. lviii.*), *sec.* 13—"*Lands and Heritages Situated within the Respective Areas under the Jurisdiction of such Public Bodies.*"

The Glasgow Court-Houses Act 1890 authorised the Glasgow Court-Houses Commissioners to acquire certain lands and buildings for the purpose of enlarging and improving the Sheriff and Justice of the Peace Court-Houses in the city of Glasgow. Section 13 provided that the Commissioners might apportion, assess, and charge the sums of money borrowed under the powers of the Act upon certain public bodies named in a schedule annexed to the Act "in proportion to the gross valuation for the year ending on the 15th of May 1890 of the lands and heritages situated within the respective areas under the jurisdiction of such public bodies." One of the public bodies named in the schedule was the County Council of the county of Lanark.

Section 15 provided that "the County Council of Lanark, as representing the Lower Ward thereof and the police burghs therein," should pay to the Commissioners out of certain specified assessments such sum "as the Commissioners should assess as the share payable by the said County Council" for the expenses of carrying into effect the Glasgow Court-Houses Acts.

Section 18 gave power to the Commissioners to sell or lease to the County Council, and to the County Council to purchase or take on lease, any portion of the lands and houses in the possession of or to be acquired by the Commissioners; and section 19 empowered the County Council to borrow money for the purposes of such sale or lease upon the security of the general purposes rate leviable upon lands and heritages "in the county of Lanark or in the lower ward and middle ward thereof, or in the said lower ward alone, in such proportions and at such respective rates as such County Council may determine, and such County Council may levy such rate at a higher rate or higher rates within the said lower ward and middle ward, or either of them, . . . than within the remainder of the county for the purpose of meeting any payment in connection with such sale or lease, or any payments due by them to the Commissioners in respect of the repayment of borrowed money, or otherwise under the provisions of this Act."

By previous Acts of Parliament the county of Lanark, for the purpose of providing and maintaining Sheriff and Justice of the Peace Court-Houses, had been divided into four separate districts, one of which, the Lower Ward district, comprises the Lower Ward of the county, the City of Glasgow, and the Burgh of Rutherglen. The Sheriff Court-House at Glasgow is the Sheriff Court-House of this district alone, except in so far as it is used for hearing appeals from the other districts.

Held (*rev.* judgment of the Second Division, and *restoring* judgment of Lord Low, Ordinary) that in fixing the amount for which the Court-Houses Commissioners were entitled to charge and assess the County Council in terms of section 13, the Commissioners were not entitled to take into account the valuation of the lands and heritages within the whole county as being the "area under the jurisdiction" of the County Council in the sense of section 13, but only of the lands and heritages within the Lower Ward.

This case is reported *ante ut supra.*

The Lanarkshire County Council (defenders and respondents in the Court of Session) appealed to the House of Lords.

In addition to the sections referred to in the Lord Ordinary's opinion (*ante*, vol. 38, pp. 65-68) the 18th and 19th sections of the Glasgow Court-Houses Act 1890 were founded on in argument.

At delivering judgment—

LORD CHANCELLOR—I have had an opportunity of reading the judgments prepared by my noble and learned friends Lord Robertson and Lord Lindley, and desire simply to express my concurrence in them.

LORD MACNAGHTEN (read by Lord Lindley)—Whatever may be the true meaning of the Glasgow Court-Houses Act of 1900 it is certainly not happily expressed.

I agree with your Lordships in thinking that the conclusion at which the learned Judges of the Second Division have arrived leads to a result neither reasonable nor equitable. Having regard to the circumstances of the case and the history of the legislation on the subject it seems to me almost impossible to suppose that Parliament could have intended either to cast a very disproportionate burden on the Lower Ward of the county, or to throw any part of the costs and expenses to be incurred in the execution of the Act on the Middle and Upper Wards.

I have, however, great difficulty in getting over the words of section 19, which was brought to your Lordships' attention very late in the argument, and is not referred to in any of the opinions delivered in the Courts below. It seems to me that

the language used in the latter part of that section goes far to show that the assessment which the Commissioners were authorised to impose on the County Council was intended to apply to the whole county and not to be limited to the Lower Ward and the Police Burghs therein.

