

the trust-estate: And in answer to the second question therein stated, that neither the trustees nor the parties of the second part are bound to relieve the fourth parties of the said loss."

Counsel for the First Parties—Maconochie. Agents—M'Neill & Sime, W.S.

Counsel for the Second Parties—Rankine—Graham-Stewart. Agents—M'Neill & Sime, W.S.

Counsel for the Third Parties—Dundas—Clyde. Agents—R. C. Bell & J. Scott, W.S.

Counsel for the Fourth Parties—Ure—Chree. Agents—J. A. Pattullo, S.S.C.

Friday, November 8.

### FIRST DIVISION.

#### KIRKCALDY DISTRICT COMMITTEE v. POLICE COMMISSIONERS OF BUCKHAVEN, &c.

*Public Health—Special Water Supply District Partly in County and Partly in Burgh—Burgh Formed after 1889—Joint-Management and Maintenance—Assessment—Local Government (Scotland) Act 1889 (52 and 53 Vict. c. 50), secs. 81 and 99.*

When a special water supply district is established in a rural parish, and a police burgh is afterwards formed within such parish, subsequently to the passing of the Local Government (Scotland) Act 1889, the police commissioners of the burgh, are, under sec. 81 of that Act, charged with the management and maintenance of the water supply and works jointly with the county local authority, and are alone entitled, as burgh local authority under sec. 99, to impose and levy within the burgh the assessments for water supply purposes.

The Local Government (Scotland) Act 1889 (52 and 53 Vict. cap. 50) enacts—Sec. 81—“With respect to special drainage districts or special water supply districts the following provisions shall have effect—(1) Where a special drainage district or special water supply district has been formed in any parish under the Public Health Acts, the district committee may, subject to regulations to be from time to time made with the consent of the county council, appoint a sub-committee for the management and maintenance of the drainage or water supply works, and such sub-committee shall in part consist of persons, whether members of the district committee or not, who are resident within the special drainage district, or special water supply district. (2) Where a special drainage district or special water supply district is partly within a county and partly within a burgh or police burgh, the sub-committee appointed under the immediately preceding sub-section, and such members of the town coun-

cil or police commissioners (as the case may be) of such burgh or police burgh as, failing agreement, the Secretary for Scotland may determine, having regard to all the circumstances of the case, shall be charged with the management and maintenance of the drainage or water supply works within such special district, and the determination of the Secretary for Scotland may provide for the regulation of the proceedings, and for the allocation and payment of the expenses incurred under this sub-section. (3) Where a special drainage district or special water supply district is wholly within a police burgh formed after the passing of this Act, the police commissioners of such police burgh shall become the local authority under the Public Health Acts for such special district, and the assessments in respect of the drainage and water supply shall be levied in the same manner as they were before such district was formed into a police burgh.” Sec. 99—“Nothing in this Act shall interfere with the formation of police burghs under the provisions of the General Police and Improvement (Scotland) Act 1862; and on the formation of any police burgh the commissioners of police thereof shall become the local authority therein under the Public Health Acts, subject to adjustment by the sheriff in regard to the property and debts and liabilities affected by such change. . . .”

In 1868 the town or village of Buckhaven, and in 1870 the village of East Wemyss, both within the parish of Wemyss and county of Fife, were respectively formed into special water supply districts under the Public Health (Scotland) Act 1867 (sec. 89 (5)). At that time the areas of these water districts were wholly landward.

In 1876 the Parochial Board of the parish of Wemyss, as local authority, obtained a Provisional Order, confirmed by Parliament, authorising the introduction of a supply of water for the whole parish. The works were vested in and constructed and administered by the Parochial Board of Wemyss as the local authority under the Public Health (Scotland) Act 1867.

The debts due by the special districts of Buckhaven and East Wemyss were taken over and paid by the Parochial Board as the local authority of Wemyss, and the special districts were thereafter treated, like the other parts of the parish, as if they had not been formed into special districts. To provide funds for the construction of the water-works, sums of money were borrowed from time to time by the said Parochial Board as local authority of the said parish, in security of the repayment of which, and of interest thereon, the water assessments of the parish, including the special districts above mentioned, and also the general public health assessments of the parish, were pledged. Such was the position of matters when the Local Government (Scotland) Act 1889 came into operation, and the parish of Wemyss became part of the Kirkcaldy district of the county of Fife.

In June 1890 a Sub-Committee of the Kirkcaldy District Committee was appointed to manage and maintain the water supply

works, under section 81 (1) of the Local Government Act.

