

of the shares to be allotted as part consideration for the sale hereby agreed to be made, a written contract to the like effect with this agreement, with such modifications as may be considered necessary or expedient, shall be filed with the Registrar of Joint-Stock Companies so far as required by section 25 of the Companies Act 1867."

The company was registered on 24th April 1877, and entered into possession on 1st May thereafter. The valuations made under arbitration were not completed till 10th June 1878. In the meantime, in order to make up the register of members, the law-agent of the company on 6th August 1877, after communication with the respective firms, and ascertaining in whose names they wished their shares placed, entered the names of the allottees or their nominees as holders of the shares without having previously got a contract executed and filed in terms of the 25th section of the Companies Act 1867.

After the valuation of the petitioner's firm's distillery was completed (June 1878), the amount of the moveable property was credited to the shares, and the balance of the nominal amount of the shares was paid up in cash. The petitioner was in ignorance that a contract had not been filed in terms of the Act of 1867, the carrying out of the transaction having been left to the law-agent. There was afterwards a conversion from £50 shares into £10 shares, and the amount of the petitioner's allotment came to be represented by 1750 £10 shares, for which he held a certificate in which they were described as "fully paid."

Having been advised that the mode in which the shares had been issued without a contract being executed and filed in terms of the statute was irregular, and that liability still attached for the part of the shares not paid in cash, the petitioner presented this petition, the prayer of which is set forth in the first paragraph of this report.

The petition was served on the company and on the petitioner's former partner. Answers were put in for the company admitting the petitioner's statements, explaining that in the circumstances it had been thought unnecessary to file a contract under the statute, but expressing a willingness, on the present entry being deleted from the register, to enter into and file a contract as desired.

On the case being called on the Summar Roll the petitioner moved that the prayer of the petition be granted, or that an inquiry should be made into the facts alleged—*New Zealand Kapanga Company*, L.R., 18 Eq. 17; *Denton Colliery Company*, L.R., 18 Eq. 16; see also *Droitwich Salt Company*, 43 L.J., Ch. 581; *Hartley's case*, L.R., 10 Ch. 157.

The Court being satisfied with the admission of the facts by the company, and the *bona fides* of the application, granted the prayer of the petition without further inquiry.

Counsel for Petitioner—W. Mackintosh—Jameson. Agents—Mackenzie, Innes, & Logan, W.S.

Counsel for Respondents—J. P. B. Robertson—Lorimer. Agents—Fraser, Stodart, & Ballingall, W.S.

Thursday, March 12.

SECOND DIVISION.

COUNTY ROAD TRUSTEES OF SUTHERLAND v. LAWSON.

Road—Assessment—Roads and Bridges (Scotland) Act 1878 (41 and 42 Vict. c. 51), secs. 32 and 37—6 and 7 Vict. c. 81 (Sutherland Road Act 1843)—Liability to Maintain Portion of Road Locally Situated in Another County.

The 32d section of the Roads and Bridges Act 1878 provides that the whole roads "within each county respectively shall form one general trust," and that the roads within each county shall be transferred to the trustees under the Act. Prior to the passing of the Act the road trustees of a county had maintained a piece of road passing through an interjected piece of another county, but forming part of their system of roads.

Held that they were entitled to continue to do so after the Act came into force.

Prior to the passing of the Roads and Bridges Act 1878, the Sutherland roads were administered under the Sutherland Road Act 1843 (6 and 7 Vict. cap. 81). Among the roads under the management of the trustees appointed by that Act was a road numbered 41 in Schedule E of that Act, which is headed "Roads to be repaired, improved, and maintained under this Act." The description of that road, No. 41 in the schedule, was as follows:—"The Lairg and Loch Inver road, leading from Ferry near Lairg, by the Gruids, Rose Hall, to the Bridge of Caslie, through the county of Ross, to Altnagalagach, thence by Inchnadamph to Loch Inver." . . . The preamble of that Act, after reciting the Act 1 and 2 Geo. IV. cap. 23, set forth that a certain portion of the road from Shin Bridge to Assynt, both in the county of Sutherland, situated in a projecting part of the county of Ross, had been made and maintained by the trustees acting under the recited Act; and that it was expedient that the same should be improved, repaired, and maintained by the trustees under the said Act of 1843, and that the powers of the Act should be extended to that portion of the said county of Ross which so projected into the county of Sutherland as aforesaid. Section 27 of the Act of 1843 enacts—"That this Act shall be put in execution for the purpose of more effectually repairing, improving, and maintaining the several roads already made within the said county of Sutherland, . . . and also for repairing, improving, and maintaining the aforesaid portion of road in the said county of Ross, and the bridges thereon (all which roads are specified in the Schedule E hereunto annexed)" . . .

Under the powers of the Act 1843 the Road Trustees maintained the portion of the said road No. 41 passing through the projecting piece of the county of Ross. It formed part of the road system of Sutherland, and did not connect with or form part of the road system of Ross.

