

"(3) The defenders have a plea founded on the time at which the pursuers were bound to leave the farms. They maintain that, because the turnips were not ripe at Martinmas, when the pursuers' time for holding the land expired, the full value of the turnips should not be paid. The Sheriff-Substitute does not think this plea calls for much consideration. If the pursuers have right to a crop of turnips at all, they have right to a ripe one.

"(4) The last of the defenders' reasons for saying that the terms of the lease should be interpreted on the view that they maintain to be the true one, is, that one of them (Bisset), on the faith that the terms would be so interpreted, gave the pursuers more than he would otherwise have given for the way-going grain crop. The particulars of this objection are not fully stated, but it seems that the price of the grain crop was fixed also by valuation, and the arbiters there must have gone far indeed out of their way if they gave Mr Bisset a bad bargain of the grain because they expected that he would afterwards get a good bargain of the turnips. The matter, however, is irrelevant, as the two bargains had no necessary connection.

"On the whole matter, the Sheriff-Substitute has therefore felt himself obliged to come to the conclusion that whether the terms of the lease, or the circumstances which the defenders say are relevant to control these terms, be considered, the construction adopted by the pursuers is the sound and legal construction."

The defenders appealed to the Court of Session. WATSON for them.

The DEAN OF FACULTY and MILLAR, Q.C., were not called on.

The Court unanimously dismissed the appeal, on the ground that the pursuers were entitled under the lease to the market value of the turnips.

Agent for Pursuers—Alex. Crombie Jun., W.S.
Agent for Defenders—William Officer, S.S.C.

Tuesday, November 1.

TEMPLETON v. GLASGOW & SOUTH WESTERN RAILWAY CO

Assessment—Railway—Erroneous Payment—Police and Improvement Act, 1850—Lands Valuation Acts, 1854 and 1867. Held (1) the line of railway within a town which has adopted the Police Improvement Act 1850 is, under the word "premises," liable to be assessed for the purposes of the Act; (2) as the Lands Valuation Acts of 1854 and 1867 do not impose the liability, but only provide machinery for fixing the amount, the collector of police rates was entitled till then to compute the valuation; and (3) erroneous payment by the railway company to the county did not relieve it of its liability to the burgh assessment.

By 13 and 14 Vict. c. 33, it is provided that after certain formalities a populous place may constitute itself a burgh in the sense of the Act, and appoint commissioners who shall have power to "assess all occupiers of premises within the burgh." The town of Maybole adopted this Act in 1857, and the respondents having become occupants of the Maybole and Girvan Railway in August 1865, were assessed by the commissioners on their station and line of railway so far as within the burgh. Payment not having been made, the collector of

police rates raised an action in the Sheriff-court of Ayrshire concluding for payment of the assessments imposed during each of the preceding three years. The railway pleaded in defence that "The Act 13 and 14 Vict., cap. 33, founded on, gave power to assess "premises" only, and the railway not coming under that term, as explained in the interpretation clause of that Act (§ 2), the Commissioners of Police for the burgh of Maybole had no power to impose an assessment on the defenders' railway. Even assuming that railway property was assessable under the Act, it could only be in the way pointed out by the Act 17 and 18 Vict., cap. 91 (the Valuation Act), which ordains all railways to be valued by a railway assessor, and there being no valuation by him of the defenders' property within the burgh of Maybole, the assessment on this ground also was illegal. As they had already paid all the assessments in the county for which they were liable in terms of the valuation roll, they could not again be charged on the same subjects within the burgh of Maybole, which, if it had any claim for such assessment, was bound to recover it by arrangement with the county." The collector urged that the word premises must be held to include a railway. By section 2 of the Act it is declared that the word "premises" and the word "lands" shall include all "lands, springs, rights of servitude, dwelling-houses, shops, warehouses, vaults, cellars, stables, breweries; manufactories, mills, and other houses and buildings, and yards and places." By 17 and 18 Vict., cap. 91, sec. 20, a special assessor of railways and canals is authorised to be appointed in order to the making up valuation of lands and heritages in Scotland belonging to or leased by railway or canal companies, and forming part of the undertakings of such companies. And by section 21, the assessor, with a view to making up the roll, is authorised to inquire into and fix the yearly rent or value of all lands and heritages in Scotland belonging to or leased by each railway and canal company, and forming part of its undertaking, and to make up a valuation-roll applicable to all railway and canal companies having lands and heritages as aforesaid, in which valuation-roll is to be set forth, in columns, the yearly rent and value, in terms of the Act, of the whole lands and heritages in Scotland belonging to or leased by each railway and canal company, and forming part of its undertaking, the names of the several parishes, counties, and burghs through which the line of such railway or canal company runs, or in which its lands or heritages, or any part thereof, are situated; the lineal measurement of its entire line, and the portion of such lineal measurement situated in each such parish, county, and burgh; and also the yearly rent or value, in terms of the Act, ascertained in manner therein mentioned, of the portion in each parish, county, and burgh in Scotland, of the lands and heritages belonging to or leased by each railway and canal company, and forming part of its undertaking. By section 33 it is enacted, that "where in any county, burgh, or town, any county municipal, parochial, or other public assessment, or any assessment rate or tax under any Act of Parliament, is authorised to be imposed or made upon or according to the real rent of lands and heritages, the yearly rent or value of such lands and heritages as appearing from the valuation-roll in force for the time under this Act (viz., the said Act of 17 and 18 Vict., c. 91) in such county, burgh, or town shall, from and after the establish-

