

pensate the tenants upon an entirely different footing from that upon which the landlord could himself resume possession of the land; but the clause contemplates the right of the landlord to resume land for the making of railroads, and I think that cannot be limited to a private undertaking. I see nothing to have prevented Lord Hopetoun from resuming the areas in question for the purpose of selling them to a railway company to be used in connection with their undertaking; and if so, the concluding words of the clause, "for any other purpose," are sufficiently broad to have entitled him to have feued the lands to the Commissioners of Admiralty for the purpose of making a Naval Base.

The Commissioners, however, do not propose to feu or let on building leases the area in question, but to erect buildings and machinery upon them, retaining in their own hand the *dominium utile* of the ground. They are therefore not within the express purposes enumerated in the clause except in so far as regards the making, altering, or widening of roads. Reliance, however, is chiefly placed upon the general words to which I have referred. In my opinion Lord Hopetoun under these words would have had power to resume lands for the purpose of himself erecting buildings and machinery upon them, just as he was entitled to feu or let them on building leases for the same purpose. If so, I cannot see how the Commissioners are in any worse position. It may be assumed that neither party, at the time when the lease was entered into, contemplated the particular use to which the land is now about to be put; but the question is not as to the contemplation of parties, but as to the fair meaning of the reserved power. I think that question is not free from difficulty, but I have come to the conclusion that the clause cannot be construed so as to exclude the Commissioners, as the present owners, from resuming land for the purpose for which they desire to use it. To the tenant it is immaterial in what way the area which is taken from the farm is utilised. The loss which he suffers arises from his being deprived of the occupation; and while this may involve a certain hardship which he did not contemplate when he entered into the lease, it was one of the risks which he contracted to take. I am therefore of opinion that both questions of law must be answered in the affirmative; and I would only add that, even if I had come to a different conclusion as regards the second, I can see no ground whatever why the Commissioners should not resume lands necessary for making the road referred to in the first question, as express power is by the lease conferred upon them of doing so.

The LORD PRESIDENT gave no opinion, not having heard the case.

LORD M'LAREN was absent.

The Court answered the questions of law in the affirmative.

Counsel for the First Party—The Lord

Advocate (Ure, K.C.)—Pitman. Agent—Thomas Carmichael, S.S.C.

Counsel for the Second, Third, and Fourth Parties—Morison, K.C.—Wilton. Agent—D. R. Tullo, S.S.C.

Wednesday, March 16.

## FIRST DIVISION.

(COURT OF EXCHEQUER.)

### VALLAMBROSA RUBBER COMPANY, LIMITED v. INLAND REVENUE.

*Revenue—Income Tax—“Balance of the Profits or Gains”—Deductions of Expenditure when Profit not Reaped within the Year—Capital or Income Expenditure?—Property and Income Tax Act 1842 (5 and 6 Vict. cap. 35), Schedule D, Case I, Rules 1 and 3.*

The mere fact that expenditure is incurred in order to earn profits in future years, and is not solely referable to a profit which is reaped within the year, does not show that that expenditure is not a proper deduction in estimating the profits of the year. *Prima facie*, an expense which recurs each year, such as weeding on a rubber plantation, is income expenditure, and is not a “sum employed as capital.”

A rubber company made a profit in its second year, but a loss in its first year. In arriving at the amount of that loss for the purpose of income tax assessment, the assessor only allowed one-seventh of the general expenditure, such as superintendence and weeding, on the ground that at that time only one-seventh of the plantation was in bearing. *Held* that the assessor had erred, and the whole general expenditure allowed.

The Property Tax Act 1842 (5 and 6 Vict. cap. 35), sec. 100, enacts—“And be it enacted that the duties hereby granted, contained in the schedule marked D, shall be assessed and charged under the following rules, which rules shall be deemed and construed to be a part of this Act, and to refer to the said last-mentioned duties as if the same had been inserted under a special enactment.”

