insertion of the words of the definition in place of the word defined would introduce any repugnancy into the sentence in which it occurs, then I think that might be a very good reason for saying, that notwithstanding the general terms of the definition Parliament could not have intended the word to be read in this particular sentence in any other than the ordinary sense, and therefore that we must discard the statutory sense and take the ordinary sense. I think that might possibly be a good argument if there were any such repugnance. But it seems to me there is none whatever. And even if there were we should not be placed in a very great difficulty, because of a reason which Lord Adam has pointed out, that when a statute says in the enacting clause that an advertisement shall not be exhibited upon any structure, meaning by the word "structure" to include any moveable structure, and then goes on to qualify that enactment by a proviso which excludes from its scope any structure of a particular description, it is hardly supposable that the word "structure" in the proviso is not to be read in the same sense as in the enactment. That appears to me, as Lord Adam has pointed out, to be a perfectly conclusive answer. But then I think there is nothing approaching repugnance in the sentence if we read the words as the statute says, and understand the proviso as meaning that a licence shall not be necessary in respect of any moveable structure the highest part of which does not exceed 12 feet above the ground. That is perfectly clear, and nobody could read that and imagine that there is any difficulty in understanding it. The highest part of a structure must always be the same height above the ground or above the street, and therefore there is no difficulty at all in that part of the case; but the difficulty is said to arise because the proviso goes on, that it is not to exceed 12 feet above the street where the same is situated in or upon any street or above the ground where it is situated elsewhere. The meaning of the clause is perfectly plain—that you are to measure from the street, or if the thing is not upon the street you are to measure from the ground. But it is said that the word "situation" or "situated" implies something fixed and permanent in the position of the thing described. I am rather disposed to think that in the ordinary use of language the word "situated" would suggest some such meaning of greater or less permanence, but there is no inaccuracy that I can see in the use of the word, although it is not intended to define a permanent situation. On a critical analysis of the words, if we are to enter into exact criticism, I rather think that the shade of meaning which distinguishes the word "situated" from its synonyms will be found to be that it describes the thing referred to in relation to its surroundings. The shade of meaning involved in the word "site" in the illustration which was used in the argument, of a fine site or a good site for building, describes the relation of the ground to other ground, but there is no difficulty in applying that meaning of the word to the sentence here, because the sole purpose of the proviso is to describe the relation of the structure in its highest part to the ground upon which it stands, or on which it is moving. The height of the highest part of the lorry or the structure which is upon the ground is always 12 feet, and it is of no consequence whether it is standing in one street or another or upon ground which is not a street. It is always 12 feet high, and therefore I confess I see no difficulty in reading the word in the sense in which the statute says it is to be read. But I think it is a very misleading method of construction to require from the Legislature a greater degree of exactness in the use of particular terms than is practically attainable. We ought not to isolate a particular word, but must take the whole clause together in order to see what it means. I agree with your Lordships that the meaning is perfectly plain.

LORD M'LAREN was absent.

The Court pronounced this interlocutor:—

"Recal the interlocutor of the Lord Dean of Guild of Glasgow dated 11th June 1901: Refuse the prayer of the petition, and decern: Find the appellants Douglas Boag & Company entitled to expenses both in this Court and in the Dean of Guild Court: And remit," &c.

Counsel for the Appellants and Respondents in the Petition—Clyde, K.C.—M'Clure. Agents—Webster, Will, & Company, S.S.C.

Counsel for the Respondent and Petitioner—Shaw, K.C.—Cooper. Agents—Campbell & Smith, S.S.C.

Saturday, February 8.

FIRST DIVISION.

MACKENZIE, PETITIONER.

Public Records—Register—Transmission of Volume of Register for Production at a Criminal Trial in England.

The King's and Lord Treasurer's Remembrancer, as representing the Lords Commissioners of His Majesty's Treasury, presented a petition in which he craved the Court to authorise the Registrar-General to exhibit a volume in his custody before the Central Criminal Court in London at a trial in a criminal prosecution pending there. The Court (*diss.* Lord Adam), on certain assurances being given for the safe custody and immediate return of the volume, *granted* the prayer of the petition.

This was a petition presented on 5th February 1902 by Sir Kenneth Mackenzie, Baronet, King's and Lord Treasurer's Remembrancer, on behalf of and as representing the Lords Commissioners of His Majesty's Treasury.

