

The lands remain in mortification for the legal poor of the city of Glasgow exactly as before, and as the superior intended that they should when he invested the magistrates and council as the proper trustees of the charity by the law as it then stood.

I agree with the Lord Ordinary that the question is to be decided "by reference to the investiture." I think, however, that his Lordship has not given due effect to the fact that the investiture was a mortification, and so perpetual, unless indeed the mortification (meaning the charity itself) should be annihilated, or the lands severed from it and turned to another use. Of such an investiture there are no heirs—for the vassal never dies. The individual men who in frequent succession come into the place of their predecessors in the trustees' office are neither heirs nor singular successors, but only make up and continue the body of trustees which is itself perpetual, and an undying vassal. A permanent charity must necessarily be administered by living men with perpetual succession according to some law,—but what that law may be, or how it may from time to time be changed by the Legislature, is of no interest to the superior who has mortified his lands and invested an undying vassal for a permanent charity of which he approved. The continuance of the vassal in perpetuity without succession (in the sense in which we speak of the succession of an heir or singular successor) was precisely what he contemplated and intended, and how this may be effected is nothing to him who is interested only in the permanence of the charity and the perpetuation of the administering trustees.

I am therefore of opinion that there is here no new investiture of the defenders as singular successors, and that they ought to be assolized with expenses.

The Court adhered.

Counsel for the Pursuer (Respondent)—Keir.
Agents—Dundas & Wilson, C.S.

Counsel for the Defender (Reclaimant)—Trayner.
Agents—W. & J. Burness, W.S.

Wednesday, March 5.

FIRST DIVISION.

(Before Seven Judges).

LAIRD v. THE CLYDE NAVIGATION TRUSTEES.

Statute—"Clyde Navigation Consolidation Act, 1858"—Dues upon Timber Logs conveyed to Storing-ponds—Right to Charge.

Held, (where no such charge had been sought to be imposed for a period of twenty years) that upon a construction of the clauses of the "Clyde Navigation Consolidation Act 1858," timber unshipped in the harbours of Port-Glasgow or Greenock, and towed "in chains," by a channel which was not the usual and artificial channel of the river, to certain timber ponds within the jurisdiction of the Clyde Navigation Trustees, there to be stored, was not liable to dues, in respect

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that it was not "shipped or unshipped" in the river—*diss.* Lords Gifford and Shand, who thought that on a broad interpretation of these words timber so dealt with might be said to be "unshipped" in the river.

Question, Whether the same timber, if made up into rafts and taken up the river to Glasgow and there landed, was liable to dues?

Observations as to the effect to be given to schedules appended to a statute.

This was a process of suspension and interdiction raised by John Laird & Sons, timber measurers, Port-Glasgow, against the Clyde Navigation Trustees, to prevent them levying or exacting payment of rates or dues for or in respect of timber imported into this country from abroad, and unshipped in the harbours of Greenock and Port-Glasgow, or either of them, and thereafter floated and towed in chains up to the timber-ponds of the complainers, situate above Newark Castle, on the south side of the river Clyde.

The following statement of the facts of the case is taken from the Lord Ordinary's note.

"The power of charging rates on timber was conferred on the respondents for the first time by the Clyde Navigation Consolidation Act 1858.

"Timber was at that time, and has ever since been, in use to be floated to the ponds in question, but the respondents have not attempted until now to charge rates on it.

"The complainers dispute their liability to pay the rates claimed, upon two grounds—(1) Because they do not in floating the timber use any part of the deep water channel or waterway of the river, for the use of which alone they maintain vessels or goods are liable to pay rates; and (2) because the timber is not 'shipped or unshipped' in any part of the river or harbour.

"The timber in question is unshipped in the harbour of Port-Glasgow or Greenock, as the case may be. It there pays harbour dues. The logs are there bound together by chains, and as it is not allowed to remain in harbour for more than about forty-eight hours, it is towed by tug steamers to the timber ponds in question, where it is placed for storage purposes. If the timber is sold, and is to be sent up the river, it is built up into rafts, formed of from three to five tiers of logs placed one on the top of the other, and firmly secured together.

"By the 75th section of the Clyde Navigation Act it is enacted that the limits of the river Clyde shall include the whole channel or waterway of the said river forming the harbour, and as far down the river as to a straight line drawn from the eastern end of Newark Castle, on the south shore of the river, to the mouth of Cardross Burn on the north shore, and the whole works within the said limits for the improvement of the navigation of the river constructed or authorised to be constructed by or under the charge of the Clyde Trustees, and the whole lands acquired for the purposes of such works or occupied by the Trust in connection with the navigation of the river.

"It is not disputed that the complainers' ponds are all situated above Newark Castle, and in that sense within the limits of the river, as defined by the 75th section.

"Immediately above the line which forms the limit of 'the river' in the sense of the Act, there are two channels—a new channel, which was

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formed by the respondents about the year 1858; and the old channel, which lies close to the southern shore of the river, and is separated from the new channel by a bank called *Fyfe's Bank*. The new channel is now the principal channel for the navigation of the river. The old channel was the natural channel of the river. Before the new channel was made the Trustees were in use to deepen it by dredging and otherwise, but they have not done so since. It is only occasionally used now by lighters and vessels of small draught of water.

"In towing timber from the harbours of Greenock and Port-Glasgow to the timber ponds it is proved that the complainers do not use or pass over any part of the new channel. They tow the timber along the south shore, making use only of the old channel."

The clauses of the statute founded on were as follows:—Clause 97 provided—"Subject to the provisions of this Act, it shall be lawful for the Trustees to levy on and in respect of all vessels entering or using the river or harbour the rates specified in the Schedule G to this Act annexed; and all such rates shall be paid by the owner, agent, master, consignee, or other person in charge of such vessels." The schedule G referred to was headed thus—"Rates on vessels on each time of entering or using or departing from the river or harbour." Clause 98 provided—"Subject to the provisions of this Act, it shall be lawful for the Trustees to levy on and in respect of all goods shipped or unshipped in the river or harbour the rates specified in the first and second columns of Part I. of the Schedule H to this Act annexed, and on all animals and carriages shipped or unshipped in the river or harbour the rates specified in Part II. of the said Schedule H; and all such rates shall be paid by the owner of such goods, animals, and carriages." And Part I. of Schedule H was headed thus—"Rates on goods conveyed upon or shipped or unshipped in the river or at the harbour, or using any transit shed or warehouse."

The contention of parties with regard to these clauses respectively therefore was:—By the trustees—That the title of Schedule H was broad enough to cover the present case, applying as it did to goods "conveyed upon or shipped or unshipped in the river," even if these logs could not be said to be shipped or unshipped in the river. By the complainers—that the words of the statute could not be extended by the title of the schedule; that goods were not chargeable unless "shipped or unshipped;" and that these logs could not be said to be either one or the other.

The Lord Ordinary (ADAM) after proof as to the use of the channel by the chains of timber, refused the note, adding the following grounds for his judgment:—"It appears to the Lord Ordinary that the definition of the river given in the 75th section of the Act makes it clear that the river Clyde under the jurisdiction of the respondents, and over the area of which they are entitled to assess, includes the whole channel or waterway of the river from bank to bank, and is not limited to any particular channel or waterway which may have been formed or deepened by the Trustees. It cannot be doubted any vessel using the old channel before the new one was made was liable to pay rates. It is difficult to see why a vessel

continuing to use that channel should cease to pay rates because the Trustees have formed a new channel more convenient for other vessels.

"The complainers relied on the 76th section of the Act as showing that 'the river' meant only the artificially deepened channel, but the Lord Ordinary thinks that that section merely describes 'the undertaking' of the Trustees, but does not in any way modify the limits of the river as defined by the preceding clause.

"The second question is, Whether timber floated in the manner described is liable for rates under the 98th section of the Act and relative schedules? That section authorises the Trustees to levy certain rates (specified in Part I. of Schedule H annexed to the Act) in respect of all goods 'shipped or unshipped' in the river or harbour, including rates on timber. It is said by the complainers that the timber in question is neither shipped or unshipped in the river or harbour, and it is therefore not liable for rates.