Schedule D, which as amended in the Act of 1853 deals, *inter alia*, with annual profits and gains not charged by virtue of any of the other schedules, under the heading “Rules for ascertaining the said last-mentioned duties in the particular cases herein mentioned,” enacts—“*First case*—Duties to be charged in respect of any trade, manufacture, adventure, or concern not contained in any other schedule of this Act.

#### “Rules.

“*First*.—The duty to be charged in respect thereof shall be computed on a sum not less than the full amount of the balance of the profits or gains of such trade, manufacture, adventure, or concern, upon a fair and just average of three

years, . . . and shall be assessed, charged, and paid without other deduction than is hereinafter allowed: Provided always that in cases where the trade, manufacture, adventure, or concern shall have been set up and commenced within the said period of three years, the computation shall be made for one year on the average of the balance of the profits and gains from the period of first setting up the same. . . .”

“Third.—In estimating the balance of profits and gains chargeable under Schedule D, or for the purpose of assessing the duty thereon, no sum shall be set against or deducted from, or allowed to be set against or deducted from, such profits or gains, on account of . . . any capital withdrawn therefrom; nor for any sum employed or intended to be employed as capital in such trade, manufacture, adventure, or concern; nor for any capital employed in improvement of premises occupied for the purpose of such trade, manufacture, adventure, or concern. . . .”

The Vallambrosa Rubber Company, Limited (referred to in the stated case, *infra*, as the company), appealed to the Commissioners for the General Purposes of the Income Tax Acts and for executing the Acts relating to the Inhabited House Duties for the County of Edinburgh against an assessment of Richard Farmer, Surveyor of Taxes, Edinburgh, for the year ending 5th April 1907 on the sum of £2683, made upon it in respect of profits arising from the production and sale of rubber.

The Commissioners, in consideration of the facts and arguments submitted to them, reduced the assessment to £2455, 10s., as shown in paragraph (j) of I of the stated case (*infra*). The company being dissatisfied with this determination, appealed by way of stated case.

The Case stated—“I. The following facts were admitted or proved—(a) The company was incorporated on 22nd April 1904 under the Companies Act as a company limited by shares. Its registered office is situated at No. 123 George Street, Edinburgh. The capital of the company is £60,000, divided into 60,000 shares of £1 each.

“(b) The objects of the company, as set forth in the third article of its memorandum of association, are, *inter alia*, as follows—1. To acquire by purchase, grant, concession, feu, lease, exchange, or otherwise, any rubber or other plantations, lands, buildings, or other heritages, and any interest or option in or rights over such plantations, lands, buildings, or other heritages in the Straits Settlements or elsewhere; to erect buildings, machinery, and other works thereon for the purposes of the company; and to cultivate and develop the resources of and turn to account the plantations, lands, buildings, and other heritages and rights for the time being of the company, in such manner as the company may think fit, and in particular by clearing, cutting timber, draining, irrigating, fencing, planting, building, improving, farming, and grazing. . . . 4. To sell, improve, manage, develop, lease, mortgage, or otherwise dispose of any portion

of the assets, estate, and effects of the company. . . . 5. To carry on the business of manufacturers, exporters, and importers of and dealers in all such goods and articles as the company may from time to time determine upon. 6. To acquire by purchase, grant, concession, lease, or otherwise, forest rights, timber and wood of all kinds whether standing or otherwise, and lumbering and cutting rights and privileges over lands situated in the Straits Settlements or elsewhere, and to cut, mill, prepare for market, sell and deal in timber of all kinds, and the product of any such forest rights, timber, and woods. . . . 19. To sell the undertaking of the company or any part thereof for such consideration as the company may think fit.

“(c) The company makes up its accounts annually on 31st March.

“(d) The operations carried on by the company up to 31st March 1906 consisted of the production and sale of rubber, seeds, and stumps, and coffee and coconuts, clearing land, planting of rubber trees, draining, making roads and drying stores, and similar work.

“The rubber plantations owned and worked by the company are situated in the Federated Malay States.

