

Friday, December 2.

FIRST DIVISION.

COUNTY COUNCIL OF RENFREW v.
GREENOCK WATER TRUST.

Consolidated Rates—Local Government Act 1889 (52 and 53 Vict. c. 50), sec. 27 (3).

The 3rd sub-section of the 27th section of the Local Government Act 1889 provides that the consolidated rates, which the county council is empowered by the Act to impose, "shall be imposed upon lands and heritages according to the annual value thereof as appearing on the valuation roll, but subject always to the provisions of the Public Health (Scotland) Act 1867 in regard to all assessments leviable under that Act.

Held that the only part of the consolidated rates which are to be imposed, subject to the provisions of the Public Health Act are the assessments leviable under that Act.

Public Health—Determination of Board of Supervision—Rates—Public Health Act 1867 (30 and 31 Vict. c. 101), secs. 5 and 95—Local Government Act 1889 (52 and 53 Vict. c. 50), sec. 27 (3).

Section 27, sub-section 3, of the Local Government Act provides that the rates levied by the county council for public health purposes shall be imposed subject to the provisions of the Public Health Act 1867.

Prior to the passing of the Local Government Act the Board of Supervision, exercising a power given them by section 5 of the Public Health Act, determined that the Police Commissioners of the burgh of Greenock should be the local authority in the landward portion of the parish of Greenock, which lay partly within and partly beyond the burgh. The result of this determination was to bring the landward portion of the parish under sec. 95 of the Public Health Act, which provides that where the local authority is police commissioners, the underground works of any water company shall be valued for assessments under the Act at one-fourth of their annual value. After the passing of the Local Government Act, but before it came into operation, the Board of Supervision recalled their previous determination, and restored the landward portion of the parish to the jurisdiction of the parochial board, for whom the county council were substituted when the Local Government Act came into operation. In levying the public health rates the county council assessed a water trust possessed of underground works within the landward portion of the parish in accordance with the provisions of the Public Health Act applicable to landward districts under the jurisdiction of parochial boards. The water trust objected to this mode of

assessment, on the ground that the act of the Board of Supervision in recalling the previous determination after the passing of the Local Government Act merely anticipated the operation of that Act.

Held that the act of the Board of Supervision must receive effect, and that the water trust were not entitled to claim from the county council the benefit of being assessed in terms of section 95 of the Public Health Act.

By the Local Government (Scotland) Act 1889, sec. 11, sub-secs. 1, 2, and 4, there were transferred to and vested in the council of each county the whole powers and duties, including the powers of assessment formerly held by (1) the Commissioners of Supply (save as mentioned in the Act); (2) the County Road Trustees; and (3) the local authorities under the Public Health Acts of parishes so far as within the county (excluding burghs and police burghs).

The Act was passed on 26th August 1889, but under sec. 110 the day appointed (unless otherwise ordered by the Secretary for Scotland) for its coming into operation was 15th May 1890.

In order to meet the expenditure which they may lawfully incur the County Council is empowered by section 26 (4) to levy rates, referred to in the Act as the owners consolidated rate, and the occupiers consolidated rate, and together as the consolidated rates.

Section 27 (3) enacts—"The consolidated rates shall be imposed upon lands and heritages according to the annual value thereof as appearing on the valuation roll, but subject always to the provisions of the Public Health (Scotland) Act 1867, in regard to all assessments leviable under that Act."

By section 5 of the Public Health Act 1867, it is, *inter alia*, provided as follows—"Provided always that where any parish shall be partly within and partly beyond the jurisdiction of a town council, and of police commissioners or trustees, and of a parochial board or of any two or more of such bodies, the board' (that is, the Board of Supervision), "if application be made to them by any of the bodies, or by any person having interest, may, if they see fit, determine which of the said several bodies shall be the local authority within the whole limits, or within any portion of such parish, and the board may, from time to time, recall or vary such determination."