"Schedule H, Part I., is entitled, 'Rates on goods conveyed upon or shipped or unshipped in the river, or at the harbour, or using any transit shed or warehouse.'

"By the 99th section, which provides for the more equitable payment of the rates granted by the preceding sections, the river is divided into three stages, and it is enacted that 'all vessels, and goods, animals and carriages whatsoever, passing in or upon the river, or any part thereof within the limits aforesaid, shall pay said rates,' in certain portions therein specified,—'Provided that the Trustees shall be entitled to levy the whole amount of the said rates on all vessels, goods, animals, and carriages passing or being conveyed along or into the said three stages, or any parts thereof.'

"In the opinion of the Lord Ordinary the power of assessment is not limited to goods 'shipped or unshipped' in the river, or conveyed in vessels, but also embraces goods conveyed or passing along the river by towing, as in the present case.

"It was maintained that the Act being a taxing Act, ought to be strictly construed in favour of exemption; but the Lord Ordinary does not think that the principle of strict construction applies to an Act of this kind where the rates are paid in return for the benefits conferred by the execution of the works. He sees no reason why rafts should not be equally liable to pay rates for the use of the river with vessels or goods in vessels.

"It appears to the Lord Ordinary that upon a sound construction of the Act all goods passing or in any way conveyed upon the river are liable in payment of rates.

"It is material to observe that this construction of the Act has been acted upon ever since it came into operation. Prior to that date timber was exempt from rates, but since the passing of the Act all built-up rafts towed up the river have invariably paid rates in terms of the schedule annexed to the Act."

The complainers reclaimed, and after the case had been argued before the First Division, it was ordered to be heard before seven Judges.

A joint-minute was then put in for the parties, from which it, *inter alia*, appeared—
"(4) The log timber discharged at Greenock and Port-Glasgow is usually first taken to the

timber ponds 'in chains.' A 'chain' of timber consists of one row or tier of logs, about 20 to 25 in number, temporarily fastened together. When the 'chains of timber' reach the ponds the chains are removed, and the logs put singly into the ponds, where they float when the tide is not out. (5) A 'chain of timber' and a 'float of timber' are synonymous. A 'raft' of timber consists of two, three, or four tiers of logs deep. (6) Some of the timber ponds are between Greenock and Port-Glasgow, and others are above Port-Glasgow. (7) The log timber is usually sold while in the ponds; and when it is to be delivered at Glasgow, or at the building-yards on the river, it is made up into rafts of two, three, or four tiers deep, securely bound. These rafts are made up at the ponds. (8) No dues have hitherto been levied on the 'chains' or 'floats' of timber going to the ponds. (11) The timber sent to the ponds is discharged out of the ships either at Greenock or Port-Glasgow. No ship comes up to the ponds above Port-Glasgow to discharge there. The timber arriving at the ponds is hauled up thither in chains, generally in tow of tug steamers, but there is also a considerable quantity floated up by the tide." &c.

The complainers then argued, that unless the schedule was to be allowed to extend the operation of the enacting clause, the timber was clearly exempt from dues; to allow any schedule to be so construed was contrary to sound rules of interpretation: *Q. v. Baynes*, 12 Adolphus and Ellis, 227. Then whether this was regarded as a public tax or a tax imposed by private bargain with those using the river, the Act imposing the tax was to be so construed as to give the benefit of any doubt to the public, who were entitled in the absence of any such statute to the free use of the stream: *Dwarris*, p. 646; *Maxwell*, p. 51; *Broom's Legal Maxims*, p. 4 and p. 570-5.

They also contended that the part of the waterway used by them was not the river in the sense of the statute.

The respondents argued that the whole waterway was by the definition in the statute included in the term river. Also they maintained that by the terms of the titles to the Schedule H and of section 99 itself, it was clear that goods conveyed upon the river—and this timber was certainly so conveyed—were liable to dues. "Conveyed" did not necessarily invoke the notion of being packed in a ship—I *Kings*, v. 9. But even if the question was whether they were shipped or unshipped, the natural interpretation of these words would be broad enough to cover the operations performed upon these logs of uniting them in chains.

At advising—

LORD JUSTICE-CLERK—This is a process of suspension and interdict brought at the instance of Messrs John Laird & Sons against the Clyde Trustees for the purpose of having them interdicted from levying rates or dues "in respect of timber imported into this country from abroad and unshipped in the harbours of Greenock and Port Glasgow, or either of them, and thereafter floated and towed in chains up to the timber ponds of the complainers, situate above Newark Castle on the south side of the river Clyde, and from interfering in any way with the complainers in regard to the timber so floated and towed to their said ponds."

It is conceded that hitherto the Clyde Trustees have not been in the habit of levying rates or dues on timber to which the conditions expressed in the prayer of the complaint apply, and therefore the question we have to consider is, whether the state of possession in this respect is to be inverted or to be maintained?

The statement of fact in the joint minute for the parties is so clear and exhaustive as to relieve me from any necessity of prefacing my opinion by any narrative. And therefore I shall at once address myself to the questions which have been so fully argued before us. These questions relate substantially to the construction of the statutory powers under which the respondents, the Clyde Trustees, act; and although they are of importance and difficulty, they are comprehended within a very narrow compass.

The statute in question on which the present argument turns is the 21st and 22d Victoria, cap. 149, and is dated in 1858. The clauses which authorise the Trustees (who have, as is well known, performed very considerable operations on the river Clyde, and expended large sums of money on the improvement of the navigation), to levy rates are the 97th and 98th sections. The 97th section is in these terms:—"Subject to the provisions of this Act, it shall be lawful for the trustees to levy on and in respect of all vessels entering or using the river or harbour the rates specified in the Schedule G to this Act annexed; and all such rates shall be paid by the owner, agent, master, consignee, or other person in charge of such vessels;"—and the 98th section provides:—"Subject to the provisions of this Act, it shall be lawful for the Trustees to levy on and in respect of all goods shipped or unshipped in the river or harbour the rates specified in the first and second columns of Part I. of the Schedule H to this Act annexed, and on all animals and carriages shipped or unshipped in the river or harbour the rates specified in Part II. of the said Schedule H; and all such rates shall be paid by the owner of such goods, animals, and carriages." These are the clauses, and the only clauses, which confer the right to impose rates; and the first question is, What, taken by themselves, do they import? It seems clear that the 97th section imposes a rate on vessels entering or using the river or harbour, and that the 98th section authorises the imposition of rates (1) in respect of goods shipped or unshipped in the river and harbour, and (2) rates on animals and carriages shipped or unshipped in the river or harbour. The test of liability in the case of vessels is "entering or using the river"—in that of goods it is being "shipped or unshipped" within the river. It is clear, further, that clause 97 enacts that the amount of rate to be so levied on vessels shall be that specified in Schedule G, and that section 98 enacts that the amount of rates to be levied on goods shipped or unshipped within the limits shall be those fixed by Schedule H, Part I, and those on animals and carriages those fixed by Schedule H, Part II. So far there seems to be no ambiguity. But it is contended that by the 99th section—the section of the statute immediately following—and also by the title affixed to Schedule H, Part I, the right to levy rates is not confined to goods, animals, or carriages, shipped or unshipped, but is extended to all goods, and all animals or carriages, whether shipped or unshipped or not, provided they pass in or upon the river.

On this part of the case I have not found any material difficulty. I think the construction attributed to the 99th section and to the terms of the title of the first part of Schedule H is not only inconsistent with the policy of these rating clauses, but is opposed to the plain meaning of clause 99 itself and the expressions in the schedule. Had the construction now put on these provisions been correct, I should have expected to have found it averred and proved that the respondents were in use to exact dues on goods which were neither shipped or unshipped within the limits of the river and harbour. I can hardly think, in the absence of any such allegation, that this can be so. The quality of being shipped or unshipped is not an unmeaning or accidental test of the liability of goods to pay harbour or river dues. On the contrary, it expresses and implies the consideration for which the power of rating goods is given, and on which the liability rests, namely, the use of the accommodation and structural works for the loading and unloading of cargo. Accordingly, in the Piers and Harbours Clauses Act 1847, which, with some exceptions immaterial to the present question, is incorporated with the Clyde Act by the 6th section, excepting so far as altered by the Special Act, are sundry clauses containing general regulations relative to rates or goods in such undertakings, and all of these relate to goods shipped or unshipped within the limits of the harbour. Thus the 33d section provides that on payment of the specified rates the harbour, dock, and pier shall be open to all persons for the shipping or unshipping of goods. The 37th section enacts that masters of vessels shall within twelve hours after the arrival of the vessel give to the collector of rates an account of all goods intended to be unshipped within the limits of the harbour. The 39th prescribes a similar notice to be given of all goods intended to be shipped within these limits. And then by section 42 it is provided that the rates "payable to the undertakers in respect of goods shipped or unshipped within the limits of the harbour, dock, or pier shall be paid as follows: that is to say, if such goods are to be shipped, they shall be paid before the shipment; or if such goods are to be unshipped, they shall be paid before the removal of the goods from the premises of the undertakers, and before the expiration of two months next after they were unshipped."