As, however, your Lordships do not think this difficulty insuperable I do not propose to trouble your Lordships by reading the opinion I submitted to your consideration, and I content myself by saying that although I still feel much pressed by the language of section 19 I do not dissent from the judgment which your Lordships are about to deliver.

LORD ROBERTSON—The question in this case is, in what proportion is the county of Lanark to contribute to the cost of court-houses in which Glasgow, Rutherglen, and the county are more or less interested. The 13th section prescribes the standard of proportion.

The theory of the respondents, adopted by the Second Division, is that the words relating to the area of jurisdiction are unambiguous, denoting the whole county of Lanark, and that, despite the rather startling result, no other construction is permissible.

Now, first of all, the words used are not the plain and natural expression of that well-known and definite idea, the county of Lanark, to name which is the easiest thing in the world, and would involve reference to a statutory valuation roll, showing at a glance the sum intended, viz., the value of the whole county. The rejection of this manifest expression, and the selection of a circumlocution instead, go some way towards displacing the theory of the Court below.

But when the phrase used is examined it is seen that the words used do not, even in a circuitous way, denote the county with any accuracy of language or even popular certainty. The County Council is an administrative body, and has no jurisdiction in the proper sense of the term, and it is therefore necessary to find out, *secundum subjectam materiem*, what is meant. Now the powers of the County Council are of a most miscellaneous character, and those are not exercised over the same area. Accordingly, the reasonable thing seems to be to apply the words to the powers of the County Council *in hac re;* and it seems an unnecessary, and I think a rather unintelligent proceeding to shut one's eyes to the *res de qua agitur*, and apply an inaccurate expression according to the maximum of its extension.

But further, as a matter of fact the County Council has never had in the matter of court-houses anything that could be called jurisdiction over the whole county.

I do not consider the appellants' claim to involve in the slightest degree the rejection of the primary meaning of the words used, in deference to what may be conjectured to be an equitable basis of proportion. But I go further, and say that the language used not only suggests but involves the Lower Ward, and not the county, being the area referred to. The conception of section 13 is that it relates to a district in part of which the county of Lanark, in part the city of Glasgow and in part the burgh of Rutherglen, have "jurisdiction."

Now up to 1890 the substance of the legislation was that the Upper, Lower, and Middle Wards were separately provided with court-houses, and that the Lower Ward, all of it close to Glasgow, was made a partner with Glasgow and Rutherglen in this regard. The two other wards were entirely separate, and the statutory powers are different even as between the Middle and Upper Wards. It is true that the court-house in Glasgow did serve, in the matter of appeals, for the whole county, but this is no novelty, and had been the condition of things throughout. As regards rating, it is quite certain that, at least up till 1890, the Lower Ward was rated by itself for court-house purposes, and this system was kept up and applied to the County Council system, the County Council rating the Lower Ward to make up the amount required for the Glasgow court-houses by a precept from the Commissioners.

On a review, then, of the situation, it is not too much to say that unless some new and strong reason is introduced by the Act of 1890 one would naturally expect those Glasgow court-houses and their extension to be a burden on the three authorities according to the several values of their portions of the district served by those court-houses, and not (in the case of one of those partners) according to the value of territory of which a large part is extraneous to that district.

It is pointed out, however, that we are now, in the Act of 1890, for the first time dealing with moneys to be borrowed. This is quite true, although it is not obvious why this should lead to a division of cost enormously different from the case where there is no borrowing. But when the sections relating to borrowing are examined they really yield the respondents nothing. The 14th section was not even referred to by the respondents, and I cannot say that I am surprised. The 14th section can only be understood when read in connection with those sections of the Local Government (Scotland) Act 1889 which constitute the borrowing powers of County Councils in Scotland. The practical result of the two Acts read together is that the County Council may now borrow for those court-houses as if this had been one of the purposes authorised in 1889. But the various borrowing powers of the County Council are to be separately exercised, and each loan may be on the security of one separate rate. Now, as there are some rates applicable to the whole county and some to parts only, section 14 is inconclusive.

Section 19 stands in a different position. Primarily it relates to a totally different matter; along with section 18 it allows the County Council to buy lands or buildings from the Commissioners, and the greater part of section 19 is concerned with the

payment of those purchases with borrowed money, but in the end of the section, and mixed up with its primary purpose, the section allows the County Council generally to rate the wards separately, or any of them, and at differential rates, or the whole county. I am ready to assume that this section can be applied to the money now in question, and the flexibility of the clause is really in favour of the appellants, for it enables the County Council to rate the Lower Ward alone for those purchases or those court-houses which truly concern it alone, just as a wider area might be adopted where the benefit or concern was more extended.