Section 94 provides, *inter alia*—"With respect to burghs having a population of less than 10,000 according to the census last taken, and not having a local Act for police purposes, and with respect to parishes (exclusive of any parts of such parishes as are situated within the district of any local authority other than the parochial boards of such parishes"), . . . "all charges and expenses incurred by the local authority in executing this Act or any of the Acts hereby repealed, and not recovered as hereinbefore or after provided, may be defrayed out of an assessment to

be levied by the local authority along with, but as a separate assessment from, any one of the assessments hereinafter mentioned in this section, that is to say, the said assessment shall be assessed, levied, and recovered in like manner and under like powers (which powers are hereby given, and are declared to extend over the whole and every part of the district of the local authority) as—the prison assessment or police assessment, as the local authority shall resolve, where the local authority is a town council, or police commissioners, or trustees acting as police commissioners, or if there be no prison or police assessment an assessment levied in like manner as is hereinafter authorised where the local authority is a parochial board. The assessment for the relief of the poor, where the local authority is a parochial board, or where there is no such assessment, by an assessment levied in such manner as an assessment might have been levied for the relief of the poor: Provided always that where the local authority is a town council, or police commissioners, or trustees acting as police commissioners, or where a parochial board is the local authority in a district including as well as the landward part of a parish a burgh or town having a town council, or police commissioners, or trustees acting as police commissioners, the annual value of the following lands or premises shall, for the whole assessments under this Act, be held to be the nearest aggregate sum of pounds sterling to one-fourth of the annual value thereof, entered in the valuation roll, made up and completed in terms of the Acts in force for the valuation of lands and heritages in Scotland, viz.—. . . All the underground water or gas pipes or underground works of any water or gas company.”

Section 95 makes similar provisions with respect to burghs having a population of 10,000 or upwards, or having a local Act for police purposes, and contains a similar provision as to the value upon which underground water and gas-pipes are to be assessed for public health purposes.

After the Local Government Act came into operation the County Council elected for the county of Renfrew levied the consolidated rates authorised by the Act, and they imposed these rates for the year 1891-2 upon, *inter alia*, certain reservoirs, tunnels, and underground works belonging to the Water Trust of Greenock, and situated in the parish of Kilmalcolm and the landward portions of the parishes of Inverkip and Greenock, in the lower district of the county of Renfrew.

All the assessments thus levied, with exception of those under the Public Health Act, were imposed upon the lands and heritages according to the annual value thereof, as appearing on the valuation roll for the year from 15th May 1891 to 15th May 1892. The public health assessments were levied on that value after allowing the same deductions therefrom in each parish as are given by the parochial board when assessing for poor rates.

With the assessments so levied the Water

Trust were dissatisfied, and accordingly the present case, to which the County Council were the first parties and the Water Trust the second parties, was presented to obtain the opinion of the Court on the following questions:—“Whether the first parties, in levying the consolidated rates payable by the second parties, under the Acts above quoted, in respect of the said subjects, so far as consisting of underground water-pipes or underground works belonging to the second parties, and situated in the parishes of Kilmalcolm, Inverkip (landward), and Greenock (landward), are entitled to assess these subjects in the manner maintained by them, viz., according to the annual value thereof as appearing on the valuation roll in the case of all the consolidated rates except those levied under the Public Health Act, and in the case of those levied under the Public Health Act according to the annual value thereof as appearing on the valuation roll after giving effect to the deductions allowed by the parochial boards in the respective parishes when assessing for poor-rates under the Poor Law Act 1845? or Whether the first parties, in levying the said rates, or any part thereof, are entitled only to assess the said subjects, so far as consisting of underground water-pipes or underground works, at the nearest aggregate sum of pounds sterling to one-fourth of the value thereof as entered in the valuation roll?”

The following statements were made in the case:—“(12) At the date of the passing of the Local Government (Scotland) Act 1889, the parochial boards of the parishes of Kilmalcolm and Inverkip were the respective local authorities for the administration of the Public Health Acts in those parishes, and the Police Commissioners of the burgh of Greenock were the local authority in the landward portion of the parish of Greenock in accordance with a determination by the Board of Supervision in terms of section 5 of the Public Health (Scotland) Act 1867, that parish being partly within and partly beyond the jurisdiction of the Police Commissioners of Greenock. . . . (14) Having regard to the provisions of the Local Government (Scotland) Act 1889, that on and after the appointed day there should be transferred to and vested in the council of each county ‘the whole powers and duties of the local authorities under the Public Health Acts of parishes so far as within the county (excluding burghs and police burghs)’ the Board of Supervision, between the passing of said Local Government Act on 26th August 1889 and said 15th May 1890, when the said Act came into operation, recalled their determination above referred to, with the result that when the Local Government Act came into operation the administration of the Public Health Acts was restored to the body which would have been the local authority if no determination had been made by the board. In this way the Parochial Board of the parish of Greenock was the local authority under the Public Health Act in the landward portion of that parish, and the Police Commissioners of

the burgh of Greenock had ceased to be such local authority when the Local Government Act 1889 came into operation."