The details of these clauses are varied by the Special Act, and in particular the direction in the 42d section as to the time and mode of payment is to some extent altered by the 99th section of the Clyde Act. But as in the General, so in the Special Act, the rate on goods is to be levied in respect of their being shipped or unshipped within the limits, and not otherwise. It was not maintained at the bar, nor can I think it probable, that if a general ship discharges part of its cargo at Glasgow, and departs with the rest of it for Belfast or Ayr, rates are or could legally be demanded for the whole at the harbour of Glasgow. I should therefore have been slow to conclude that the construction put by the respondents on the 99th section was in any respect sound, seeing that if the rates are leviable upon all goods, animals, and carriages passing in or upon the river, the words "shipped or unshipped within the river or harbour" would cease to have any significance or intelligible meaning, and the principle

which I think underlies them would be entirely excluded. But I need not enlarge upon this, because when we come to look at the real object and intent of the 99th section, it becomes quite clear not only that it does not in words confer any power to impose any other rates than those which have been the subject of the 97th and 98th sections, but that the words founded upon are used for an object quite clear in itself and wholly opposed to the construction contended for. That object plainly is to modify these sections of the Piers and Harbours Act to which I have referred as to the time and manner of exacting the rates. In order to show this, however, it is necessary to read the whole clause together. The 99th section begins with the words "For the more equitable payment of the rates hereinbefore granted leviable below the Stockwell Bridge, formerly called the Old Glasgow Bridge, that part of the river shall be divided into three stages." This division is the sole purpose of this clause, and it is to be made for the more equitable payment of the rates hereinbefore granted, and for no other object whatever. The clause then proceeds to make the division of the river below Stockwell Bridge down to its western extremity, Newark Castle, into three stages, which are there expressed; and then it proceeds thus:—"And all vessels and goods, animals, and carriages whatsoever passing in or upon the river or any part thereof within the limits aforesaid shall pay the said rates"—that is, the rates under the 97th and 98th sections—"in manner and in the proportions following, and at such stations on the river as the Trustees shall appoint." The meaning of that provision seems to be this. It is a provision which prescribes the manner, the proportion, and the place in or at which the rates granted by the 97th and 98th sections are to be exigible from the traders, and the words "passing in or upon the river or any part thereof within the limits aforesaid" have no significance but this, that as the rates are to be exacted, not at the termination of the voyage or at the place of shipment or unshipment as provided for in the General Act, it shall be sufficient to oblige the vessel to pay the rate at the station where it is exacted—although the goods may not have been then unshipped—that the vessels have, at the time of demand, passed over any portion of the waterway of the river or harbour. This provision was necessary in combination with that in the 97th and the 98th sections in order to prevent disputes in regard to goods which, although destined for unshipment at a further point, had, when the rate was demanded, not been unshipped within the limits of the river. The clause proceeds to specify the proportions of the rate which shall be exigible at the different stages, and it concludes by giving the Trustees power, if they think fit, to levy, not these proportions of the rate, but the whole of it, at any of the stations.

It seems to me, therefore, that the construction for which the respondents have contended has no support whatever in the terms or in the object and intent of this enactment; but that, on the contrary, the 99th section is so expressed as to limit the subject-matter of it to the rates granted by the 97th and 98th sections, and that the words in question cannot possibly bear the interpretation sought to be put upon them. A good practical illustration of how little these words

were intended to affect the quality of the goods on which the rates were to be levied may be deduced from this consideration, that while the words "passing in or upon the river," in the 99th section, are applicable not only to vessels and goods, but also to animals and carriages, there are no rates provided in the Schedule H, Part II, for animals and carriages excepting for such as are shipped or unshipped in the river or at the harbour. It is in vain to contend that the words contained in the title of the first part of Schedule H, which relates alone to rates to be levied on goods, are imported into the second part, which relates alone to the rates to be levied on animals and carriages.

So much on the 98th section. In regard to Schedule H, Part I, it is contended that the terms of the title extend and enlarge the description of goods on which the rate may be levied. The words are these—"rates on goods conveyed upon or shipped or unshipped in the river or at the harbour, or using any transit shed or warehouse."

Now, in the first place, as this schedule derives its authority entirely from the 98th section, and as that authority is limited in the 98th section to the specification of the rates leviable on goods shipped or unshipped within the river or harbour, it would be wholly inadmissible on any canon of construction to give it a wider interpretation. But I think it unnecessary to say more on this head, because the words thus introduced into the title, although not very accurate, are manifestly intended to meet exactly the same circumstances as those in the 99th section; and to give the authority of the schedule to levying these rates at the different stages, even although the goods on which they are levied have not, when the rate is demanded, been shipped or unshipped in the river, although they are destined to be so when they arrive at the place of unshipping or discharge.

But it is maintained further, that granting that these considerations show that there is no authority to levy dues on goods which are not shipped or unshipped within the river, these timber logs which are floated or towed to the timber ponds, as described in the minute of admissions, are truly shipped or unshipped within the limits of the river, and are therefore liable to pay the rate.

It seems from the facts, on which the parties are agreed, that the timber in question is unshipped or discharged from the vessels in which it has been imported below and outside the limits of the river; and from that point, the logs being chained together, are floated up by the tide or by means of propulsion, or dragged by tugs along the south margin of the stream until they reach the timber ponds within the limits of the river. These ponds are within low water-mark, and are left dry by the receding tide. It is said that the course which the timber thus follows is for the most part at all events outside the fairway or channel, and that it does not use any part of the ordinary navigation.

Whether the timber under these conditions, or under any of them, can be said to be shipped when the logs are united or chained together, and to be unshipped when the chains are taken off at the timber ponds, is a question no doubt involving elements of considerable difficulty. On

one hand, it is said that as these goods are conveyed by the use of the waterway within the limits of the river they are within the category of profitable use or enjoyment of the navigation. On the other hand, the fact remains and is admitted that they never have been rated, although that kind of traffic has continued from time immemorial. *Prima facie* it would rather seem that the terms used in the 98th section, "shipped or unshipped," apply to goods conveyed by some floating conveyance—some ship or vessel or similar craft. They imply a conveyance by water by means of a separate navigating appliance. The floating vessel itself cannot be said to be shipped or unshipped merely because it floats. It must pay duty as a vessel, not as goods. These logs are not shipped, although by reason of their power of flotation they do not require to be shipped. A log of wood thrown into the water is unshipped when discharged from a vessel as this timber was; but a log of wood can hardly be said to be shipped because it floats with the tide to shore, nor can this be accurately said of two or three, or twenty or thirty, merely because they are fastened together. This is manifestly in some respects a question of degree; and I am not prepared to say that while it does not appear to me that under the conditions specified in the minute any of the timber in question under this action can with reason or accuracy be said to be shipped or unshipped within the river, something might not in other cases come to depend on the scale on which the operation is performed, and the details of the means adopted for the conveyance of the timber, as well as the amount of use made of the harbour accommodation. It is said that while no rates have ever been paid on timber under the conditions specified, a very large revenue is derived by timber formed into rafts and floated up to the harbour of Glasgow. The question whether, on this larger scale, it can be said that these timber rafts are not substantially vessels, or that the timber conveyed in them is not shipped when it starts, or unshipped when it arrives, are questions which must depend on other considerations, and on which I do not think it necessary to indicate any opinion. If the logs form a raft intended for the support and transport of others as well as themselves, the question may assume another aspect. But, dealing as we are here with the existing state of possession, and the construction which the authorities for twenty years have placed on this statute, and the long-continued practice before its date, I am of opinion that it would be an unreasonable and unsound extension of the words under which the power to rate is conferred to apply it in the way contended for on the part of the respondents. I am therefore of opinion that the suspenders are entitled to prevail, and that this interlocutor ought to be altered.