By an order of the Boundary Commissioners, of date 24th November 1890, a detached portion of the parish of Markinch, known as Innerleven, which had been formed into a special water supply district in the year 1885, was added to the parish of Wemyss.

On 4th March 1891 the district of Buckhaven, Methil, and Innerleven, all then and now in the parish of Wemyss, was formed into a police burgh, under the provisions of the General Police Act of 1862.

On 30th July 1892 the Kirkcaldy District Committee of the County Council passed certain resolutions which had the effect of enlarging the special water supply district of East Wemyss so as to embrace the whole parish of Wemyss including the added district of Innerleven, except those parts embraced within the limits of the police burgh of Buckhaven, Methil, and Innerleven.

On 23rd August 1892 the Police Commissioners of said burgh resolved to enlarge the boundaries of the special water supply district of Buckhaven so as to include in one special water supply district, to be called that of Buckhaven, Methil, and Innerleven, all the special water supply districts within the said police burgh.

The same water supply system supplied both the parish and the burgh, the source being outside the parish of Wemyss, and only the distributing mains within the parish and burgh.

In September 1892 a Joint-Committee, composed of members of the Sub-Committee of the District Committee of the County Council and of Police Commissioners of said burgh, was appointed for the management of the works, and with a view of applying for a Provisional Order to enable the authorities of the parish of Wemyss and of the police burgh of Buckhaven, Methil, and Innerleven, to bring in an additional supply of water, if so advised, and to execute and maintain the new works.

This Joint-Committee resolved upon a scheme to be adopted, and applied for a Provisional Order sanctioning said scheme, the new works to be managed and maintained along with the existing works of the Combined Special Water Supply District of Wemyss. The Provisional Order was obtained, and received the Royal Assent on 9th July 1894.

Difficulties having arisen between the Kirkcaldy District Committee and the Police Commissioners of the Burgh of Buckhaven, Methil, and Innerleven, as to which was the local authority for the administration of the water supply works originally introduced by the Parochial Board for the whole parish, and of those to be constructed, a special case was presented by the District Committee of the first part, and the Police Commissioners of the second part, to have the following questions of law settled, viz.—“1. Which of the parties to the case is the local authority charged with, and entitled to the administration of, (a) the existing, and (b) the contemplated

water-supply and water-works (1) within the landward part of the parish of Wemyss, (2) within the police burgh of Buckhaven, Methil, and Innerleven, and (3) within the part outwith both the said police burgh and the said parish? 2. Do the assessments necessary in connection with (a) the existing, and (b) the contemplated water-works fall to be imposed and levied by the County Council over the whole parish; or are the second parties entitled or bound to impose and levy the same within the burghal portion of the said parish?”

The first parties maintained that “looking to the facts that the water supply introduced into the parish of Wemyss by the Parochial Board as local authority of the parish, was introduced for the benefit of the whole parish; that the whole of the works, except certain distributing mains, are outside the limits of the said police burgh, and partly also outside the parish of Wemyss; that the cost of the said works for the supply of the whole parish, including the burgh, forms a debt upon the parish, including the burgh, and the assessments of the whole parish, including the burgh, were pledged in security for repayment of the money borrowed to construct the works; and that the special water supply districts of East Wemyss, Buckhaven, and Innerleven were all formed before the said police burgh came into existence, only the extensions and combinations of the same having taken place after the creation of the burgh, the District Committee is entitled, in terms of the recited Acts, to exercise all the administrative and financial business of the said waterworks through a sub-committee appointed in terms of section 81 (1) of the Local Government (Scotland) Act 1889, and the County Council is entitled and bound to levy the assessments necessary within the burghal, as well as the landward portions of the parish. Further, as the new supply of water about to be introduced is merely an addition to the existing supply, the whole of the works in connection therewith being outside the burgh, and most of them outside the parish, the administration of and the assessments necessary in connection with such new or additional supply must be dealt with upon the footing above indicated with regard to the existing water supply.

The second parties maintained that “Buckhaven, Methil, and Innerleven being a police burgh formed in 1891 under the General Police Act 1862, of which the second parties are the local authority under the Public Health Acts and the Local Government (Scotland) Act 1889, sec. 81 (3), and sec. 99, and the said police burgh forming a special water supply district, the second parties are entitled to combine with the first parties, the local authority of the parish of Wemyss, in maintaining the existing, and executing and maintaining the contemplated waterworks, and to exercise in conjunction with them the administrative and financial business of the said waterworks, and that the second parties are entitled and bound to impose and levy

the waterworks assessments so far as with- in the said police burgh."

