

were declared to continue only during the lives of the existing burgesses as on 10th June 1858, and for so long and at such times only as such burgesses were actually resident in the said burghs respectively. From the provisions of the statute, it does not seem to me doubtful that the privilege thus continued had reference to individuals, and that no associated body, unless composed entirely of individuals possessing the necessary qualifications, could be entitled to the exemption conferred by the statutes. An association or company might nominally be recognised as within the privileged class; but this could be only because of its whole members being individually qualified to claim the exemption. Strictly speaking, the claim was one to be vindicated by the individual partners, and not by the company, who could in no proper sense be called a resident burgess on the death or non-residence of whom the statutory privilege was to cease.

This being so, the provision contained in the recent general Act abolishing the exemption (1867), and providing for compensation, admits of easy construction. It is only a "person or body corporate" that would have been entitled in his or their own right to profit from the exemption, had the Act not passed, who is declared to be entitled to claim the compensation provided for by the 5th section. "In that, but in no other case" can the claim be competently made. What may have been precisely meant by the term "body corporate," which occurs for the first time in this compensation clause, might have required some investigation into the history and provisions of the several enactments referred to in the case, had we to deal with any body fairly within that denomination. But it certainly does not apply to a private trading company such as that formed by the claimants. This was not indeed contended, and it must be as persons individually or collectively that this can be maintained. For the reason I have stated, however, I am clear that it is not as a company but as individuals, that the claimants have right to claim. And this construction, and no other, appears to me to be consistent with the nature of the exemption saved to the parties by the Act of 1858, and done away with by the statute 1867, and with the terms of the proviso attached to the compensation section of that Act. I am therefore of opinion that the first question contained in the case must be answered in the negative, and the second question in the affirmative.

The question, however, embraces a further inquiry. It is asked, "to what extent and amount, and for what period" is the compensation exigible under the statute? The plain object of the statutory provision as to compensation was to indemnify the parties in the enjoyment of the exemption for their loss of profit through its abolition. Every person who has derived pecuniary profit from the exemption during the year preceding the 1st February 1867 is entitled to be a claimant; and I see no sufficient ground for thinking that, if otherwise qualified, it behoved that he should have been deriving profit throughout the whole of the year. The question simply is, whether, through the exemption, profit was derived by the individual from the exemption to which he was entitled? Assuming this to be so, his title is complete to "an annuity equal to the average annual amount of profit derived during the three years next preceding the 1st of February 1867," but as it might happen that the claim-

ant had not been enjoying profits from the exemption during the whole period of three years, it is added, "or during so much of those three years as is subsequent to the date at which the claimant commenced to derive such profit." Whatever difficulties might be felt in applying this provision to cases where the circumstances are different, I do not think it doubtful that in this case the extent of the claim competent to the individuals, the first parties hereto, is correctly stated in the 24th statement of facts in the case. The average amount of profit drawn by them severally from the exemption during the requisite period prior to 1st February 1867, is admitted to be the several sums there attached to their names respectively. Nor is it of any consequence,—the parties having continued to be during the whole three years within the privileged class,—that certain of the vessels of which they were owners have been sold during the period. It is the average or pecuniary profit derived from the exemption generally, and not its source, as derived from ownership of particular vessels. The annuities being thus fixed in conformity with the statute, will continue until one or other of the conditions attached to its endurance by the terms of the proviso quoted in the 19th statement shall take effect. It must terminate with the life of the claimant, and at all events, on the expiry of ten years from the commencement of the Act. It will also terminate should the dues from which the claimant was exempted cease to be levied; and also in the event of the fourth condition becoming operative, by the claimant ceasing from any reason whatever "to have a right to such exemption, or to be in a position to derive profit from it"—that is, if he ceases to be a burgess, or to be resident within the burgh, or to be connected with the ownership of vessels, or to be engaged in trade, in respect of which ownership or trading, had the Act of 1867 not passed, profit from the exemption would have accrued to the claimant.

LORD BENHOLME and LORD NEAVES concurred.

The LORD JUSTICE-CLERK delivered no opinion, being absent at the hearing.

Agents for First Parties—J. & R. D. Ross, W.S.
Agent for Second Parties—Jas. Webster, S.S.C.

Wednesday, June 15.

FIRST DIVISION.

THOMS, PETITIONER.

Deed—Clerical Error—Alteration of Testing Clause—Instrument of Disentail—Record—Officer of Court. An application for authority to alter the spelling of the name of a testamentary witness in the testing clause of a deed of disentail which had been recorded, *refused*, on the ground that it was a private deed, and that the clerical error had not been committed by an officer of court or public official.

This was an application to the Court to grant warrant to the petitioners to correct an instrument of disentail by altering the spelling of the name of one of the testamentary witnesses. The said deed had been recorded in the Register of Tailzies.

SHAND, for them, founded on *Hedde*, 1 D. 267; *Gilmour*, 1 D. 467; *Brown*, 2 D. 1467; *Rowe*, 1st March 1849, 21 Jur., p. 309.