LORD DEAS concurred, observing that the fact that no dues had been levied for 20 years was sufficient for the decision of the question, which was merely a possessory one.

LORD ORMDALE concurred.

LORD MURE—I have come to the same conclusion. As I understand, the whole question is

whether timber that is unshipped in the harbour of Port-Glasgow or of Greenock, and is afterwards tugged or floated up to these timber ponds which are within the jurisdiction of the respondents, is liable to dues. The claim is made under the Act of 1858. Now, I have to remark that at the date of that Act logs were floated up as they are now to these ponds, and yet no attempt has been made till now to charge the complainers with rates for doing so. If it was intended to subject this timber to rates, that ought to have been made matter of distinct provision. But I cannot find any such provision—the fact that the respondents have not attempted to charge rates shows, I think, that they had not any power to do so.

It is under the 98th section of the statute that the respondents claim these rates, but that section is confined to goods that are shipped or unshipped in the river or harbour. Now, these goods are not unshipped in the river Clyde—they are unshipped at Port-Glasgow or Greenock, and they lie in these ponds till they are floated up the river. Attention has been called to the fact that a large proportion of the timber is formed into rafts and towed up the river, and that then it pays dues as is stated in the minute of admissions. I cannot extend the operation of the rating clauses through an expression used in one of the schedules attached to the Act, nor can I hold that the words of the schedule can control the words of the section of the statute.

I give no opinion as to what is to be done in the case of the rafts. I can see that there may be argument that the logs when towed up on rafts are not to be charged with rates, but on that question I reserve my opinion.

LORD GIFFORD—The question in this case is, whether the respondents, the Trustees of the Clyde Navigation, are entitled to levy the statutory rates on timber in logs which have been unshipped in the harbour of Port-Glasgow or Greenock and which are thence floated up or towed up the river to timber-ponds belonging to the suspenders, and situated on the south bank of the Clyde above Newark Castle. The timber-ponds are admittedly within the statutory limits of the river to which the respondents' power of levying rates is applicable, but the suspenders maintain that the statutory rates are not leviable, inasmuch as the timber is not in the sense of the statute shipped or unshipped in the river, that it does not pass over the artificially deepened portion of the river, and also in respect that it is taken to the timber-ponds simply for the purposes of storage, and often remains in the ponds a considerable time without either being sold or used.

The question is raised in the form of a suspension and interdict, but the case has been argued on the merits and with a view to determining in all time coming the right of the Clyde Trustees to levy Clyde dues on timber taken to the suspenders' timber-ponds or to other ponds similarly situated, and there is no inconvenience or difficulty in deciding the whole merits of the case just as if the action had been one of declarator of right. To treat the question as a mere possessory one, and to decide it according to the usage which has prevailed during the last seven years, would, I apprehend, defeat the object which both parties must have in view, and would leave the question

to be raised again immediately in a new process of declarator. This would simply create useless and unnecessary procedure and expense, and I apprehend your Lordships of the First Division would not have ordered the present hearing by seven Judges if the question had been merely of a possessory or interim nature. I take the question, then, in precisely the same way as if it had been raised in a formal action of declarator.

The statute which conferred upon the Clyde Trustees power to levy rates on vessels entering the river, and on goods shipped or unshipped therein, was passed in 1858, and although there have been a good many amending statutes, the rates now in dispute are still levied under the Act of 1858. The present action was brought in Dec. 1876. The practice of the Clyde Trustees since 1858 has been not to levy the statutory rates upon timber merely taken to the timber-ponds situated in the same locality as those of the suspenders, but in the event of the timber being made into rafts and floated or towed up to Glasgow, or to other places on the river above the timber-ponds, the practice has been then to levy the whole river dues under the statute according as the timber is landed for use in the first, second, or third stages of the river, in terms of section 89 of the said Act. Timber made into rafts and floated or towed up the river, either to Glasgow or to any intermediate place between Glasgow and Newark Castle, has always paid the river dues according to the schedule of rates. In explanation of the usage which has hitherto prevailed of not levying dues upon timber merely going to the ponds, the Clyde Trustees explain that the storage of timber in the ponds has very much increased, and that considerable quantities of it, instead of being ultimately rafted up to Glasgow and so paying the statutory dues, are removed from the ponds and otherwise disposed of and so escape the payment of dues altogether. They state that it is the interest of the River Trust to levy the dues on the timber that is taken to the timber-ponds, of course such timber paying only for the third or lowest stage of the river. If it is afterwards rafted to Glasgow or elsewhere, it will not be charged over again for the third or lowest stage, but only for the second and first stages, or for such of them as it actually passes.

I am of opinion that the question now raised cannot be determined by the mere usage which has hitherto prevailed under the Act of 1858. The question depends, and depends exclusively, on what is the sound construction of the statute, and I do not think that this can be determined by the mere usage of the Trustees, even although such usage has continued for eighteen or nineteen years prior to the raising of this action. A misconstruction of the statute by the Trustees would not prevent them from now obtaining the right interpretation, and from proceeding in terms thereof, and so, in like manner, if they have been unwarrantably levying dues they could now be stopped from doing so by anyone having interest. In short, the construction of the statute does not depend upon the past practice of the Trustees, if their practice can be shown to have been erroneous and to have proceeded from oversight or mistake. There has been no such inveterate usage as to fix the legal meaning of the statute. If it be true that the traffic of logs to and from the timber-ponds has increased, or has varied

from what it was when the usage began, and that timber is sold from the ponds without paying river dues at all, this would afford an additional reason for disregarding past practice, and applying the statute according to its true meaning and import.

Now, on considering the terms of the statute, I am of opinion that timber in logs floated or towed up the river from Greenock or from Port-Glasgow to timber ponds above Newark Castle, that is, above the western limit of the river, is liable in the statutory dues—that is, in reference to the ponds in question, which are situated in the third or lowest stage of the river, the timber must pay one-sixth of the whole statutory river rates. It will be liable in further payment only if it is thereafter rafted or conveyed up the river to the second or to the first stage thereof.

As I understood the argument for the suspenders, they claim exemption from river dues upon three separate grounds. First—They say that timber merely floated up the river to the timber ponds, either in loose logs or “in chains,” or in floats towed up by a tug steamer, is not in the sense of the statute “shipped” or “unshipped” therein, and as dues are leviable only on goods shipped or unshipped in the river, all timber not loaded in or upon a “ship,” or not unloaded from a ship, is duty free. Second—They maintain, that as the timber in question is floated or towed to the timber ponds without requiring to pass or to make use of the artificially deepened channel of the river, that therefore it does not use the river proper, and ought not to be liable in river dues. And Third—They maintain, that as the timber in question is taken to the timber ponds merely for the purpose of stowage, and may not be instantly sold or used, therefore it should not pay river dues, leaving it to be charged, if chargeable at all, on being afterwards taken up to Glasgow or elsewhere. It humbly appears to me that none of these grounds for exemption are well founded.

First—It is said the timber in question is neither shipped nor unshipped in the river, and certainly if these words are to be rigorously interpreted as meaning put on board of or taken from the hold or deck of a ship in the river, this is true. I cannot, however, so read the statute. I think the words “shipped” and “unshipped” must be read in a fair and reasonable sense, having regard to the whole nature and intentment of the statute. The object of the statute was to improve the navigation of the river Clyde so as to make it more useful and available as a means of transit, and the dues are levied simply as a means of providing the funds necessary for the improvement of the river and the protection and security of the navigation. The Clyde Trust is a public trust, and the whole dues levied are applied to the trust purposes. There is no private company or private proprietary, and no profit is made by anybody. The river dues are simply the price which those who use the river pay for its improvement, and in construing an Act of this kind I think what is to be sought for in its rating clauses, as well as in all its clauses, is its fair and true meaning. It was urged that sections 97 and 98 are taxing clauses, and must be rigorously if not judiciously interpreted; so that there is no tax if the words do not in the strictest and most rigorous sense apply. I do not so in-

terpret a statute like this. It is not in any sense a taxing statute. It is a statute for improving a river by heavy expenditure, and the dues are simply the fair price to be paid for that expenditure by those benefitted thereby. An equitable and fair interpretation, and not a strict or rigorous one, is to be applied to such a case.