Argued for the first parties—(1) The formation of the burgh did not affect the water supply, which was applicable to the whole parish, and which was to be managed by the District Committee coming in place of the Parochial Board. The existing works belonged to the District Committee, and fell to be managed and maintained by them exclusively. The 99th section was inapplicable. It safe-guarded the formation of police burghs, but did not give police commissioners right to interfere in works lying outside the burgh. If they were right as to the old works, it was only reasonable and convenient that the same management should continue undisturbed with respect also to the extensions. (2) As to assessing—they had right to lay on an assessment, or at any rate to fix it, and remit to the burgh authorities to lay it on—*County Council of Dumbartonshire v. Police Commissioners of Clydebank*, November 16, 1894, 22 R. 64.

Argued for the second parties—(1) The new works would be the most important. They were being promoted by both parties; they must therefore be managed by both jointly. That being so, it would be inexpedient, if not impossible, to separate the management and maintenance of the old works, which formed a part of the whole, from that of the contemplated works. The first parties, in joining with the second in applying for the Provisional Order, were barred from now objecting to a joint management. If it was necessary to refer to the Act, section 99 constituted the police commissioners the local authority for the carrying out in the interests of the burgh such undertakings as the present, and indeed owners of any works within the burgh. They were entitled under sec. 8 (2) to a share in the management, and when the rate had to be levied, they alone could assess within the burgh, and that according to their own methods. The decision in the *Clydebank* case did not touch the present question, as it related to a police burgh formed before the passing of the Local Government Act of 1889.

At advising—

LORD PRESIDENT—The police burgh of Buckhaven, Methil, and Innerleven was formed in 1891. The 99th section of the Local Government (Scotland) Act 1889 determines the effects of this event upon the administration of the Public Health Acts. The Police Commissioners became the local authority within the new burgh in succession to and in place of the District Committee. The Police Commissioners succeeded the District Committee in all their rights as local authority within the burgh, including their property, and became the sole assessing authority.

The application of the law to the present question does not present any difficulty, whether in theory or in practice. There was an existing system of waterworks supplying both the burgh and the residue of the parish out of which the burgh was carved. The system being one and indivisible, there is a joint interest in the two

local authorities, and there must be a joint management and maintenance. As the water-works form a "property affected by the change" from the one local authority to the other, the Sheriff is appointed by sec. 99 to adjust the terms of the new arrangement. The matter is complicated, but only very slightly, by the circumstance that the residue of the parish is a special water supply district, and accordingly while the District Committee is the local authority, its powers of management and maintenance of these works are exercised through a Sub-Committee appointed under sec. 81 (1) of the Local Government (Scotland) Act 1889. (I may mention, but merely incidentally, and for the avoiding of all doubtfulness, that the statutory recognition of the special water supply district in the Provisional Order of 1894 sufficiently establishes the legality of the resuscitation and extension of the long obsolete district of East Wemyss). It would be within the province of the Sheriff to fix, with due regard to the numerical strength of the Sub-Committee of the District Committee, the number of police commissioners, if the whole are too many to sit as a committee along with the Sub-Committee of the District Committee, so as to duly represent town and country respectively.

While the management and maintenance of the works will therefore be in the hands of this joint body, it is clear that it has no assessing power in itself. The joint body will, however, have in the course of its management to frame its budget, and make up its mind what money is required each year. This deficit must be divided between the two assessable areas (the special water supply district of Wemyss and the burgh of Buckhaven, Methil, and Innerleven), and the proportion can be fixed by the Sheriff. The sums thus falling on the two local authorities will be raised by assessment laid on, in the burgh, by the police commissioners as local authority, and outside the burgh, by the County Council, each authority exercising its own appropriate assessing powers.

What I have said has related to the existing water supply. It all however applies equally to the contemplated works. The Provisional Order of 1894 expressly authorises the new works as the joint enterprise of the two bodies, and, once these works are completed, the management and maintenance will be in like manner joint. As the old and the new are to form one system, the new will necessarily come under the management of the same joint body, which by that time will be fully equipped.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court pronounced the following interlocutor:—

"Find and declare (1) that the whole of the existing and also of the contemplated water supply and water-works fall to be managed and maintained by the Sub-Committee of the District Committee appointed under sec. 81, sub-sec.