It is to be observed that the clauses which I have now been discussing go no further than to bear indirectly on the question of proportion under section 13. The area of rating for the money borrowed is not conclusive of the standard of proportion as between the county and the two third parties, but so far as those clauses go I think that they favour the appellants.

I revert, however, to the 13th section, and in my opinion that section prescribes the district made up of (1) the Lower Ward, (2) Glasgow, and (3) Rutherglen, as the unit, and the value of that part of it which is in the county, viz., the Lower Ward, is the standard of Lanarkshire's proportion.

I am therefore for allowing the appeal.

LORD LINDLEY—This appeal turns on the true construction of section 13 of the Glasgow Court-Houses Act 1890. This Act is one of a long series of Acts relating to court-houses, and in order to understand section 13 it is necessary to ascertain what areas are under the jurisdiction of the public bodies mentioned in the schedule of the Act, viz., the Corporation of Glasgow, the County Council of the County of Lanark, and the Corporation of Rutherglen. The appellants are the County Council of the county of Lanark. In order to ascertain what areas are under the jurisdiction of the County Council of Lanark two inquiries are necessary, viz., first, a geographical inquiry in order to fix the localities over which the County Council have any authority at all; and secondly, a legal inquiry in order to determine, first, the kind of authority exerciseable by the County Council in such area; and secondly, whether such authority is what is meant by the word jurisdiction in section 13.

The geographical inquiry as to areas does not furnish any real difficulty. The limits of the county are known, and the county is divided into four areas or wards, one of which, viz., the Lower Ward, includes Glasgow. The limits of these areas are known. The Lord Ordinary and the Lords of the Second Division on appeal all agree that the limits must be ascertained, having regard to statutory alterations made since 1890, and this is not now in dispute.

The legal inquiry as to jurisdiction is much more difficult. The County Council has no jurisdiction of a judicial nature, either over the county or over any of the wards into which it is sub-divided, but the County Council has by statute various powers exerciseable by it over the county and its separate wards, and I apprehend that any area which is subject to any of these statutory powers may be in some sense and for some purposes an area under the jurisdiction of the County Council within the meaning of section 13. But this conclusion does not in my opinion decide the controversy between the parties to this appeal. Having regard to the objects of the Act of 1890, with which your Lordships are at present concerned, it appears to me reasonably plain that by jurisdiction in section 13 is meant, not every or any authority exerciseable by the County Council, but only such authority as it may have to raise money for Glasgow Court-House purposes by means of rates. I have examined the various statutes referred to in the Act itself and in the arguments of counsel, and in the respective cases of the appellants and of the respondents, and I can find no authority prior to 1890 to raise money for such purposes by means of a rate on the whole county of Lanark.

This goes far to show that the whole county is not such an area as is referred to in section 13. As I read the statutes, down to the year 1890 the Glasgow Court-House expenses were apportioned between the city of Glasgow, the Lower Ward of Lanark, and the burgh of Rutherglen, in proportion to their rental valuations. The Corporation of Glasgow, the County Council of Lanark, and the Corporation of Rutherglen are the three public bodies mentioned in the schedule referred to in section 13, and the area under the jurisdiction of the County Council of Lanark, within the meaning of that section, appears to me to be not the whole county but only the Lower Ward over which the County Council had the power to which I have referred when the Act of 1890 was passed. The Act of 1890 might, of course, extend this area, but section 13 does not in my opinion extend it, and I can find no other section which does.

This is the view contended for by the appellants, and adopted by the Lord Ordinary. Their Lordships on appeal in the Second Division considered the language of section 13 too clear to admit of any meaning but one, and held the whole county of Lanark to be the area referred to. I am unable to come to this conclusion. I think the Lord Ordinary was right, and the closer the matter is studied the more clear does this appear to me.