Argued for the County Council—The meaning of the provision contained in section 27 (3) of the Local Government Act was that all the consolidated rates, with the single exception of the rate for public health purposes, should be imposed on the annual value of lands and heritages as appearing in the valuation roll. The qualification in subsection (3) of section 27—"subject to the provisions of the Public Health Act"—only applied to assessments leviable under the Public Health Act. Otherwise the last clause of that subsection was meaningless. With regard to the public health rates in the landward portion of the parish of Greenock, the Water Trust were not entitled to be assessed only on one-fourth of the value of their underground works situated therein. The provisions of section 94 of the Public Health Act did not confer that privilege where the local authority was a parochial board unless the district over which such parochial board had jurisdiction included a burgh or town having a town council, but when the Local Government Act came into operation the parochial board was the local authority in the landward portion of the parish of Greenock, and the district over which it had jurisdiction did not include any burgh or town having a town council. No doubt at the passing of the Local Government Act matters were different, for at that time, in accordance with a resolution of the Board of Supervision, the Town Council of Greenock were the local authority in the landward portion of the parish of Greenock, which entitled the Water Trust, under section 95 of the Public Health Act, to the privilege of being assessed on only one-fourth of the value of their underground works. That privilege had, however, been withdrawn by the Board of Supervision recalling their determination before the Local Government Act came into operation, and the Board of Supervision having acted in accordance with the powers conferred on them their act must receive effect.

Argued for the Water Trust—The effect of section 27, subsection (3), of the Local Government Act was that the consolidated rates imposed by a county council must be levied subject to the rule laid down in sections 94 and 95 of the Public Health Act as to assessments under that Act, namely, that the underground works of a water or gas company must be assessed only on one-fourth of their annual value. In levying the consolidated rates the first parties were therefore only entitled to assess the underground works of the second parties on one-fourth of their annual value. At all events, the second parties were entitled to this privilege as regarded the public health rate levied on the landward portion of the parish of Greenock, as the Police Commissioners of Greenock were, at the passing of the Local Government Act, the local authority in that district in accordance with the determination of the Board of

Supervision. In subsequently recalling that determination the Board of Supervision merely anticipated what would have been effected by the operation of the Local Government Act, and their action being of no effect in other respects could not be held effectual to alter the mode of assessment which was in force when the Local Government Act was passed.

At advising—

LORD PRESIDENT—The first and more general question raised under this special case is a question under the Local Government Act of 1889, and it depends upon the construction of section 27 of that Act. The general rule which is laid down in that section in regard to the rates which are leviable by the County Council is that they are to be levied upon gross rental, and that is expressed in the 3rd sub-section—"The consolidated rate shall be imposed upon lands and heritages according to the annual value thereof as appearing on the valuation roll," and then follows the qualification to that general rule which is now in question—"But subject always to the provisions of the Public Health (Scotland) Act 1867 in regard to all assessments leviable under that Act." I should have thought that it was tolerably clear that the scope of that exception was determined by the last words, and accordingly that the Public Health (Scotland) Act was to come into play under the new administration in regard only to the assessments leviable under that Act. The Public Health Act is an Act not relating to assessments generally, but only incidentally to those assessments which are authorised for purposes of public health; and accordingly, taking the proviso according to its strictest construction, or according to any construction, it appears to me that the qualification on the general rule is in terms limited to the assessments which are leviable under the Public Health Act. They continue to be leviable under the Public Health Act although the assessing and administering body is now the district committee of the County Council; but all other rates follow the rule laid down in the substantive enactment prescribing gross rental.