ment of such valuation therein, be always deemed and taken to be the just amount of real rent for the purposes of such county, municipal, parochial, or other assessment rate or tax, and the same shall be assessed and levied according to such yearly rent or value accordingly, any law or usage to the contrary notwithstanding." An assessor of railways was accordingly appointed, and was acting in 1866-68, and made up a valuation of the whole lands and heritages belonging to the railway in the parish of Maybole. By the interpretation clause it is enacted that the word burgh shall apply only to royal and parliamentary burghs; but by 30 and 31 Vict., c. 80, § 5, the assessor's duties are extended to towns. The police collector having ascertained the length of the line within the parish of Maybole and its valuation, computed the proportional value of it within the police burgh, and claimed from the railway company the assessment to that amount.

The Sheriff-Substitute (ROBISON) gave effect to the contention of the police collector in an interlocutor, to which he added the following note:—

"*Note.*—The defenders object, on three grounds, to the legality of the assessments in question.

"It is contended, firstly, that if they are liable to be assessed at all the assessment must be confined to the station-house and its accessory sheds, and cannot include any portion of the railway, because it is said it is only the former which can be held to be comprehended under the word 'premises,' used in section 63 of the Act 13 and 14 Vict., cap. 33, to describe the kind of property which is made liable to assessment. But as, from the interpretation clause of the Act (section 2), it would appear as if a synonymous meaning were intended to be given to the words 'lands' and 'premises,' it follows that the use of the word 'premises' singly in the 63d section must be held to include all the subjects specified under the head of lands and premises in the interpretation clause of the Act, and therefore either under the category of 'lands' or that of 'places,' which are two of these specified subjects, a railway, which is just a tract of land having a level surface of connected iron rails for the conveyance of goods and passengers thereon, falls reasonably enough to be included.

"But the defenders contend, secondly, that they are not liable in the assessments in question at all, because it is said that the valuation upon which they proceed is not that of the railway assessor, which it ought to have been, in terms of the Act 17 and 18 Vict., cap. 91, but it is a valuation made by the Commissioners of Police themselves. Now, while it is true that the Commissioners of Police have, by an arithmetical process, ascertained the value of the defenders' railway within the burgh of Maybole, it is the railway assessor's valuation of the railway within the parish (and including the burgh) of Maybole that has been made the foundation of their calculation. For the years over which the assessments extend the railway assessor could not, or, at least, was not bound to return a special valuation of the portion of the railway within the burgh (see 17 and 18 Vict., cap. 91, § 42), and it is only by a posterior Act, 30 and 31 Vict., cap. 80, that he can now be required to do so. In these circumstances, this objection appears not to be well founded.