The Roads and Bridges Act 1878 was adopted in the county of Sutherland at a meeting of the Sutherland Road Trustees on 30th April 1879, and came into operation on the 1st of

August 1879. By section 32 it is provided that "From and after the commencement of this Act, the whole turnpike roads, statute labour roads, highways, and bridges within each county respectively shall form one general trust, with such separate district management as shall be prescribed by the trustees as hereinbefore provided; and all the roads, bridges, lands, buildings, works, rights, interests, moneys, property, and effects, rights of action, claims, and demands, powers, immunities, and privileges whatever, except as hereinafter provided, vested in or belonging to the trustees of any such turnpike roads, statute labour roads, highways, and bridges within the county, shall be by virtue of this Act transferred to and vested in the County Road Trustees appointed under this Act, who, subject to the qualifications hereinafter expressed, shall be liable in all the debts, liabilities, claims, and demands in which the trustees of of such turnpike roads, statute labour roads, highways and bridges are or were liable under any general or local Act then in force, except in so far as such debts, liabilities, claims, and demands may under the provisions of this Act be discharged, reduced, or extinguished."

The counties of Ross and Cromarty are, in so far as road purposes are concerned, treated as one county under "The Ross and Cromarty Roads Act 1866" (29 Vict. c. 28). These counties had no turnpike roads from and after 1st January 1867, and had not adopted the Act of 1878—their roads being still managed under the local Act of 1866. It was taken as certain by the parties to this Special Case that the counties of Ross and Cromarty would not take over the portion of the said road No. 41 which passed through the County of Ross. The portion of road in question was about 12 miles long.

The County Road Trustees of the county of Sutherland considering it necessary for the maintenance of the road system of Sutherland, that the portion of the said road passing through the county of Ross should be kept in repair by the county of Sutherland, expended a part of the funds under their control with that object. The road in question was placed on the list of roads made up by the Board at their first meeting, in terms of section 41 of the Act of 1878, it having been before the commencement of the said Act maintained out of public funds levied by means of assessment. George Lawson, tenant of the farm of Achinduich in the county of Sutherland, and a ratepayer in that county, however, intimated to them that he considered that they were not entitled to apply any of their funds to the maintenance of the portion of the road in question, inasmuch as it was not situate within the county of Sutherland.

Accordingly this Special Case for the opinion of the Court on the following question of law was presented by the County Road Trustees of Sutherland, and Lawson, of the first and second parts respectively:—"Are the parties of the first part entitled to apply the funds at their disposal raised by assessment to the maintenance of that portion of the road formerly known as No. 41 in Schedule E of the Sutherland Road Act of 1843, which is locally situate within the county of Ross?"

Argued for first parties—It was fitting that they should conform to the only reasonable con-

struction of the 32d section of the Roads and Bridges Act, and so become liable to keep up the piece of road in dispute which they kept up before the adoption of that Act, in virtue of the Act of 1843, which was the "local Act then in force." Further, they had authority to do so under the 37th section, which provided that where a portion of a turnpike road was situated within a county in which the Act had not been adopted, the obligation to maintain it was to be left as it stood before. The county of Ross had not adopted the Act.

The second party answered. The 32nd section gave no warrant for the first parties' contention. It applied to the whole roads, &c. "within each county *respectively*." The first parties, then, had no concern with a road which was *de facto* in another county. The 37th section did not apply. It was an enactment with reference only to turnpike roads, of which this was not one.

At advising—

LORD YOUNG—I must own I expected to hear some rational explanation of this dispute, but none has been offered us. Plainly the 12 miles of road in question form part of the Sutherland road. Those 12 miles lead across a certain hill in the county of Ross which projects into Sutherland, and that part of the road, like the rest of it which is situated within Sutherland, was vested in the trustees of the county of Sutherland, and it was their duty to maintain it as well as the rest. They adopted the Roads and Bridges Act of 1878, and it would certainly be a singular result of that adoption if it were to relieve them of the obligation of maintaining this bit of road without laying the obligation on anyone else, and one would be ingenious to reach a conclusion which would avoid so singular a result. If it were, then the bit of road would be left without any provision for its maintenance. I have no hesitation in rejecting that as the meaning of the statute. I should not read the words "within each county" as meaning that every mile, yard, or foot of any particular road is within the county. This road was generally within the county of Sutherland, and the statutory meaning will be well satisfied by holding that the obligation continued. I should, in order to avoid so bad a result, so interpret the clause. But further, the 37th clause of the Act provides for the case of a road, formerly a turnpike road, not wholly situated in one county or burgh, and provides that where a portion of a turnpike road is situated within any county or burgh in which the Act had not been adopted, the obligation to maintain it is to be left as it stood before. There is this difficulty in the way of the only sensible conclusion, that in terms that 37th section applies only to turnpike roads or to roads which were such before the Act. But the sense and meaning is applicable here, and we shall not only be doing no violence to the statute, but be construing it in conformity with its true spirit, by leaving the obligation to maintain the bit of the road just where it was before the Act of 1878. I am therefore very clearly of opinion that the question of law ought to be answered in the affirmative.