Now, I read “shipped” or “unshipped” as really equivalent to the expressions “loaded or discharged” in the Clyde, or as “dispatched from or landed in the Clyde,” or other expressions of similar import—the essence being the use of the river as a means of transit. The provision relates to goods alone. It is the 97th clause which provides for rates on ships or vessels, and in that case all ships or vessels entering or using the river or harbour are to be liable. The 98th clause, which provides for rates upon goods, which are quite separate and distinct from the rates on vessels, provides that all goods shipped or unshipped in the river or harbour shall pay the rates mentioned in Schedule H. Now, without going further, I think it would be a most unfair interpretation, and quite contrary to the spirit of the Act, to hold that timber which comes to Glasgow in the hold or on the deck of a ship must pay the dues, but that timber which is made into a raft and towed up the river, or even floated up the river with the tide, is to be duty free. This cannot have been the meaning of the statute, and I would be very unwilling to be driven to such an interpretation. No doubt if floated up the river there will be no rates to pay upon the vessel which brought it to Greenock or Port-Glasgow, because such vessel does not enter the river, and so the rates on vessels will be saved, but the rates on the timber as “goods” must be paid all the same—all the more so that timber in rafts or in floats is the most inconvenient of all traffic on such a river as the Clyde. The 119th section specially contemplates the conveyance of rafts of timber on the river, for special power is given to the Trustees to make byelaws for their regulation.

In getting at the true meaning of the words “shipped” or “unshipped,” I think I am entitled to look not only to the schedule of the rates but also to all the other clauses of the statute, and I find important light from these sources. The schedule of rates which is specially referred to in section 98 is entitled “rates on goods conveyed upon or shipped or unshipped in the river or at the harbour, or using any transit shed or warehouse.” Here the words “conveyed upon” the river are used apparently as explanatory of or as synonymous with shipped or unshipped in the river. I do not say that the title of the schedule is incorporated as a proper part of section 98, but it is surely important to see what the Legislature meant when they used the words shipped or unshipped, and when we find in the schedule the words “conveyed upon” used apparently in connection with shipped or unshipped, it points very directly to what the true meaning is. There can be no doubt that rafts of timber are conveyed upon the river quite as much as vessels.

In like manner, section 99, the primary object of which is to divide the river into three stages, and to allocate the rates according as one or more of the stages are used, expressly enacts that the Trustees “shall be entitled to levy the whole amount of the said rates on all vessels, goods,

animals, and carriages passing or being conveyed along or into the said three stages or any part thereof." Here it is very noticeable that the words shipped or unshipped are not used at all, but "passing or being conveyed along" the said three stages are alone used for the purpose of providing for the rateable apportionment of the dues. On the whole, I have no doubt that, according to the fair sense and true intendment of this statute, timber floated or towed up the river to timber ponds or—for the question would be the same—to timber yards, are liable in a rateable proportion of the dues, according to the stages of the river up which they pass or are conveyed.

But the question goes a great deal deeper and a great deal further than the mere conclusions of the present action, and the decision must, I think, regulate not only the duties on timber taken to the timber ponds, but the duties payable on all timber floated, rafted, or towed up the Clyde to Glasgow or elsewhere. If the view of the suspenders is well founded, I think it will follow (I for one can hardly resist the inference) that timber rafted or floated or towed all the way up to Glasgow, the whole three stages of the river, will be free of all river dues, for the argument that timber floated or towed to the timber ponds is not shipped or unshipped in the river, will be equally applicable to timber rafted or floated or towed all the way to Glasgow or to any intermediate point on the river. This raises a very large question indeed, for parties are agreed that the duties levied upon such rafts amounted in 1877 to between £2000 and £3000 per annum, and this revenue is largely increasing. No doubt some distinctions exist between timber floated to the timber ponds and timber floated to Glasgow, but I confess myself quite unable to take any distinction in point of principle between the two which should make the one liable in duties and the other not. No doubt the rafts that go to Glasgow are larger and consist of more tiers, or are more firmly bound together than in the case of timber which is merely going to the ponds. The only reason of the difference, however, being that rafts destined for Glasgow have further to go, and must be closer and better packed, so as to be convenient for narrower channels, it cannot possibly be a reason for levying duties that the timber is in a big raft instead of a small one, or that the raft is firmly bound and well made instead of being slackly and loosely fastened, or that it is made in two tiers of logs or in four tiers instead of only in one tier, and so on. Such reasons for imposing duties or for exempting from duties would be absurd. I feel therefore that in considering the liability to duties of logs floated or towed to the timber ponds, I am really dealing with the far larger question of the rateability of all timber floated or rafted up to any part of the river. I cannot help this. I really can draw no effective distinction between the two cases, and if I were to hold that the timber going to the timber ponds is duty free, I do not see how I could consistently avoid holding that timber floated or rafted up to Glasgow is duty free also. This would involve a loss to the trust of £3000 a-year, and probably far more, for I think I may assume that much of the timber which now comes up in ships, and which now pays nearly £5000 a-year of duty, would be taken from the ships below Newark Castle, and be

floated up to its destination in Glasgow, if by this being done it could escape duty altogether.

Of course it is a mere accident that the timber ponds in question are in the lowest stage of the river, and not far above Newark Castle, but they might be anywhere. They might be in the second stage, or there might be timber-yards at Glasgow, and a timber-pond is just a timber-yard with the convenience that logs can be floated into it or into part of it when the tide flows up. The very same question would arise in regard to floating or towing logs to a timber-yard at the Broomielaw as has now arisen in reference to the timber-ponds in the third stage. Both must pay river dues or neither, and I am clearly of opinion that both must pay rateably according to the stages which they traverse.

The other grounds on which exemption is claimed may be disposed of in very few words. It is vain to say, as the suspenders do, that timber floated to their ponds does not use the river. The interpretation clause provides that "river shall mean and include the river Clyde and the whole works connected therewith as hereinafter defined." The lower stage of the river is at some places very broad, several miles, and the artificially deepened channel where artificial deepening has taken place is comparatively limited to a buoyed or marked course which large vessels follow. It would be a very serious thing if it were held that small vessels could escape dues altogether by keeping in the old channel of the river which has not been altered—by avoiding the deepened channel, or it may be by only sailing up at high tide when they could go a long way up without leaving what at low tide would be only foreshore. It is true only a portion of the broad *alveus* of the river is deepened, for to do more was impracticable on account of the expense, and would be useless, but all ships and all goods over whatever part of the *alveus* they sail must pay the dues which produce the funds which have made the Clyde the great way that it is.

The remaining plea which is urged by the suspenders is, that timber floated or towed to their timber-ponds should be exempted from Clyde dues because it is taken to the ponds simply for purposes of stowage—that it is merely deposited for a time in the ponds, and that when it comes ultimately to be sold or removed for consumption it may be charged if otherwise chargeable with river dues, at least in the event of being taken up the river. I think it is a sufficient answer to this plea to say that the Clyde Trustees have no concern with the ultimate destination of goods which become chargeable under the statute. They have no right to inquire what that ultimate destination is, and they are not bound to wait for their dues till the ultimate destination is determined. If once the dues are exigible under the statute they must be paid altogether irrespective of what the merchant intends to do with the goods. The statute does not exempt timber from payment of the dues merely because it is not intended for instant consumption. This would be to convert the timber-ponds into a sort of bonded warehouse, and would require regulations and precautions for which there is no warrant in the statute. Further, if the suspenders' view is well founded, they would be equally entitled to exemption though they used the whole river, and conveyed the timber to Glasgow, provided only it was stored

there in a timber-pond or in a timber-yard, for in the present question there is really no difference between the two. It appears, however, that a considerable part of the timber stored in the timber-ponds never goes further up the river at all, but is used ultimately at Port-Glasgow or at Greenock, or is taken elsewhere, and the contention is that such timber shall escape payment of river dues altogether. This I think is inadmissible. It is the suspenders' misfortune that they have chosen to purchase or construct their timber-pond within the statutory limits of the river Clyde, instead of outside those limits or further down than Newark Castle, but if they use the river in the sense of the statute they must pay the statutory dues, even although this may subject them to disadvantage as compared with other timber-ponds situated in a different locality.