1, of the Local Government Act 1889 and the Police Commissioners (or so many of the Police Commissioners as the Sheriff shall fix as a committee) jointly; (2) That the second parties are alone entitled and bound to impose and levy within the police burgh the assessments necessary to raise the due proportion effeiring to the burgh of the moneys necessary to be raised by assessment for the existing and contemplated water-works."

Counsel for the First Parties—Dickson—Dundas. Agents—Ronald & Ritchie, S.S.C.

Counsel for the Second Parties—Balfour, Q.C.—Lorimer. Agents—Douglas & Miller, W.S.

Tuesday, November 12.

FIRST DIVISION.

[Lord Stormonth Darling,  
Ordinary.

GIRVIN, ROPER, & COMPANY v.  
MONTEITH.

*Principal and Agent—Foreign—Undisclosed Principal—Choice of Laws.*

By the terms of a contract of sale entered into by the Scotch agent of a foreign undisclosed principal with an English firm, it was agreed that the contract should, for the purpose of legal proceedings, be deemed to have been made in England and to be performable there, and that all disputes which might arise under the contract should be settled according to the law of England.

*Held* (1) that the question whether the foreign principal was liable to be sued upon the contract by the sellers fell, as a dispute arising under the contract, to be determined by the law of England, although the contract of agency was concluded in Scotland; (2) that there being no express or implied authority conferred upon the agent to bind the foreign principal, the latter, in accordance with the rule of English law, was not liable to be sued upon a contract in his agent's name.

*Question* whether in this respect the law of Scotland was the same as the law of England.

On 19th December 1893 Messrs Younger & Monteith, grain merchants, Edinburgh, received instructions from Andrew Tait Monteith, Vancouver, British Columbia, to purchase for him a cargo of Californian wheat. The order was given in a telegram dated 18th December 1893, in the following terms:—"Buy cargo Californian wheat well forward immediately remittance ready telegraph."

Mr Younger, the sole partner of Younger & Monteith, was in London at the time, and the telegram was repeated to him from Edinburgh. On the same day, 18th December 1893, he instructed Messrs Dowker & Company, corn brokers, to

buy the required cargo of wheat. Messrs Dowker & Company through another broker purchased a cargo of wheat at the price of £11,803, the property of Messrs Girvin, Roper, & Company, grain merchants, London.

The contract note was headed:—

"The Liverpool Corn Trade Association, Limited.

"London, Dec. 19th 1893.

"Bought of Messrs Girvin, Roper, & Co., London, for a/c of Messrs Younger & Monteith, Edinburgh, through Messrs A. Dowker & Co., London, on the printed conditions and rules endorsed on this contract, a cargo of Californian wheat. . . ."

It contained the following stipulation:—"Buyer and seller agree that, for the purpose of proceedings either legal or by arbitration, this contract shall be deemed to have been made in England, to be performed there, any correspondence in reference to the offer, the acceptance, the place of payment or otherwise notwithstanding, and the courts of England or arbitrators appointed in England, as the case may be, shall, except for the purpose of enforcing any award made in pursuance of the arbitration clause hereof, have exclusive jurisdiction over all disputes which may arise under this contract. Such disputes shall be settled according to the law of England, whatever the domicile of the parties to this contract may be or become."

The cargo was deliverable at any safe port in the United Kingdom with an option to the purchaser to send the ship to certain ports on the Continent. The price was to be paid by cash in London in exchange for shipping documents, or at the seller's option by buyer's acceptance of shipper's or seller's "drafts, domiciled in London," with documents attached as usual.

Before signing the contract, Girvin, Roper, & Company made inquiries about Younger & Monteith, and as the result of these inquiries their name was accepted and inserted in the contract as apparent principals. The sellers knew that Younger & Monteith were acting for a foreign principal, though the name of the principal was neither asked nor given.

The sellers took a bill from Younger & Monteith for the price, and the shipping documents were made out in their favour. On the arrival of the cargo Younger & Monteith failed to take up the documents and to meet their acceptance.

Messrs Girvin, Roper, & Company accordingly took over the cargo, and paid over the contract price. They then re-sold at a loss of £2100, which they called upon Messrs Younger & Monteith to make good. On their failure to do so, and having ascertained the name of the foreign principal, Girvin, Roper, & Company, after founding jurisdiction by arrestment, raised an action against him concluding for payment of £2100, being the difference in the price paid, and that realised by them for the cargo.

The defender pleaded—" (4) The defender having given no authority to Messrs Younger & Monteith to pledge his credit, and the