“(e) Rubber trees do not yield rubber until they are about six years old. Up to 31st March 1904 no rubber was produced. The estate was acquired by the company as at 1st April 1904. No accounts are available showing the expenditure on the estate by the company’s predecessors before 1st April 1904.

“(f) [This dealt with a sum of £99, being an annual interest on loans. The company departed at the hearing from their objection to pay income tax on this.]

“(g) Included in the sum of £3261 shown as estate expenditure in the company’s accounts for the year to 31st March 1905 was a sum of £2632, consisting of the following items, viz. :—

“(1) Superintendence	£724 0 0	
Allowances	45 0 0	
Contingencies	135 0 0	
Stores	19 0 0	
Medical	18 0 0	
Bank commission, stationery, and postages	17 0 0	
Nurseries and seeds	5 0 0	
Lining and cutting pegs, &c.	10 0 0	
Weeding	540 0 0	
Cattle-keepers	28 0 0	
Pests	271 0 0	
Weeding watchmen	29 0 0	
Home expenses	181 0 0	
		£2022 0 0
“(2) Cutting out rubber	£35 0 0	
Tapping	83 0 0	
		118 0 0
“(3) Clearing and draining	£330 0 0	
Making roads and drains	162 0 0	
		492 0 0
		£2632 0 0

(h) In arriving at the amount of profit or loss for the year ending 31st March 1905, one-seventh, or £290 of the said sum of £2022, and the whole of the said sum of £118, were allowed by the Commissioners as deductions; and the balance, or £1732, of the said sum of £2022 and the whole of the said sum of £492 were not allowed by them as deductions. Thus the total deductions allowed by the Commissioners from the said sum of £2632 amount to £408. The company claimed deduction of the whole sum of £2632.

(i) In the company's first year, ending 31st March 1905, 150 acres, or one-seventh of the plantations (approximately 1046 acres), began to bear rubber, and produced rubber of the value

of	£193 0 0
Deductions allowed as in paragraph (h) of I.	408 0 0

showing a loss for the year of	£215 0 0
--------------------------------	----------

There was no assessment on the company for the year ending 5th April 1905.

(j) For the year ending 31st March 1906 the company's accounts showed a profit balance of

£4,767 0 0	
Add sums debited in accounts, and in the opinion of the Commissioners not allowable as deductions—	
Additional tapping plant.	£80 0 0
Cost of planting new ground.	200 0 0
Interest before referred to	99 0 0
	359 0 0
	£5,126 0 0

Deduct loss for year ending 31st March 1905, as shown in paragraph (i) of I.	215 0 0
Amount of profit	£4,911 0 0
One-half whereof is	£2,455 10 0

“II. For the company it was contended—(1) That the sum of £2632 mentioned in paragraph (g) represented money wholly and exclusively laid out or expended for the purposes of the company's trade within the meaning of the First Rule to Cases I. and II. of Schedule D, section 100, of the Income Tax Act 1842, that they were not capital outlays but ordinary current expenses of carrying on the trade, and necessary to earning the profits realised in that and immediately succeeding years. . . .

“III. The Surveyor of Taxes (Mr Richard Farmer) maintained—(1) That as in the year ended 31st March 1905 only one-seventh part of the plantations had begun to produce rubber a deduction of only one-seventh of the £2022 of the general expenditure on the whole of the plantations should be allowed as being a fair estimate of the proportion thereof expended in obtaining the rubber actually produced, the remaining six-sevenths expended in respect of area not producing rubber being a capital outlay for the formation of rubber plantations and for improvement of the estate.

(2) That the sum of £492 was not expenditure incurred for the benefit of the trade of the particular year, but for the general

interests of the company's business, and was capital employed in improvements, and therefore, under Rule 3 of the First Case of Schedule D, was not an allowable deduction.”

At the hearing of the appeal the Crown admitted that (g) (2), which was expense of cutting out rubber and tapping, was a proper deduction, and the company admitted that (g) (3), which was expense of clearing and draining and making roads and drains, was capital expenditure.