The second question is one under the Public Health Act, and it arises in this way. The Public Health Act is in no way repealed by the Local Government Act except in so far as the County Council, acting through the district committee, are substituted as Local Authority for the bodies designated as local authorities under the Public Health Act within the county. Accordingly the County Council, when they come to assess for public health rates, lay down the Local Government Act and take up the Public Health Act as defining the methods of assessment for those purposes. Now, when the County Council are thus engaged in imposing the assessment for public health, there come forward the Greenock Water Trust, and they found upon the exemption or privilege which is contained in the 94th and 95th sec-

tion of the Public Health Act. Now, that exemption is applied to a certain class of cases, and the class of cases according to the section itself is ascertainable by the criterion—Who is the Local Authority? The proviso founded on by the Water Trust is to the effect that where the local authority is a town council or police commissioners, or trustees acting as police commissioners, or where a parochial board is the local authority in a district including, as well as the landward part of a parish, a burgh or town having a town council or police commissioners, or trustees acting as police commissioners, the annual value of underground water or gas pipes, or underground works of any water or gas company, shall for any assessment under the Public Health Act be held to be one-fourth of the value thereof. The fatal difficulty in the way of the Water Company is, that coming forward to claim that exemption, it has to admit that the local authority is not any one of the bodies which are held up as the criterion for determining whether that privilege exists or not. That simple and conclusive reason seems to me to put this company out of Court. It is to be observed that the claim is made under the 95th section of the Public Health Act; and under the 5th section of the very same Act a provision is made by which another body altogether, namely, the Board of Supervision, is authorised to depose, so to speak, one local authority and substitute another, or to readjust the local authority in a particular class of parishes. Well, now, that 5th section of the Public Health Act continued in force between the passing of the Local Government Act and its coming into operation, and in that intermediate period the Board of Supervision exercised its powers under this very Public Health Act, and terminated the condition of things which in former days enabled this Water Company to get this exemption. It is now merely a historical fact that at one time it was within the exempting clause, and at present it is not, and therefore the fatal difficulty of the Water Company is, that having to found upon the Public Health Act, and appealing to the County Council as administrators of that Act, it has to confess that the section which it founds on does not apply to the case in hand. That is the short of this controversy. I must own that I am not at all impressed by the speculations which the Dean of Faculty has entered as to the reasons of the Board of Supervision for operating this change. It seems to me that the Act does not authorise us to inquire into anything of the kind. The Local Government Act left the Board of Supervision in the saddle to exercise the shifting power; and the Public Health Act, as regards the parishes in question, gave them the power which they have exercised apparently in full harmony with the tendency of recent enactments, which drew the line between counties and burghs, of making the alteration in the local authority of this parish. That alteration having been made, it puts

the second parties to this case out of Court.

LORD ADAM concurred.

LORD M'LAREN—In this case between the County Council of Renfrewshire and the Water Trust of Greenock two questions of statutory construction were argued—one upon the 27th section of the Local Government Act, the other on the 94th and 95th sections of the Public Health Act. Under the first of these questions it was contended by the Water Trust of Greenock that the effect of the Local Government Act was to extend to all county assessments whatsoever the provisions of the Public Health Act, under which pipes and underground works are assessed at not more than one-fourth of their annual value. I agree with all your Lordships that this construction is not maintainable, because the 27th section of the Local Government Act only subjects its own provisions and its assessing powers to the provisions of the Public Health Act of 1867 in regard to assessments leviable under that Act. How such words can extend to assessments under other Acts really passes comprehension, and accordingly I am not surprised that this point, although raised in the case, was not followed up in the argument. Then the 94th and 95th sections of the Public Health Act seem to have suggested to the parties a difficulty which at all events is a fair subject for argument and solution. The effect of another provision in that Act was to vest in the Board of Supervision from time to time a power of uniting burghs with landward parishes in respect of the administration under the Act. The effect of the 94th and 95th sections was that wherever a landward district had been annexed to a burgh and was under burgh administration, the same rule of assessment should prevail as was enjoyed with reference to purely burghal districts, namely, that underground works were to be assessed at one-fourth of their value. The Board of Supervision, however, could also disunite the landward portion of the parish from the burgh unless their power of doing so was taken away by the Local Government Act. But the Local Government Act, although it was passed in the end of the session of 1889, did not come into operation until 15th May 1890, at least as regards its general purposes, and there is no repealing of the powers of the Board of Supervision in the intermediate period between the actual passing of the Act and the time of its coming into operation. Now, it is said that if the Board of Supervision had just let the matter alone, the disunion which it seemed to think a desirable thing with reference to the new scheme of county government would have taken effect of itself. I am not sufficiently cognisant at the present moment with the provisions of the Local Government Act—because we have not been taken over the Act—as to say that that result might not have been brought about by the Local Government Committees, but it does not appear that the passing of the Local Government

Act took effect on the previous orders of the Board of Supervision so as to disunite districts which had previously been united, and we are not here criticising or reviewing the proceedings of the Board of Supervision. It is enough that a question of public interest being raised, the Board decided it in the sense of disuniting the parishes. It follows, in my opinion, that as the state of matters contemplated by the 94th and 95th sections no longer existed, the provisions of these sections have ceased to be applicable to the case under consideration, and accordingly that the questions fall to be answered in favour of the County Council.