The petitioner stated—"That in a prosecution at the instance of the Crown against Francis Marley for the crime of bigamy, which is set down for trial at the next Sessions of the Central Criminal Court in London commencing on 10th February 1902, it is necessary for the ends of justice that the original marriage certificate or Schedule C 661, 1875, for the Gorbals district of Glasgow, containing the signatures of Francis Marley and Rose Docherty, the contracting parties to a marriage solemnised on the 27th December 1875, should be produced in Court at such trial in order to prove the signature thereto of the said Francis Marley. That the said principal marriage certificate or schedule is in the custody at Edinburgh of the Registrar-General for Scotland. The present application is therefore made to your Lordships for authority to have the volume of Marriage Schedules for Gorbals Registration District for 1875 containing the said certificate or schedule exhibited before the said Central Criminal Court in London under the custody of an officer to be selected by the Registrar-General, and by whom the said volume shall be restored to the custody of the Registrar-General. That due notice in writing of the intention to make this application to your Lordships has been made for the requisite period to the Registrar-General, who is quite ready to comply with the orders of Court."

The petitioner prayed the Court "to grant warrant to and authorise the said Registrar-General or any officer duly authorised by him to convey the said volume containing the said principal marriage certificate or schedule to London, and there to exhibit the same in the said Central Criminal Court at the said trial."

The following letter, dated 6th February 1902, from the Assistant Director of Public Prosecutions to Mr Thomas Carmichael, S.S.C., Edinburgh, was read to the Court—"Dear Sir,—I am in receipt of your telegram of to-day, and in reply I wired you as follows—'*Rex* v. *Marley*. Am sending by post letter from Clerk of Central Criminal Court and my own assurance that officer will be allowed to retain and take away after the trial the volume containing Marriage Schedule.' With reference to your telegram I beg to point out that counsel for the Crown cannot give any more binding undertaking than I can give, and I accordingly undertake that, so far as it rests with me, the officer appointed to produce the volume containing the marriage schedule will be allowed to retain custody of the volume and to bring it back with him at the conclusion of the trial. It is not known what Judge will try the defendant, but I enclose a letter from Mr Avory, the Clerk of the Central Criminal Court, who is able to state that it is not the practice of the Court to retain documents, and that there will be no difficulty in allowing the officer to retain custody of the volume and to take it away with him at the conclusion of the trial. I trust the Court of Session will understand that all that can possibly be done to ensure the safe return of the Record will be done. Yours faithfully, ANGUS LEWIS, *Assistant Director of Public Prosecutions*."

Mr Avory's letter to the Solicitor to the Treasury was in these terms—"Dear Sir,—Referring to my interview with Mr Rowe on the subject of the prosecution of Francis Marley for bigamy, I beg to say that it is not the practice of this Court to retain documents which are produced in evidence in the cases which come before it, and there will be no difficulty in allowing the officer to retain custody of the volume containing the marriage schedule signed by Marley, and to take it away with him at the conclusion of the trial.—I am, dear Sir, Yours faithfully, (Sgd.) H. K. AVORY, *Clerk of the Court*."

Counsel, in moving that the prayer of the petition should be granted, stated that there appeared to be a variation in the practice of the two Divisions of the Court in a matter of this kind—*Kennedy*, July 13, 1880, 7 R. 1129, 17 S.L.R. 760; *Earl of Euston*, December 5, 1883, 11 R. 235, 21 S.L.R. 170. With regard to private deeds the practice up to 1860 appeared to have been to grant the application, but in that year a deed which had been produced had been temporarily impounded by the English Courts — [*Shedden* (decided November 7, 1860), July 19, 1862, 24 D. 1446]—and since then the practice had varied —*Dunlop*, November 30, 1861, 24 D. 107; *Bayley*, May 31, 1862, 24 D. 1024. The Treasury gave the assurance contained in the letters that had been read to the Court.

In answer to the Court counsel stated that although he had no specific authority to give any undertaking, he was prepared to say that in the event of its being found that the Register could not be used at the trial without risk of its being impounded by the Court the Treasury would decline to produce it.

At advising—

LORD PRESIDENT—I have felt great difficulty as to whether the prayer of this petition should be granted, as I have repeatedly heard the late Lord President Inglis express strong views against sending any of our public records out of the country, and Lord Adam's opinion to the same effect is also of great authority and weight. If this had been an application by a private individual the objections to granting it would to my mind have been almost insurmountable. But when Mr Blackburn, representing such a department as the Treasury, has been enabled to give us the assurances which he has given, and when he feels that his authority warrants him to give the further assurance which we asked, I think we should grant the prayer of the petition. I hope, however, that it will not be supposed that such an application will be granted as a matter of course. I think we should grant the application on this occasion only because it is at the instance of a responsible public department acting in the interests of public justice—a department whose assurances can be relied upon as certain to be

carried out not only in accordance with the word but with the spirit of their undertaking.