Argued for the appellants—Under Schedule D, Case I, Rule 3, it was not permissible to deduct capital expenditure in estimating the balance of profits and gains. But weeding, &c., was not capital expenditure but annual expenditure. The rule did not say that expenditure incurred in order to reap a profit in future years could not be deducted. The cases cited by the respondents were cases in which receipts exceeded expenditure, and there was nothing in them to show that the circumstances of the present case had arisen for consideration or been considered. The proper test was that suggested in *Watson v. The Royal Insurance Company*, [1896] 1 Q.B. 41, by Lopez, L.J., at p. 45, namely, was the expenditure in question expenditure for the purpose of earning profits. The question in the different circumstances of that case was answered in the negative, and the decision was affirmed in the House of Lords [1897] A.C. 1, but Lord Herschell, at p. 9, expressly reserved his opinion on the proposition now argued by the Crown. The assessor had attempted to split up their business into sections for purposes of income tax. Such a method was not permissible—*Scottish Union and National Insurance Company v. Inland Revenue*, February 8, 1889, 16 R. 461, 26 S.L.R. 330, except when the assessment was under different schedules, as in *Brown v. Watt*, February 20, 1886, 13 R. 590, 23 S.L.R. 403.

Argued for the respondents (Inland Revenue)—(1) “Balance of profits and gains” meant the receipts of the year less the expenditure which was necessary to earn those receipts, and it was not permissible to deduct expenditure which was made in order to earn profits in future years—*City of London Contract Corporation v. Styles*, 1887, 2 Tax Cases 239, Esher, M.R., at 244; *The Gresham Life Assurance Society v. Styles*, [1892] A.C. 309, Lord Herschell at 323; *Watsey v. Musgrave*, 1880, 5 Ex. D. 241; *Highland Railway Company v. Special Commissioners of Income Tax*, July 10, 1889, 16 R. 950, Lord President Inglis at 953, 26 S.L.R. 657; *Granite Supply Association, Limited v. Inland Revenue*, November 7, 1905, 8 F. 55, Lord McLaren at p. 57, 43 S.L.R. 65; *Gillatt and Watts v. Colquhoun*, 1884, 2 Tax Cases 76, Grove, J., at p. 80. (2) In any case, however the appellants might choose to regard the matter in their own books, the expenditure in question was from the point of view of income tax capital expenditure and not income expenditure. The expenditure necessary for the development of an

entirely new industry was in a different position from expenditure made as one product was gradually substituted for another.

At advising—

LORD PRESIDENT—This case arises upon the question of the proper estimation of the profits of the Vallambrosa Rubber Company, Limited. The Vallambrosa Rubber Company, Limited, is a new adventure, and has not yet—at any rate at the time of the year of assessment—come to its full third year's trading; and it is therefore, in stating what its profits are, entitled to take the average of the years since it began. The question here arises, not in estimating the profits of the last year, but in finding out what is the loss upon the first year.

The company is a rubber company, and has an estate called the Vallambrosa Estate, and its profits are derived from the cultivation and sale of rubber. The company proposed, as is set forth in the case, in stating their accounts for the year to 31st March 1905, to make a set of deductions amounting in all to £2632. Those deductions are divided into three heads. The first head amounts to £2022, the second to £118, and the third to £492. Now, we have nothing to do with the second and third heads, because parties are agreed about these. The Crown admitted that the second head, which was expense of cutting out rubber and tapping, was a proper deduction; and the company on the other hand admitted that the third head, which was expense for clearing and draining and making new roads and drains, represented truly a capital expenditure for new land, and therefore the whole point is as to the deduction of the £2022.