I am therefore of opinion that the Lord Ordinary's interlocutor should be adhered to.

LORD SHAND—As the result of the argument in this case before the First Division of the Court, I was of opinion that the timber in question was liable in the payment of dues to the River Clyde Trustees, the respondents; and having heard the case re-argued before your Lordships I remain of that opinion.

The note of suspension prays that the respondents shall be interdicted from levying dues in respect of timber "imported from abroad and unshipped in the harbours of Greenock and Port-Glasgow or either of them, and thereafter floated and towed in chains up to the timber ponds of the complainers, situated above Newark Castle, on the south side of the river Clyde." The application there made raises as the first point for consideration whether timber using the river within the limits under the charge and administration of the respondents for the purpose of transit or transport, and which is landed on the river banks or shore, is liable to rates or dues if only so "floated and towed" in the river, and not carried on board of a ship or vessel. Should that question, which has formed the main subject of the argument on the statute submitted by the complainers, be answered in the negative, there is an end of the respondents' case, and the complainers must succeed. Should it be answered in the affirmative, as I think according to a sound construction of the statute it must be, it then becomes necessary to determine whether there are any special circumstances relating to the timber in dispute, which undoubtedly comes within the limits of the river under the respondents' charge, in respect of which it can be held that the rates' clauses of the statute do not apply to it.

The general question, as I have stated it, is one of very considerable pecuniary importance, for while it appears by the minute of admissions for the parties that dues are paid annually to the amount of upwards of £5000 for timber conveyed up the river in vessels, at the same time (laying out of view any charge for the conveyance and landing of the timber in question at the timber ponds of the complainers and others similarly situated) timber to the extent of upwards of 40,000 tons is annually made up into rafts and towed or conveyed up the river by tug steamers, and dues to the extent of upwards of £2500 annually have for some time been paid on such timber without objection.

The solution of the question appears to me to depend on the consideration whether a reasonable construction is to be given to the clause or clauses of the Clyde Navigation Consolidation Statute of 1858 relating to rates on goods taken up or down the river, and landed on or discharged from the river banks. By a reasonable construction I mean that while the language of the statute should not, on the one hand, be strained in favour of the respondents, with the effect of imposing burdens not obviously within its meaning, yet, on the other, its fair meaning should receive effect, and in the question of construction regard should be had to the general scope and intention of the language employed. The respondents hold their trust for an important public object—the improvement of the navigation of the river—an object in which those using the channel are of course the parties mainly interested. They can make no profit for themselves or for any body of constituents, but must apply their whole funds for the general trust purposes. The persons benefited by the statute and by the extensive operations of the River Clyde Trustees during the last century are mainly those who use the river, and who in respect of that use have to contribute rates. In such circumstances I see no ground for holding, in a question with persons using the river for the conveyance or transit of goods, that the rating clauses of the statute should be so strictly construed as to exclude considerations of reason and of the general intention of the language used. If the statute is to receive a fair and reasonable construction, I think timber conveyed on the river by towing, and landed in the harbour or on any part of the river banks, is liable in rates for the use of the river.

Prior to the statute of 1858 timber was exempt from river or harbour dues, the object of the exemption having been, it is said, to promote the business of shipbuilding on the Clyde. But in the schedule to the statute of that year timber is included under the general head of goods, and all classes of timber are made liable to rates. The controversy between the parties is, whether the words shipped or unshipped in the river or harbour contained in section 98 of the statute are broad enough to cover the case of timber conveyed by towage and landed in the harbour or on the river banks?

It cannot be suggested that there is any reason for exempting timber, whether in rafts or floats or in logs chained together, which are just rafts in the ordinary sense of the term, from the payment of rates for the use of the river, while timber conveyed in the hold or on the deck of a vessel or on board of lighters is liable in such payment. By the operations of the respondents and their predecessors it is well known the river Clyde has been made navigable. A depth of water originally of only three or four feet in many places has been superseded by a uniform depth of upwards of 20 feet, and by dredging operations a much greater body of water now flows up the river than formerly. Timber towed or floated up the river under the care of rafters, and landed in the harbour or on the banks, has, equally with timber on board of a ship, the use and benefit of the river and of the respondents' extensive operations and river accommodation. One distinction appears to be, that in the convey-

ance of timber on board a ship, the owner, who has to provide the ship, has, indirectly at least, to pay also the separate tonnage dues of the vessel provided as the means of conveyance, to the benefit so far of the Clyde Trustees—a burden which the owner of timber conveyed in rafts escapes. A further peculiarity is that rafts of timber towed along a river crowded with navigation, and which is in many parts of comparatively narrow breadth, and landed in the harbour or on the banks directly from the water, must at times occasion inconvenience, if not risk, to vessels and steamers—a fact which appears to be recognised by the provision in section 119 of the Act, which gives the respondents special powers “for regulating the conveyance of rafts of timber on the river.” Neither of these considerations is favourable to the argument of the complainers. They both point the other way. On the reason of the thing, if reason is to have weight in the decision of the matter, it would appear that if any timber should be liable in dues it should be timber which is conveyed free of ship’s dues, and which is conveyed in such a way as to form a peculiarly troublesome kind of traffic on the river. Accordingly, all that the complainers have been able to say as to the reasonableness of their general argument is, not that they can suggest any good ground for exempting rafts from dues, but that the statute has omitted to provide for the case, and that they are entitled to the benefit of the omission until another statute is got by the respondents.

It appears to me, however, that the language of the statute fairly construed includes the case said to be omitted. In considering that question it is obviously of no consequence that the timber has paid dues for unshipment in Greenock or Port-Glasgow harbours, for both of these are outside the limits of the river Clyde under the charge of the respondents. The dues paid at any place, near or distant, which is below the proper river, cannot affect the respondents’ right to dues on goods entering and passing along the river and discharged within its limits. There cannot be one rule for timber brought to Greenock or Port-Glasgow, it may be, by rail, and another for timber brought by ship—each must pay dues in the river, as goods transhipped at Greenock must pay river dues if taken up the Clyde. If a lighter should take wood on board from a vessel discharged in Greenock or Port-Glasgow, it would be no answer to the respondents’ claim for dues that the wood had just paid harbour dues outside the river; and the same observation applies to timber made up in rafts.

This being so, even if section 98 of the statute be taken alone, is not timber towed in rafts and landed in the harbour, say of Bowling or of Glasgow, in a reasonable sense of the expression “unshipped in the river or harbour?”—for that is all that is necessary to render it liable in dues. These words must have their fair meaning, and ought not, I think, to be interpreted in any limited or restricted sense, or according only to what was called their “primary sense” in the course of the argument—as applicable only to timber taken out of a vessel. The payment of dues, whether tonnage dues on vessels or river dues on goods, is made in return for the use of the river and its conveniences. Timber conveyed in rafts has had the use of the river for

transit and for navigation, and so has had the benefit of the operations of the respondents and their predecessors on the river and harbour. Having been brought from a destination below the river, it has been conveyed on the river, it may be, for about eighteen miles, and having reached its destination has been detached from the steamer conveying it, and landed in the harbour or on the banks. Conceding that the primary construction of the term “unshipped” is the discharging or unloading from the hold or deck of a vessel, I think it is no strained construction, or anything but a fair and reasonable construction, of the term to hold it to apply to the detaching of timber from the steamer which has conveyed it, and the landing or delivering it at its place of destination. So, also, if timber in a raft were taken from the river bank or harbour by means of a tug and conveyed down the river, I think it may fairly be described as having been shipped at its point of departure. It is not necessary that it should be both shipped and unshipped within the limits of the river to create liability for dues. The great proportion of dues is paid on timber shipped abroad, and after transport only unshipped within the harbour or river. I have only to add on this point that in the comparatively few cases in which towing is not employed, but in which the wood is floated with the benefit of the tide under the care of rafters,—I presume with the use also of small boats attached to the rafts,—and which cases are confined to the third or lowest stage of the river, I think the same reasoning will apply. The river is used for the navigation and transit of the logs; and the rafts, large or small, are, in a reasonable sense of the term, shipped at their point of departure, whether from the shore or from a harbour outside the river, and unshipped at their place of destination.