LORD ADAM—This is not with me a question merely of greater or less risk of injury or loss. In my opinion these registers being the public records of the country should not be sent beyond the jurisdiction of the Court in any circumstances. That I know was the view taken by the late Lord President Inglis.

LORD M'LAREN—While I have a very high respect for the authority of the late Lord President Inglis as a lawyer, this is not a question of law but of administration, and I think that in each case the Court must judge of questions of this kind upon the facts of the case before it and independently of authority. We see that there has been a variation in practice between the two Divisions of the Court in time past; but in my opinion the use of public registers is to prove the matters of fact recorded in them. Now the register in question is necessary for the proof of the fact of a marriage, and I am satisfied with the assurance which we have received from the Solicitor of the Treasury, as the result of his inquiry at the office of the Clerk of the Central Criminal Court, that the deed will be left in the custody of the official who takes it to England, and that no attempt will be made to detain it.

LORD KINNEAR—I have very great respect for the authority upon which Lord Adam's difficulty proceeded, and also for his Lordship's own authority, but at the same time I agree with Lord M'Laren. I think it is the duty of this Court to aid the Courts in England in the administration of justice when we are asked to do so in accordance with our own forms and practice, and I agree with Lord M'Laren that if we refuse to do so on this occasion we should practically be refusing to put the records to the exact use for which they were intended, which is to prove the facts contained in them. Accordingly, the only question which occurs to my mind is, whether there is such a risk of loss or injury to the records involved in their being sent to England as to make it improper to expose them to that risk. For my own part I am satisfied with the assurance which we have received from the bar, and with the additional assurance which Mr Blackburn gave in answer to a question from the Lord President, so far as he was able to give it. I am therefore for granting the petition.

The Court pronounced this interlocutor:—

"The Lords having considered the petition and heard counsel for the petitioner, Grant authority to the Registrar-General or any officer duly authorised by him to attend in Court at the trial mentioned in the petition on 10th February curt., to exhibit the volume of Marriage Schedules for Gorbals Registration District for 1875 to the Court or to the jury before whom the cause shall be tried, the said volume to be forthwith restored to the keeping of the Registrar-General."

Counsel for the Petitioner—Blackburn. Agent—Thomas Carmichael, S.S.C.

Wednesday, February 19.

FIRST DIVISION.

HILL'S TRUSTEES *v.* KAY.

Superior and Vassal—Casualty—Composition—Blench Holding—Clause of Taxation.

By a blench disposition dated 3rd August 1805 a superior disponed certain subjects to R, "his heirs, successors, and disponees," in consideration of the payment of the sum of £9000, and bound himself to grant infeftment to "the said R and his foresaids" in the subjects "to be holden of and under me, my heirs and successors, by the said R and his foresaids in free blench farm for yearly payment of one penny Scots money on the ground of the said lands at Whitsunday yearly, if the same be asked allenarly, in lieu of the entry of heirs and successors and other casualties of superiority."

A singular successor of the superior having claimed a composition of a year's rent from a singular successor of the vassal, the vassal refused payment.

Held that as at the date of the deed composition had come to be spoken of as a casualty in the ordinary language of conveyancers, composition was included among the "other casualties of superiority" mentioned in the clause of taxation, and that consequently the vassal was not liable.

The rule which requires clauses taxing entries to be construed if possible in favour of the superior does not apply to such a clause occurring in a blench charter.

Question—Whether composition is a proper or necessary incident of a blench holding.

By blench disposition dated 3rd August 1805 the Duke of Atholl, in consideration of a price of £9000, disponed to George Ritchie, *primus*, farmer, "his heirs, successors, and disponees," the lands called the Hill of Ruthven, being part of the lands of Huntingtower. The disponer bound himself, his heirs and successors, "duly and validly to infeft and seize the said George Ritchie and his foresaids upon their own proper charges and expenses: To be holden of and under me, my heirs and successors, by the said George Ritchie and his foresaids in free blench farm for yearly payment of one penny Scots money on the ground of the said lands at Whitsunday yearly, if the same be asked allenarly, in lieu of the entry of heirs and successors and other casualties of superiority."

In 1899 the trustees of the late James Lawson Hill, W.S., were infeft as superiors