Now, this sum of £2022 represents various matters, superintendence, allowances, weeding, and so on, and the way in which the Commissioners dealt with the case in the argument for the Assessor was certainly startling. They did not really go into the question of whether these were proper ordinary expenses or not, but they said this—The rubber tree, it is admitted, is not commercially valuable till it is six or seven years old. They said—We find from your own admission that at present, in this year, only a seventh of your rubber trees are in full bearing, and therefore, they say, we shall hold that only one-seventh of these expenses can be expenses of the ordinary business and as such deductible, and that the other six-sevenths are not deductible. Now, that somewhat startling result was before your Lordships argued on two grounds. The Junior Counsel for the Crown, encouraged by certain expressions which he found used by various learned Judges who had given judgments in Tax Cases, wished your Lordships to accept this proposition, that nothing ever could be deducted as an expense unless that expense was purely and solely referable to a profit which was reaped within the year. I think that proposition has only to be stated to be

defeated by its own absurdity. It is quite true that in some of the cases there are expressions to a certain effect, and I will take as an illustration, for instance, one that was founded on—an expression of Lord Esher in the case of the *City of London Contract Corporation v. Styles* (2 Tax Cases, page 239). He was dealing there with the question of whether a certain expenditure was capital expenditure or an ordinary expenditure, and he said this (page 244)—“How can you carry on a business after you have embarked your capital in the purchase of it? You must find new money in order to pay the expenses year by year, but then you do find money to pay the expenses year by year, and you get the receipts year by year, and the difference between the expenses necessary to earn the receipts of the year and the receipts of the year are the profits of the business for the purpose of the income tax.” Well, that is for the case quite correct, but it must be taken, as you must always take a Judge's dicta, *secundum materiam subjectam* of the case that is decided. But to say that that expression of Lord Esher's lays down that you must take each year absolutely by itself and allow no expense except the expense which can be put against the profit which is reaped for the year, is in my judgment to press it much further than it will go. Something seems to have been tried in other cases like it, because I notice in the case of *Watson v. The Royal Insurance Company* (1897 A.C. p. 1), which went to the House of Lords, that their Lordships took occasion there to say that they must not be held as agreeing in certain expressions which fell from certain of their Lordships in the Court below, because these expressions were not to be taken too literally.

I think the proposition only needs to be stated to be upset by its own absurdity. Because what does it come to? It would mean this, that if your business is connected with a fruit which is not always ready precisely within the year of assessment, you would never be allowed to deduct the necessary expenses without which you could not raise that fruit. This very case, which deals with a class of thing that takes six years to mature before you pluck it or tap it, is a very good illustration; but of course without any ingenuity one could multiply cases by the score. Supposing a man conducted a milk business, it really comes to the limits of absurdity to suppose that he would not be allowed to charge for the keep of one of his cows because at a particular time of the year, towards the end of the year of assessment, that cow was not in milk, and therefore the profit which he was going to get from the cow would be outside the year of assessment. As I say, it is easy to multiply instances, but the real truth is that it is just one of those mistakes which are made by fixing your eyes too tightly upon the words of rules and cases which are given in the Act of 1842. These, after all, are only guides, because the real point is, What are the profits and gains of the

business? Now it is quite true that in arriving at the profits or gains of a business you are not entitled, simply because—for what are likely quite prudent reasons—you either consolidate your business by not paying the profit away, or enter into new speculations, or increase your plant, and so on—you are not entitled on that account to say that what was a profit is a profit no more. The most obvious illustration of that is a sum carried to a reserve fund. It would be a perfectly prudent thing to do, but at the same time, none the less, if that sum is carried to a reserve fund out of profit it is still profit, and on that income tax must be paid. But when you come to think of the expense in this particular case that is incurred for instance in the weeding which is necessary in order that a particular tree should bear rubber, how can it possibly be said that that is not a necessary expense for the rearing of the tree from which alone the profit eventually comes? And the Crown will not really be prejudiced by this, because when the tree comes to bear the whole produce will go to the credit side of the profit and loss account. When the year comes when the tree produces, the only deduction will be the amount which has been spent on the tree in that year; they will not be allowed to deduct what has been deducted before.