LORD KINNEAR concurred.

The Court answered the first question in the affirmative, and the second in the negative.

Counsel for the County Council—Jamieson—Dundas. Agent—F. J. Martin, W.S.

Counsel for the Water Trust—D. F. Pearson—Sym. Agents—Cumming & Duff, S.S.C.

Tuesday, December 6.

FIRST DIVISION.

PEARSON AND OTHERS.

Obligation—Real Burden—Negative Prescription—Manse—Special Case.

In 1790 a person by letters expressed his intention of endowing and establishing an Episcopal chapel and manse in the village of Laurencekirk. He bound and obliged himself, his heirs and successors in his lands and estate, to make this establishment a real and perpetual burden on his estates, . . . the manse to be supported in future times by the same rules and regulations as obtain with regard to legal manses in Scotland, and his heirs and successors in the lands of Johnston being bound in the same manner as heritors are in different parishes. A chapel was built, and a manse provided. In 1813, F, a singular successor in the lands of Johnston, granted a deed of mortification in favour of the then incumbent, upon which sasine was taken, in which he declared that "the manse shall be supported in future times by the same rules and regulations which obtain with regard to legal manses in Scotland, the said F and his heirs and successors in the said lands and estate of Johnston being bound in the same manner as heritors are in the different parishes."

No real burden for the support of the manse was ever created, but the manse was kept up by the proprietors of the lands of Johnston, being gratuitous donees of F, until 1892, when it was held (1) that any claim under the letters to have such a real burden created was excluded by the negative prescription,

but (2) that a personal obligation rested upon the proprietors of the lands of Johnston, at least so long as they continued to hold them, similar to that which would have lain upon them had the manse been a parish manse and they the sole heritors.

Observations upon the kind of questions the Court will not answer in a special case.

Upon 9th February 1790 the late Francis Garden, one of the Senators of the College of Justice under the title of Lord Gardenstone, and proprietor of the estate of Johnston in Kincardineshire, wrote to the Rev. Dr W. A. Drummond that he had resolved to endow and establish a Scotch Episcopal church in the village of Laurencekirk. The letter proceeded—"For that purpose, by this, my obligatory missive to you, as a leading member of that Church, I oblige and bind myself, my heirs and successors in my lands and estate" (of Johnston) "in the county of Mearns, to make this establishment a real and perpetual burden on my said estates in proper and ample form hereafter, and in substance as follows— . . . *Secondly*, I, my heirs and successors, shall be bound to furnish a competent manse and a moderate glebe, subject to the same rules and regulations in all time coming, with regard to the obligations incumbent on my heirs and successors, and on the successive incumbents, as take place with regard to heritors of parishes and incumbents in the Established Kirk of Scotland."

Upon 4th December 1790 Lord Gardenstone wrote to Rev. Jonathan Watson appointing him first incumbent of the living, *inter alia*, as follows—"You and your successors are to have a commodious manse, with a piece of garden ground adjoining, and a glebe not under three acres of enclosed ground. The manse to be supported in future times by the same rules and regulations which obtain with regard to legal manses in Scotland, my heirs and successors in the lands of Johnston being bound in the same manner as heritors are in different parishes, both for stipend and manse."

Lord Gardenstone died in 1793 without having executed any deed other than the said letters to render the establishment a real burden on his estate of Johnston, but prior to his death a church had been built by subscription, and the Rev. Jonathan Watson had entered upon his incumbency, and Lord Gardenstone had put him in possession of a house and ground for a manse and glebe, and made payment of his stipend until his (Lord Gardenstone's) death. Mr Watson remained in possession of the house and glebe, and his stipend continued to be paid until his death by Lord Gardenstone's successors. Lord Gardenstone was succeeded in said estate by his nephew, the late Colonel Peter Garden, who was again succeeded by his brother Francis Garden, neither of whom took any further steps towards creating Lord Gardenstone's establishment a real burden on the estate.