"The defenders, in the third and last place, object to the assessments sued for, because it is said that they have already been assessed on the same subjects for county rates for the years in question,

and have paid these assessments; but the Sheriff-Substitute has been informed by the Clerk of Supply that the fact is not so.

"*Postscript.*—The information received from the Clerk of Supply has been misunderstood, and the Sheriff-Substitute now understands the fact to be that the defenders have for the years in question been charged with and have paid police assessments to the county in respect of their railway property in the parish of Maybole, but have objected to pay such assessments in future, on the ground of their being liable to be assessed in police rates in respect of the same property to the burgh of Maybole, and that this objection has been sustained by the county."

On appeal the Sheriff (CAMPBELL) reversed this interlocutor in so far as it found the railway company liable to assessment on their line. The following note was annexed to this interlocutor. "This is a case of considerable importance. The Police Improvement Act of 1850 is founded on by the pursuer as his only warrant for levying the assessment sued for from the defenders, the railway company. Their property within burgh consists—1st, of their line of railway passing through it; and 2dly, of the station-house and its appurtenances. By the Act the Commissioners of Police for the burgh are entitled to 'assess all occupiers of premises within the burgh in the sums necessary to be levied for the purposes of the Act,' and the question between the parties turns upon the meaning to be given to the word 'premises.' In construing this word the Court is not wholly without a guide. The interpretation clause of the Act provides that the word 'premises' shall include all 'lands, springs, rights of servitude, dwelling-houses, shops, warehouses, vaults, cellars, stables, breweries, manufactories, mills, and other houses and buildings, and yards and places.' The Sheriff has no doubt at all that the word 'premises,' in its ordinary acceptance and meaning, considered apart from the interpretation clause just quoted, does not include a line of railway. The first question, therefore, comes to be, whether a line of railway is to be held as comprehended within any of the terms which the Act says shall be included in the word 'premises'? It seems clear enough that it cannot reasonably be held to be included within any of the following terms, viz.:—'springs, rights of servitude, dwelling-houses, shops, warehouses, vaults, cellars, stables, breweries, manufactories, mills, and other houses and buildings and yards.' Now, these are all the things that, by the Act, are to be held as included in the word premises, excepting "lands" and "places." The Sheriff-Substitute is of opinion that a line of railway may be held as included within one of these terms, viz., "lands." The Sheriff thinks otherwise. "Lands and heritages," coupled together, are no doubt held to include all kinds of heritable property, lines of railway not excepted; and possibly the word "lands," standing alone, might be held to include everything *a centro usque ad cælum*. But in the present case that word is not used in this large sense. If it had been, there would have been no need for going on to enumerate the other species of property, such as springs, dwelling-houses, shops, warehouses, &c. The term "lands," in short, is not used in its generic sense, but to indicate a species of property distinguishable from all the other species of property enumerated along with it; in short, it is used in its limited sense, and in this sense it cannot be held to include rail-

ways, canals, and other kinds of property differing essentially from the particular kinds of property contained in the enumeration. In practice, when railways and canals are intended to be embraced in such enumerative clauses, they are specially mentioned. This is the case in regard to the Prisons' Discipline Act of 1839, and it is believed in regard to all other acts proceeding on the enumerative principle. The only other word that can be founded on by the pursuer is the word "places." Now, a line of railway is clearly not a "place," in the ordinary sense of that word. It runs between one place and another, but it is not itself, in common and ordinary language, denominated a "place." The word "place" seems to have been used to cover and include depots for coal, or lime, or the like. From this analysis of the interpretation clause the Sheriff concludes that the line of railway in question is not within the purview of the statute, and therefore not assessable as such. He is quite clear, however, that all the railway company's heritable property within the limits of the burgh falling within the terms "houses," "buildings," "yards," and "places," is assessable, and he thinks that the station house, with the buildings, depots, and appurtenances connected therewith may be fairly brought within the meaning of these terms. He has accordingly found the defenders liable for them, according to their yearly rent or value. There will probably be no great difficulty in ascertaining and settling the annual value."

The Collector appealed.