At advising—

LORD PRESIDENT—I am for refusing the prayer of this petition. The precedents much relied on by Mr Shand are not in point. All that they establish is, that when a clerical error has been committed by an officer of court, or any other public officer, the Court have the power to order that clerical error to be rectified. But in this case the error has not been committed by a public officer, but by one of the parties to the deed, or his agent, and consists in a wrong spelling of one of the names in the testing clause. Now, it is not for the Court to anticipate what may be the effect of this mistake, but in my opinion they have not the power to order an alteration to be made upon a private probative deed upon the mere allegation of a clerical error. And if they had such power, in my opinion it would not be expedient that they should exercise it.

LORD DEAS agreed with the Lord President, that if this were a private deed the Court had no power to authorise any alteration, but it certainly raised a difficulty in his mind that this deed was executed by the parties on an application to the Lord Ordinary for disentail, and he would like to consider a little more carefully this peculiarity.

LORDS ARMILLAN and KINLOCH concurred with the Lord President.

LORD PRESIDENT—It is of importance to observe that this deed was executed previous to the presentation of the petition for disentail.

Agents for Petitioner—Hill, Reid & Drummond, W.S.

Wednesday, June 15.

SECOND DIVISION.

HIGHLAND RAILWAY COMPANY v. FOSTER & SONS.

Heritors—Assessment—Repairs on Manse—Real-Rent—Valued-Rent—Railway. Held that the heritors of a landward parish were entitled to lay on the assessment necessary to defray the expense of repairs on a manse according to the real-rent, the principle of the decided cases being that the heritors are entitled to depart from the valued-rent whenever the adoption of the real-rent is required in order to distribute the burden over the whole property in the parish.

This was an action of reduction at the instance of the Highland Railway Company against the Heritors of the parish of Kinclaven, and the schoolmaster as their collector, and a relative appeal from the Sheriff-court of Perthshire in which the same point was involved.

The question in these cases was whether the heritors of the parish of Kinclaven, in Perthshire, were entitled to lay on an assessment for the repair of the manse according to the *real rent* of their several properties, or whether they were bound to adopt as the basis of the assessment the *old valued rent*? The Railway Company, whose share of the real rent is £577 per annum, and to whose subjects there is no valued rent applicable, maintained that, the parish being purely landward, all ecclesiastical burdens fell by established usage to be levied according to the valued rent. The heritors, on the other hand, maintained that, there being no statutory rule, they were entitled to de-

part from the customary rule whenever the proportions of valued rent did not approximately correspond with those of the real rent; and they founded in support of this contention upon the *Peterhead* case (4 Paton's Appeals, 356), where the House of Lords sanctioned an assessment according to the real rent in respect of growth of feus, &c., within the parish.

The Lord Ordinary (MURE) assailed the defenders from the conclusions of the action of reduction. His Lordship added the following note to his interlocutor:—"Although the parish of Kinclaven is a landward parish, it is admitted that in the rental of £9487, heritable subjects are included of the value of upwards of £3600, consisting principally of railways, which have no valued rent attached to them, and the question here raised for decision is, whether an assessment for the repairs and alterations of a manse, which has been laid on according to the real rent, has been illegally imposed? The Lord Ordinary, upon considering the authorities, has come to the conclusion that it has not.

"The rule which was at one time generally acted upon, that assessments for the building and repairing of churches and manses fell to be levied from the heritors according to the valued rent of their lands, has of late years been gradually departed from, when the justice of the case required that a different basis of assessment should be adopted. This appears to have been first done in the case of *Crieff*, Nov. 20, 1782 (M. 7924), when it was decided that the expense of building a new church must be defrayed by the heritors of the landward part of the parish according to their valued rents, and by the feuars and proprietors of houses in the burgh according to their real rents. A decision substantially to the same effect was repeated in the case of *Peterhead*, and affirmed by the House of Lords, 24th January 1802 (4 Paton's Appeals, p. 356), but altering the judgment of the Court of Session in so far as any portion of the assessment was laid upon the valued rent, and deciding that the assessment fell to be levied from all the owners of lands and houses within the parish in proportion to their real rents.

"These decisions were pronounced in cases where the parishes were partly landward and partly burghal. But in 1837 a further step was taken in the same direction, in *Boswell*, June 15, 1837, in which it was held that the same rule must be applied in a parish where there was a large village which had never been erected into a burgh, notwithstanding the apprehension which was expressed by several of the Judges that this might lead to great practical inconvenience from the want of any regular assessment roll. The rule was still further extended in the recent case of *Macfarlane v. Monkland Railway Company*, Jan. 29, 1864, in a parish in which there was no burgh and no village, but a considerable number of detached feus, and it seems to have been assumed as settled in that case and the relative case of *Coupar-Angus*, decided the same day, that railway companies which were not specially exempted are liable in assessment for churches and manses as owners of heritable subjects in the parish.

"All these decisions appear to have proceeded upon the rule laid down by Lord Eldon in the case of *Peterhead*, that 'all the heritors should contribute according to the value of their land,' and that where any considerable portion of the heritors would not be reached by an assessment on the