Senior counsel for the Crown, probably not having his hopes very highly raised by the argument which had already been given, changed his ground, and he put the point as upon the proper delimitation between capital and income expenditure. Taken in that way of course I have nothing to say against it, but here it seems to me that the Crown have no materials for their case. They chose to peril themselves upon this extraordinary calculation of the assessor of one-seventh of the trees being in bearing. This throws no more light upon the question of what is the proper deduction than any other irrelevant fact, and when you come to the things themselves it was explained at the bar, and I do not think it was contradicted, that these expenses were all expenses which were necessary every year. Now I do not say that this consideration is absolutely final or determinative, but in a rough way I think it is not a bad criterion of what is capital expenditure, as against what is income expenditure, to say that capital expenditure is a thing that is going to be spent once and for all, and income expenditure is a thing that is going to recur every year. Therefore, *prima facie*, weeding, which does occur every year, seems to me to be an income expenditure. Upon the whole matter, therefore, I am clearly of opinion that the Commissioners' judgment was quite wrong, and that the company were entitled to the deductions they claimed, namely £2022, and that the assessment ought to be remodelled in accordance with that view.

LORD JOHNSTON—By section 100 of the Income Tax Act 1842, duties under the first case of Schedule D are “to be charged in

respect of any trade, manufacture, adventure, or concern of the nature of trade, not contained in any other schedule of this Act.”

The Vallambrosa Rubber Company was established as from 1st April 1904. In the revenue year 1904-5 it admittedly made a loss. In the year 1905-6 it made a profit. As it had not been three years prior to 5th April 1906 in existence when it came to assessing the company in income-tax for 1906-7, it was necessary to take the average of the two preceding years, one a year of loss, the other a year of profit, and the question which has to be determined is what deductions are allowable in arriving at the profits of the year 1905-6, before bringing in these profits, to strike the average.

The rule primarily to be applied is the first rule for both the first and second cases under the schedule, which says, in estimating the balance of profits or gains—that is, the net profits to be charged—no allowance shall be made except for “money wholly or exclusively laid out or expended for the purposes of such trade, manufacture, adventure, or concern.” And the question that at once arises is, What is the trade, &c.? I think that this must be ascertained from the memorandum of the company read in conjunction with the actual operations of the company. Some of the purposes of the memorandum are obtained by capital, some by revenue expenditure. In making the discrimination, certain items will no doubt be found to come very near the dividing line, but the discrimination must nevertheless be made as best may on business lines.

It appears to me that, as at present worked, the trade, manufacture, adventure, or concern of the company is the cultivation and production for sale at profit of rubber and other tropical products. For this purpose land had to be acquired, cleared, and drained, roads made, and buildings erected before the cultivation began. What was expended for these purposes was I think capital expenditure, and not, in the sense of the Income Tax Act, money laid out and expended for the purposes of the trade, &c. But once the cultivation began with the planting, expenditure on cultivation, production, and marketing was I think revenue expenditure, or expenditure for the purposes of the trade, &c. (See *Watney & Company's* case, L.R., 5 Ex. Div. 241; *Highland Railway Company's* case, 16 R. 950; and *The Granite Supply Association's* case, 8 F. 55.) Applying this principle, and on the analogy of these cases, of the deductions claimed in ascertaining the profits for the year 1905-6, I think that the whole of the first two sums of £2022 and £118 fall to be allowed, and the whole of the third sum of £492 to be disallowed, and that the Commissioners' deliverance should be corrected accordingly.

I do not think that reference need be made to any of the other rules under the schedule.

LORD SKERRINGTON concurred.

LORD M'LAREN and LORD KINNEAR were absent.

The Court pronounced this interlocutor—

“(1) Reverse the determination of the Commissioners in so far as it disallows £1732 of the deduction of £2022 claimed by the appellants, and find that in arriving at the amount of profit or loss the Commissioners ought to have allowed the whole sum of £2022 as a deduction; (2) Affirm their determination as regards the other deductions claimed by the appellants; (3) Reverse their determination as regards £866 of the assessment on £2455, 10s.; (4) Affirm their determination as regards the balance of the assessment, viz., £1589, 10s.; and decern: Find the appellants entitled to expenses,” &c.