DEAN OF FACULTY and LEES, for him, argued—The word premises must be held to include railway. It is convertible with the word lands, and is used very widely, being defined to include lands, springs, rights of servitude, yards, places, &c. If, therefore, land was assessable, the laying of rails on it, and so making it more valuable, could not relieve it from liability. If a railway did not require paving, places might not, and springs did not, require either paving or draining. A water company's pipes below the ground subject the company to assessment for poor-rates as occupiers of lands, even though the surface proprietor is taxed; *Hay v. Edinburgh Water Company*, 12 D. 1245, and 1 Macq. 682. The railway company purchased the ground as land, and their line was unquestionably included under the words "lands and heritages." It would be invidious to assess small properties, and not railways. The Valuation Acts of 1854, and 1867 only provided new machinery for carrying out the Police Act of 1850; and as Maybole was not a burgh in the sense of the Act of 1854, and as the police and parochial boundaries were not the same, the collector could not till 1869 avail himself of the railway assessor's valuation for the police burgh of Maybole otherwise than by calculation of the proportional amount; and the correctness of these calculations was not disputed. Payment to the county did not exonerate the company from their liability to burgh assessment. They had a good title to object to the county assessment, as by clause 376 of the Act of 1850 exemption from the double assessment was granted.

LORD ADVOCATE, SOLICITOR-GENERAL, and JOHNSTONE replied—It must be admitted railways come under the word premises. But the company are not bound to pay police assessments twice. They have paid the county assessment for the years in question; and the Commissioners, if entitled to any payment, should obtain this payment from the county. It was only in 1867 that the police burgh

became entitled to demand this assessment. Even if in 1865, as they had not adopted the proper course for obtaining it, they were not entitled to claim it now.

At advising—

LORD JUSTICE-CLERK—On the main question, the one on which the Sheriffs differ, I have no doubt. The Sheriff seems to think premises, in its natural signification, cannot include a railway. I am not quite sure that I would agree with that opinion; but the second section clearly settles the point. The commissioners are to assess all the occupiers of premises in the burgh, and the railway is just part of the premises of the burgh. The puzzle is under the second question. It is conceded that for the future the assessment is to be paid; but the company say that, not being properly assessed during the years in question, they cannot be held liable in payment. The thirty-third section of the Valuation Act of 1854 provides that the Railway Assessor's Roll is to be the test of value of railway lands in all valuations. But there is no provision for the railway assessor returning the valuation for such a place as Maybole. The collector had therefore had to make his own valuation, and the accuracy of his calculation is not disputed. He ascertained the amount of the valuation for the parish, and assessed the railway for the part within the police bounds in the proportion of the amount of railway line in the police to that in the parochial bounds. The question how the respondents stand with regard to the county is not, I think, raised here at all. They were liable to be assessed for the burgh, and could have pleaded that as a defence against payment of the county assessment.

LORD COWAN—I concur. The Sheriff-Substitute's interpretation of the word premises is more correct than the Sheriffs'. I cannot construe the word premises otherwise than as including the railway. It seems to embrace all the subjects in the burgh. It includes land, and putting rails on land cannot make it other than land.

LORD BENHOLME—On the point of the interpretation of the word premises, I have no doubt. As to fixing the amount of the valuation, the collector seems to have acted quite rightly. In the great majority of cases there is no division of parochial burdens. It is only in the case of royal burghs. But parliamentary burghs were created, and an express indemnity given them from assessments for the county police. Following the analogy of the Railway Act, it was quite competent for the commissioners to make a calculation of the amount of assessment to be imposed, as they have done; and it is not sufficient for the railway company to object that they paid the assessment to the county erroneously.

LORD NEAVES—The valuation Acts did not impose this assessment. They only made a change in the machinery for imposing it. But as soon as Maybole adopted the Police Act—viz. in 1857—the railway company could claim exemption from paying the county assessment. As soon as the Act was adopted all occupiers of premises within the burgh became liable to assessment; and the railway company is just such an occupant.

Agents for Appellant—Muir & Fleming, S.S.C.

Agents for Respondents—Gibson-Craig, Dalziel, & Brodies, W.S.