I should hold this to be so even if the question depended on the meaning of section 98 of the statute alone. But I think assistance may be obtained as to the meaning of the terms “shipped or unshipped” there used from the schedule referred to in that section, as well as from sections 99 and 119 of the statute. It was maintained that this question must be determined on the terms of section 98 alone, that the schedule can only be looked at for the sole and limited purpose of ascertaining the particular rate payable on each class of goods specified, and that the other sections can be referred to only for the particular purpose of the special enactment. I am clearly of opinion that this argument is unsound, and that in a question as to whether the words “shipped or unshipped” in section 98 are to be taken in the literal restricted and primary sense contended for, or ought to receive a somewhat wider meaning, it is legitimate to look at other expressions in the statute relating to the transit of goods on the river—particularly where these occur in a schedule or clause of the Act relating to the very subject of rates. Turning, then, to the schedule, the goods which in the section are described as “shipped or unshipped” are these referred to in the title as “goods conveyed upon or shipped or unshipped in the river.” Had these words been in section 98 itself, of which the schedule is really a part, even the argument for a literal construction only of the language of the section would, I think,

have been fatal to the complainers, for undoubtedly timber towed in rafts is "conveyed upon the river." Though not in the section, they are in my opinion important as bearing on the words which are there employed. The table is given as applicable to goods "conveyed upon the river." What follows is introduced by the alternative—"or shipped or unshipped in the river." These words are either to be taken as referring to separate and different acts with reference to goods which have travelled by the river, or the wider terms with which the title begins show that the words "shipped or unshipped" are not to be taken in any narrow sense, and that the use of the river for transport, and of the banks at departure or arrival, give the criterion or ground for charging rates. The same inference is, I think, deducible from the language of section 99, in which the division of the river for the apportionment of rates is made into three stages. In that section the expressions "passing in or upon the river," "passing upon or going down the river," and "passing upon or coming up the river," are all used as descriptive of goods liable in rates. Any of these expressions, taken in even a literal sense, would apply to timber towed or floated in the river. The river dues may be exacted while the timber is thus merely in the course of transit; and that such expressions are used, in my opinion tends strongly to support the argument that the words "shipped or unshipped" are not to be construed in the narrow sense and with the unreasonable result contended for by the complainers. The provision of section 109, giving the Trustees special powers to deal with the timber traffic on the river, and which refers to "the conveyance of rafts of timber on the river," seems to me also to support the construction of the words shipped or unshipped which I think fair and reasonable, and which must have been thought reasonable in the trade, looking to the very large sum paid annually for dues on timber rafts.

On the grounds now stated, I am of opinion that river dues are chargeable on timber which has been towed or floated on the river, the proportion of the general rate being dependent on the part of the river traversed, as defined by section 99 of the statute, which provides that 1-6th of the total rate shall be payable for the use of the third or longest stage of the river, extending from Dalmuir Burn to the Castle of Newark. It remains for consideration whether there are special circumstances which entitle the complainers to have timber towed or floated to their ponds without payment of dues.

The first speciality relied on is that the timber in question does not make use of the proper or ordinary navigation channel of the river. I understand that all your Lordships are agreed that this plea is not well founded, and I am clearly of the same opinion. By section 75 of the statute it is made clear that the whole of the breadth or waterway of the river lying above a straight line drawn from the eastern end of Newark Castle on the south, to the south of Cardross Burn on the north, is within the meaning of the term "River Clyde" under the charge of the trustees, and so within the meaning of the word "River" in sections 97 and 98 of the statute. This waterway extends to the high water-mark, and the respondents have power to

execute all operations within the river thus defined which they think necessary or proper for the benefit of the navigation of the river, and the river police appointed by the respondents have jurisdiction within the same limits. The somewhat voluminous proof taken before the Lord Ordinary appears to have been mainly devoted to showing that the complainers use the old channel next the south shore, and not the ordinary channel used by vessels proceeding further up the river, and which seems to have been made or at least greatly improved after 1858. Assuming this to be established, it appears to me to be of no consequence the old channel, and even the complainers' yards themselves, are obviously within the limits of the river. The proof shows that the old channel was to a great extent made and kept open by the operations of the Trustees, and probably the complainers would be fairly entitled, if it were becoming so much silted up as to be no longer of use, to claim that the Trustees should resume dredging operations there. The respondents would certainly be entitled to execute such works, and I cannot doubt that small craft using that channel for the purpose of landing goods on the shore would be liable in tonnage dues in the same way as if using any other part of the river. It is unreasonable to suppose that either a vessel or goods could escape dues by keeping outside the line of the ordinary navigable channel on one side of the river, and carrying traffic up or down the river to or from the river banks in that way.

The second speciality founded on is that the timber in question is taken up the river in what are called "chains," and not in the form of built up rafts. This argument appears to me to be equally untenable. The right of the trustees to charge dues cannot surely depend on whether the quantity of timber taken on each separate occasion is great or small. If a considerable number of logs are to be conveyed a distance, it becomes necessary to make a raft or structure not only larger but more compact, having three or four tiers of logs piled one above the other instead of one tier only, and having these more securely fastened than is necessary for a short journey. The more secure or permanent nature of the structure cannot surely affect the question of rates. It would, I think, be very difficult if not impossible to prescribe a mark or criterion by which a proper raft should be known. But if this could be done, and if the Court were to sustain the complainers' view, it would lead to the result that in place of using built-up rafts, timber would be taken up the river to the numerous shipbuilding yards in its highest stage, no longer in rafts, but in chains, in order to escape dues, and, as Lord Gifford has observed, even the timber now conveyed in ships would probably be conveyed in that way. The suggestion that exemption from dues could be attained in this way is, I think, sufficient to show that the distinction between rafts and chains of timber is clearly unsound.

The only other speciality on which the complainers founded relates to the use made of the timber ponds in question. But I am of opinion that in a question as to the exaction of dues the respondents have nothing to do with the use which is to be made of the timber after it has traversed a part of the river. The criterion

which the statute provides is the use of the river and the landing of timber, and the respondents would be involved in endless questions if such an element as the purpose which the owners of the timber had in view in taking it up the river, or a part of the river, were to affect the question of liability.

Even if, however, the purpose for which the timber is conveyed to the ponds were an element in such a question, I cannot see any reason for holding the timber in question exempt from dues. It is explained in the evidence of Mr Laird himself and others that the floating timber, having been first fastened by chains passed through the eyes of bolts in the logs, is measured by the timber measurer in the harbour of Greenock or Port-Glasgow, as the case may be, and thereafter towed up the river by or for the owners, and placed in the timber ponds. These ponds are simply large wood-yards, in which the timber is enclosed, afloat at high water, and left dry on the shore when the tide recedes. These wood-yards, like others above high water-mark on the land, are used for the storage and sale of the timber stored, and it is admitted in the joint-minute (art. 7) that "the log timber is usually sold while in the ponds." It is proved by the evidence of the witnesses Henderson, Simpson, and Carswell that while much the greater part of it goes further up the river, part is taken down the river again, and used at the shipbuilding-yards and premises, of which there are several lying below the proper limits of the river. If the complainers be right in their contention, this class of timber is entitled to go so far up the river and out of the river again without paying dues. So also timber might be taken inland from the ponds for building purposes without having paid river dues. The important fact, however, is that the timber usually changes hands in the ponds or yards, and that while it was towed or floated into the ponds by the importers, the sellers, it is afterwards sold and removed by other persons, the purchasers. I cannot see that in these circumstances there is any reason in the argument that the purpose for which the timber is taken to the ponds should exempt it from payment of dues. If an owner of timber tows it up to the second stage of the river to store and sell it, he must pay dues for the use of two stages of the river. I cannot see that any difference arises in favour of an owner who uses one stage of the river only. Nor do I think the liability of the one party or the other can be limited or enlarged or in any way affected by the consideration that the purchaser again using the river has to pay dues for the use of such stages as he for his own advantage made use of. It may as well be said that grain or any other commodity brought up the river and landed in storehouses on the river side at any part of the third or lowest stage of the river, for the purpose of storage and sale, is not liable for river dues as goods, and if the argument were well-founded it would, I think, apply equally to all the other timber ponds and yards lying on or near the river side, and even in the highest stage of the river.