It is necessary, however, to refer to one or two other sections of the Act of 1890. Section 15 was much relied on by the respondents, but it does not, in my opinion, throw light on the meaning of the expression "areas under the jurisdiction" in section 13. Section 15 refers to a different matter, viz., to the rate originally authorised by section 10 of the Act of 1868 to be levied by the Court-Houses Commissioners in the Lower Ward, and afterwards by section 8 of the Act of 1878 by the Commissioners of Supply of the county of Lanark as representing the Lower Ward. The County Council are the successors of those Commissioners, and it

was necessary, or at least obviously desirable, for the purposes of that section to allude to the Lower Ward and the police burghs of the county of Lanark. I am unable to see that the special reference in section 15 to the Lower Ward justifies the inference that the whole county must have been referred to in section 13.

Section 14 of the Act empowers the County Council to borrow whatever may be properly charged upon them under section 13. But the question what can be so charged depends on the true construction of section 13, and section 14 does not in my opinion throw light upon its real meaning and effect. Section 19 is open to a similar observation. It is an addition to section 18, and authorises differential rates for the sales and leases there mentioned; then follow additional words, the precise effect of which is not easy to discover, but they do not in my opinion affect the construction of section 13. They seem to me to refer to the latter part of section 18, and to be applicable to cases in which agreements have been come to as there contemplated.

Sections 14 and 19 appear to me equally consistent with either interpretation of section 13, but that adopted by the Second Division leads to consequences which, to say the least, are very curious and anomalous, whilst the construction adopted by the Lord Ordinary is much more in accordance with good sense.

For the foregoing reasons I am of opinion that the appeal should be allowed, and the order of the Lord Ordinary be restored.

Interlocutors appealed from reversed, and interlocutor of the Lord Ordinary of 15th June 1900 restored, and appellants found entitled to costs in the House of Lords and Court of Session.

Counsel for the Pursuers, Reclaimers and Respondents—Lord Advocate (Graham Murray, K.C.)—Solicitor-General (Dickson, K.C.) Agents—Webster, Will, & Company, S.S.C., Edinburgh, and William Robertson & Company, Westminster.

Counsel for the Defenders, Respondents and Appellants—Haldane, K.C.—H. Johnston, K.C.—Constable. Agents—Bruce, Kerr, & Burns, W.S., Edinburgh, and Grahames, Currey, & Spens, Westminster.

COURT OF SESSION.

Thursday, December 11.

SECOND DIVISION.

[Lord Stormonth Darling, Ordinary.

MOATSCHAPPIJ HOEK-VAN-HOLLAND *v.* CLYDE SHIPPING COMPANY, LIMITED.

THE "ARANMORE."

Ship—Collision—Momentary Delay by Ship Placed in Difficulty through Wrong Manœuvre of Another — Prescribed Signals not made — Presumption of Fault Held Rebutted — Reparation — Liability for Collision.

On a fine night a steamer, making 11 or 12 knots an hour, and a steam trawler, making three or four knots, were approaching each other "green to green." When they were between half and quarter of a mile apart the master of the trawler let his trawl down over the starboard side and proceeding on a port helm came round to starboard and shut out his green light and opened first his white light and then his red light to the steamer, steering to cross her bows. The mate of the steamer, who was in charge, when he lost the trawler's green light and saw her white light open, waited to see what she was doing, and on her red light opening he stopped and reversed his vessel's engines, and put her helm hard-a-port. A collision followed whereby the trawler was sunk. In an action of damages at the instance of the owners of the trawler against the owners of the steamer, *held* that the trawler was to blame, and (*rev.* judgment of Lord Stormonth Darling—*diss.* Lord Moncreiff) that the steamer was not to blame, in respect that the mate had acted with due promptitude, the interval between the opening of the trawler's white and red lights not having exceeded the short time to which he was entitled for consideration, when he had been put in a position of difficulty by an improper manœuvre on the part of the trawler; and that any presumption of fault on the part of the steamer, arising out of the fact that she did not give the prescribed blasts with her whistle to indicate that she was going to starboard and reversing, was rebutted by the fact that the signals, if made, would have been too late.

This was an action at the instance of Moatschappij Hoek-van-Holland, of Rotterdam, owners of the steam trawler "Fredrik Cornelis," and mandatories, against the Clyde Shipping Company, Limited, owners of the steamship "Aranmore," in which the pursuers sought to recover damages for the loss of the "Fredrik Cornelis,"