LORDS CRAIGHILL and RUTHERFURD CLARK concurred.

The LORD JUSTICE-CLERK was absent.

The Court answered the question of law in the affirmative.

Counsel for First Party—Gloag—Graham Murray. Agents—Mackenzie & Black, W.S.

Counsel for Second Party—Dundas. Agents—J. & F. Anderson, W.S.

Thursday, March 12.

FIRST DIVISION.

SPENCE *v.* BANFF TOWN AND COUNTY CLUB.

Sale—Sale of Heritage—Objection to Title—Fee and Liferent—Expenses of Objection to Title.

William Frazer Johnston purchased certain heritable subjects in Banff, and took a disposition from the seller in the following terms:—"To and in favour of the said William Frazer Johnston and Mrs Alexandra Augustina De Marchie or Johnston, his spouse, in liferent for her liferent use allenarly, and Mary Elizabeth Kerr Johnston and Alice Kerr Johnston, and the other children to be begotten of the marriage betwixt the saids William Frazer Johnston and Mistress Alexandra Augustina De Marchie or Johnston, share and share alike, in fee." The disposition bore that the purchase price had been paid by Johnston. The disposition was recorded in the Register of Sasines, the warrant of registration being in these terms—"Register on behalf of William Frazer Johnston and Mistress Alexandra Augustina De Marchie or Johnston, his spouse, for their respective rights and interests in the register of the burgh of Banff." Johnston sold these subjects to Spence. The disposition in favour of Spence was granted" by "the said William Frazer Johnston, with consent of the said Mistress Alexandra Augustina de Marchie or Johnston, his spouse, for all right of liferent, conjunct fee, terce, or other right which she had or could claim therein, or to any annual rent or annuity payable furth thereof, and by the said Alexandra Augustina de Marchie or Johnston for herself, her own right and interest, with the special advice and consent of the said William Frazer Johnston, her husband, and by them both with joint consent and assent." Spence sold the subjects to the Banff Town and County Club, who objected to the title he offered on the ground that the fee of the subjects was not in Johnston or his wife, but in the children named in the first-mentioned disposition, for behoof of themselves and the other children of the marriage. This Special Case was stated accordingly. *Held* that the fee of the subjects was in William Frazer Johnston, and that the title was good. The Court gave expenses against the Banff Town and County Club in respect that the question was free from any doubt.

Counsel for Spence—Darling—Shaw. Agent—George Andrew, S.S.C.

Counsel for Banff Town and County Club—Begg. Agent—Alexander Morison, S.S.C.

Friday, March 13.

FIRST DIVISION.

THE BOARD OF POLICE OF GREENOCK *v.* THE GREENOCK PROPERTY INVESTMENT SOCIETY IN LIQUIDATION.

Police Assessment for Streets and Sewers—Heritable Creditor—Preference—Greenock Police Act 1877 (40 and 41 Vict. c. ccciii.), secs. 407, 408, 441.

The Greenock Police Act 1877, by section 408, provides that the "expense of streets and sewers payable under the Act by the proprietor of any lands or heritages shall be a real burden and charge on such lands or heritages, in priority to any incumbrance or charge on or affecting the same and created subsequently to the date when the petition for authority to execute the work on account whereof the expenses are payable was presented." Section 441 provides that "when the proprietor of any lands or heritages shall be liable to the board in any sum due in pursuance of the provisions of this Act, it shall be lawful for the board to recover the amount from the occupier of such land or heritage to the extent of the rent due by such occupier at the date when notice of the claim is given, and the occupier shall after such notice be bound to retain and account to the board for any rent due by him, and shall be entitled to an abatement from his landlord corresponding to the sum so retained and accounted for." By the interpretation clause the word proprietor includes "heritable creditors, or other persons who shall be in the actual enjoyment of or who shall take the rents and profits or produce of the lands or heritages."

The Police Board made a claim under this Act against the liquidator of a Property Investment Society who had entered into possession of certain heritable properties in the burgh over which the society held bonds, for the sums due by and chargeable on the properties as their share of the expense of streets and sewers. The Board maintained that these assessments should be treated as charges upon the rents after deducting feu-duties, taxes, repairs, &c., but in priority to the interest on the bonds. The liquidator founded on section 408 and maintained that there was no preference, as the society's bonds were prior in date to the petitions for authority to execute the work. *Held* that the terms of section 441 were so inconsistent with the construction which the liquidator sought to put upon section 408, that his argument, rested as it was merely on an implication, could not receive effect, and that therefore he was bound to pay the past-due assessments