A good deal has been said in the argument as to the past usage being in favour of the right which the complainers claim. The fact on this subject appears to be, that the traffic in question was of trifling extent when the statute came into operation, and for a number of years afterwards,

having been confined originally to certain ponds called the Castle Ponds. Within the last few years, and particularly within the last three years, it has, however, grown to much larger dimensions. New ponds have opened along the river side, and tug-steamers are specially employed exclusively for the increasing traffic. The attention of the respondents has thus been attracted to the matter, and I confess I can see no ground for thinking that because the complainers have hitherto enjoyed a privilege to which I think they were not entitled with reference to a comparatively small amount of traffic, this gives them a legal right to exemption now and for the future. The respondents have now thought it right to raise the question of legal right. That question is one which depends entirely on the true construction of the Act of Parliament; and their right to levy dues cannot be affected by the fact that they have hitherto failed or neglected to put the statutory provisions in force.

Nor do I think there is anything in the form of process which can prevent the respondents from obtaining the judgment of the Court on the legal question raised. The complainers ask an interdict founded on their alleged rights under the statute, and they can only succeed if their view of the statute is held to be sound. The parties have treated the question raised between them as one of legal right, and not to be determined merely on any consideration of the past usage involving a mere question of fact. If usage had been enough for the determination of the question, there was no need either for the elaborate proof taken before the Lord Ordinary or for the additional investigation ordered by the First Division of the Court, and which resulted in the joint minute of admissions by the parties, for in the complainers' statement of facts and the answer, the usage was distinctly averred and fully admitted. It appears to me that it would be an abuse of the procedure of the Court, if after the proof, investigation, and very full discussion that have taken place, it were now to be held that the complainers should succeed without any decision on the merits of the question in dispute, because the proceedings should have been initiated by a summons of declarator rather than a note of suspension and interdict, and the case was to be decided as one depending on possession merely and on the respondents' admission that they had not hitherto charged dues for the traffic in question.

There may be some hardship to the complainers and other persons having timber ponds or yards within the limits of the river, in the competition for trade, arising from the fact that timber brought there is liable to pay river dues, while timber may be taken to other ponds immediately below the line by which the river is defined free from such dues. But this is a hardship arising entirely from the local situation of the complainers' property. It is of the same kind as occurs when premises are situated a short way within a toll-bar and so are subjected to a disadvantage in the payment of rates for traffic, from which other premises immediately outside the toll-bar are free. Such considerations of real or supposed hardship obviously cannot be allowed to affect any question as to the liability for toll duties or rates.

On the whole matter, I am of opinion that the Lord Ordinary's judgment is right, and ought to be affirmed.

LORD PRESIDENT—I am of opinion with the majority of your Lordships that the complainers here are entitled to have the prayer of their petition granted, and I am not disposed to deal with this as a possessory question merely. I go on the words of the statute, and I consider that our judgment will be an authoritative exposition of its taxing clauses. Now, no person, either as an individual or a corporation, and no body of statutory trustees, can be allowed to levy tolls unless he has an unequivocal warrant for doing so, and we are bound to construe the words of the statute when we are inquiring whether they constitute such a warrant or not according to their ordinary meaning and use.

Now, it must be always kept in view that previous to 1858 no such dues as are now demanded were leviable, and the practice of towing this timber was perfectly well known then. The question is, how far the Legislature intended to subject timber hitherto exempted from duty to duties, and the answer I am compelled to give is, that no dues are to be levied upon it unless it is "shipped or unshipped" in the river. Now, it has been said that it is unshipped in the river. There is a place where this timber was unshipped, but that was the harbour of Port-Glasgow or the harbour of Greenock—the unshipment there was a perfectly distinct act, and it could not be unshipped again till it was shipped again. I looked with some curiosity for an explanation from Lord Gifford or Lord Shand of the precise place or time at which it could be said to be shipped again and unshipped, but I was disappointed. I suppose that the attachment of two floating logs by a chain is "shipping," and I suppose that when that chain is removed they are "unshipped," but that is a forced and unnatural construction of these words, and I cannot therefore see how it is possible to say that the timber in question satisfies the conditions under which alone dues are leviable.

It seems, however, to be thought that by the judgment proposed some facilities will be given for this timber evading duty altogether; if that could be shown to be so, I can only say it would not make any difference in my opinion; but I think Lord Gifford and Lord Shand are under some misapprehension as to the fact here, because from the 11th article of the minute of admissions the Clyde Trustees admit that "dues have not hitherto been charged in respect of timber stored in the ponds in question until floated up to Glasgow or any of the building-yards on the river, when it is charged according to its destination—that is, if taken to Dumbarton, it is charged for the lowest or third stage only; if to Renfrew, it is charged for the third and second stages, and if taken above that, it is charged for all the three stages." If that be so, the difficulty is at an end.

Another disturbing element in the case is, that the principle we here affirm is said to be applicable to the rafts that are taken up the river, and that they will escape payment of dues. On that question I reserve my opinion. I can see that there is a good deal to be said on that question. I can see, for example, that a large raft of that kind may be described as being "unshipped" when the timber is landed, without disturbing the principle on which we are now to pronounce our judgment.

The Court therefore recalled the Lord Ordinary's interlocutor, and granted interdict as craved.

Counsel for the Complainers—Trayner—M'Laren—Burnet. Agent—William Archibald, S.S.C.

Counsel for the Respondents—Balfour—Asher—Guthrie. Agents—Webster, Will, & Ritchie, S.S.C.

Wednesday, March 5.*

FIRST DIVISION.

[Sheriff of Lanarkshire.

DUNCAN (KELLY'S TRUSTEE) v. AITCHISON AND COMPANY.

Bankruptcy—Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. c. 97), sec. 52—Bankrupt Estates (Scotland) Act 1839 (2 and 3 Vict. c. 41), sec. 32—Deduction of Discount from Claim where there is Usage of Trade.

The Bankruptcy (Scotland) Act of 1856, sec. 52, enacts that "A creditor who has a claim or a debt due shall be entitled to vote and rank for the accumulated sum of principal and interest to the date of the sequestration, but not for any interest accruing after the date of the sequestration, and if the debt is not payable till after the date of the sequestration he shall be entitled to vote and rank for it only after deduction of the interest from that date, and he shall also be liable to deduction of any discount beyond legal interest to which his claim is liable by the usage of trade applicable to it." Held that under this section a claim by a creditor was liable to deduction of discount in respect of usage of trade only when it was for a debt not payable till after the date of sequestration, but that at common law such a deduction was to be made whether the debt was payable before or after sequestration if a usage of trade was proved to exist.

Circumstances in which it was held that no usage of trade existed sufficient to entitle the trustee to make a deduction at common law.

The estates of Edwin Kelly, spirit-dealer, Glasgow, were sequestrated on the 19th December 1876, and the respondent W. T. Duncan, C.A., Glasgow, was elected trustee. The appellants John Aitchison & Company, brewers, Edinburgh, lodged a claim for £224, 6s., being the alleged balance of an account for ale and beer sold by them to the bankrupt. The trustee pronounced the following deliverance—"The trustee admits the claim, subject to deduction of the customary trade discount, in terms of section 52 of the Bankruptcy (Scotland) Act 1856." The rate of the deduction was afterwards stated to be 30 per cent.

The 52d section of the Bankruptcy Act 1856 was as follows (*reads as in rubric*).

The corresponding section of the Act of 1839 (2 and 3 Vict. c. 41), viz. sec. 32, is—"If a creditor claim for a debt with bygone interest, he may in his oath accumulate the interest as at the date of the sequestration, and he shall specify the amount of the interest, and also of the accumulated sum, but he shall not be entitled to claim

Decided January 28, 1879.