Counsel for the Appellants—Fleming, K.C.—Pitman. Agents—J. & F. Anderson, W.S.

Counsel for the Respondents—Constable, K.C.—Umpherston. Agent—P. J. Hamilton Grierson, Solicitor of Inland Revenue.

Friday, March 18.

FIRST DIVISION.

[Sheriff Court at Glasgow.

M'CORMACK v. GLASGOW CORPORATION.

*Reparation—Malicious Prosecution—Privilege—Actings in Enforcement of Statutory Bye-laws.*

The Corporation of Glasgow, the proprietors of the tramways in Glasgow, are empowered under the Glasgow Corporation Tramways Acts 1870 and 1893 to make bye-laws, and these bye-laws, *inter alia*, make it an offence punishable by a penalty to travel upon any car and attempt to evade payment of the fare, or having paid for a certain distance knowingly to travel beyond that distance with intent to evade payment of the additional fare. They further provide that the conductor of each car shall to the best of his ability enforce the bye-laws and prevent their breach, and make his failure to enforce, itself a breach.

In an action of damages against the Corporation of Glasgow the pursuer averred that he was a passenger in one of their cars, that when the car reached a certain station the conductor requested him to pay the sum of one halfpenny and alleged that he had travelled beyond the station to which he was entitled to travel for a halfpenny, that he refused to pay, that the conductor lost his temper, insulted the pursuer and accused him of trying to defraud the defenders, and wrongfully, maliciously, and without probable cause called a policeman and charged the pursuer with travelling on the car

with intent to evade payment, and that in consequence he was cited to appear at the police court, and that after evidence was led the charge was found not proven.

*Held*, on a proof, that the defenders should be assizled — the Lord President and Lord Kinnear on the ground that the occasion was privileged and that the pursuer had failed to prove malice and want of probable cause; Lord Johnston on the ground that though the occasion was not privileged, yet since the conductor was armed with statutory authority the *onus* lay on the pursuer to show that he was not justified in the use of it, and that he had failed to discharge this *onus*.

*Buchanan v. Corporation of Glasgow*, July 19, 1905, 7 F. 1001, 42 S.L.R. 801, followed.

Under powers conferred by the Glasgow Corporation Tramways Acts 1870 to 1893, the following bye-laws, *inter alia*, were made:—“4. (c) Any person travelling, or having travelled, in any car, who evades or attempts to evade payment of his fare, or any person who, having paid his fare for a certain distance, knowingly proceeds in any such car beyond that distance without paying the additional fare for the additional distance, and with intent to evade payment thereof, shall be liable to the penalty prescribed by these bye-laws. And it shall be lawful for any officer or servant of the Corporation, and all persons called by him to his assistance, to seize and detain any such passenger whose name or residence is unknown to such officer or servant until such passenger can be conveniently taken before a magistrate, or until he be otherwise discharged in due course of law. 23. The conductor of each car shall, to the best of his ability, enforce these bye-laws and regulations, or prevent the breach thereof; and if any such conductor fails to enforce the same as aforesaid, he shall be deemed to have committed a breach thereof.”

Joseph M'Cormack, Rose Street, Garnet-hill, Glasgow, raised an action in the Sheriff Court at Glasgow against the Corporation of the City of Glasgow concluding for £100 damages.

The following *narrative* is taken from the opinion (*infra*) of Lord Johnston—“The situation is this. The Glasgow Corporation tramway routes are divided in halfpenny stages. If a passenger enters a car at any point within a stage he is due one halfpenny as his fare to the end of that stage. The moment the car enters upon another stage, the passenger, if he is going on with it, is due a second halfpenny for the second stage or any part of it, and so on. The pursuer Joseph M'Cormack wished to travel by one of the Corporation cars on the Maryhill to the city route, along New City Road to the corner of Cambridge Street. If he boarded the car at the corner of Seamore Street and New City Road his fare was a halfpenny. But if he boarded it before Seamore Street his fare was a penny, for the Seamore Street