

of that Act, and for no other purpose.

Upon a consideration of the whole of these enactments, it appears to me that the area of a royal burgh for the purposes of the Public Health Act 1897 includes the whole royalty of the burgh, and that it is not limited either to the police or municipal area or to the parliamentary area, as the pursuers contend that it is.

Holding these views, I do not find it necessary to consider the effect of what was actually done by the burgh in adopting the Act of 1862 in the year after it passed. A meeting was called by the Provost to be held on 10th March 1863 for the purpose of considering the propriety of adopting in whole or in part the Act of 1862, "as applicable to the whole limits of" the burgh, as the same are defined by or referred to in the Act of 3 and 4 Will. IV. cap. 76. The meeting unanimously resolved to adopt, and did adopt, the Act of 1862, "and the whole powers and provisions thereof as applicable to the whole limits of the royal burgh of Rutherglen without any limitation" in terms of the Act. The resolution was duly reported to the Sheriff of the county in order that he might pronounce a deliverance thereon, and on 11th March 1863 he did pronounce a deliverance declaring that the Act of 1862 "and the whole powers and provisions thereof, have been adopted by the Magistrates and Council of the said royal burgh of Rutherglen, as applicable to the whole limits of the said royal burgh, without limitation, and finds and declares that the said Act shall apply to the whole limits of the said royal burgh of Rutherglen without any limitation accordingly." It would be difficult to devise larger language than this, and the defenders contend that it applies to the whole royalty of the burgh, and that even if it should be held to have been *ultra vires* to adopt the Act over the whole of that area, the adoption is protected from challenge by the deliverance of the Sheriff being declared to be final by section 20 of the Act of 1862, and by section 18 of the Act of 1892, which declares that such proceedings shall not be liable to challenge after three years from the date of the alleged non-compliance with the statutory requirements and provisions.

The defenders also rely on section 7 of the Act of 1892, which declares that the boundaries of any burgh which at the commencement of that Act is administered wholly or partly under any general or local Police Act, shall for the purposes of the Act be the boundaries to which such Police Act extends, and upon the fact that when Rutherglen was divided into wards in 1885 the whole area within the royalty was comprehended in the division, and the division was approved of by the Home Secretary on 7th August 1885.

It appears to me, however, to be unnecessary to express any opinion upon these and other arguments maintained by the defenders, as I consider, for the reasons already given, that the Lord Ordinary's interlocutor should be recalled, and that they should be assoilzied from the conclusions of the summons.

LORD ADAM and LORD M'LAREN concurred.

LORD KINNEAR having been absent at the hearing gave no opinion.

The Court recalled the interlocutor of the Lord Ordinary, and assoilzied the defenders from the conclusions of the summons.

Counsel for the Pursuers and Respondents—Dundas, K. C.—W. Thomson, Agents—J. & A. Hastie, Solicitors.

Counsel for the Defenders and Reclaimers—Sol.-Gen. Dickson, K.C.—Clyde. Agents—Mackenzie & Black, W.S.

Wednesday, March 20.

FIRST DIVISION.

DUKE OF SUTHERLAND,
PETITIONER.

Parent and Child—Aliment—Payment to Father out of Fund Held for Pupil Son by Trustees—Entail.

Circumstances in which the Court, on the petition of a father, authorised and ordained trustees holding funds belonging to his pupil son to repay to the father out of the income of the fund sums expended by him in the maintenance and education of his son, and to pay a fixed annual sum to meet such expenses during the three succeeding years.

This was a petition presented by the Duke of Sutherland, with consent and concurrence of certain trustees acting for behoof of his eldest son the Marquess of Stafford, for the purpose of obtaining the authority of the Court to the trustees to pay to the petitioner out of the income of funds belonging to the Marquess in the hands of the trustees the expenses of the yearly education and maintenance of the Marquess.

The petitioner stated "that the petitioner is heir of entail in possession of the earldom and estate of Sutherland, in the counties of Sutherland and Ross and Cromarty. That the next heir of entail is the eldest son of the petitioner the Right Honourable George Granville Sutherland Leveson-Gower, commonly called Marquess of Stafford, residing at Dunrobin Castle, Golspie. That the said Marquess of Stafford was born on the 29th day of August 1888, and is now in his thirteenth year. That he is the only heir whose consent is necessary to the disentail of the estates of the petitioner. That applications for authority to disentail certain portions of his estate have from time to time since 1895 been made to the Court by the petitioner, and granted. That on each occasion the value of the expectancy of the said Marquess of Stafford has been ascertained, and security for the respective amounts has been given by the petitioner. That it was thought desirable that moneys coming

to the said Marquess of Stafford in this way should not be administered by the petitioner as tutor-at-law; and, accordingly the said securities, consisting mainly of bonds and dispositions in security granted over portions of the petitioner's estate, were taken in the names of Donald Maclean, Rhives, Golspie, and Thomas Murray Mackay, Solicitor Supreme Courts, Edinburgh, as trustees for behoof of the said Marquess of Stafford. The said Donald Maclean and Thomas Murray Mackay recently assumed Mr Cecil Chaplin, banker, London, to act along with them as trustees for the said Marquess of Stafford. That the said trustees act under no trust-deed. That the funds in the hands of the said trustees at 30th June 1900 were as follows:—

Funds at close of last account	£47,299 5 0
Value of expectancy in certain portions of the Sutherland estates received during the year	42,247 0 0
Surplus revenue	1,119 7 3
	£90,665 12 3

That the said trustees therefore receive the annual income upon £90,665, 12s. 3d. in trust for the said Marquess of Stafford, which income amounts to over £2,500 per annum. That the said trustees have repaid to the petitioner the expenses incurred by him in the education of the said Marquess of Stafford up to the month of April 1899. That the trustees, in answer to a request for payment of expenses incurred since April 1899 by the petitioner in the education and maintenance of the said Marquess of Stafford, intimated that, looking to the natural increase in the expense of educating and maintaining the said Marquess of Stafford as he grows older, they would not be in safety in granting the advances craved without the authority of the Court. That the trustees have no objection to the prayer of this petition being granted, and are ready and willing to make payment of the sums craved should your Lordships so direct. That the expenses incurred by the petitioner in the year 1899, subsequent to the above payment in April of that year, for the benefit of the said Marquess of Stafford are estimated at £407, 0s. 5d., and for the year 1900 at £643, 8s. 5d., which amounts include the cost of maintenance and education, of travelling, and other sums expended for the advantage of the said Marquess of Stafford."

The petitioner craved the Court "to authorise and ordain the said trustees for the said Marquess of Stafford to make payment to the petitioner out of the free annual income of the trust funds so held by them of the said sums of £407, 0s. 5d. for the year 1899, and £643, 8s. 5d. for the year 1900, or such sums as your Lordships shall consider suitable for the present education and maintenance of the said Marquess; and furthermore to authorise and ordain the said trustees to make payment to the petitioner out of the said free annual income of such sum as your Lordships shall consider fitting to meet the

increasing cost of educating and maintaining the said Marquess of Stafford during such future period as your Lordships may consider right and proper."

No answers were lodged.

The Court appointed Mr R. A. Lee, advocate, *curator ad litem* to the Marquess, and remitted to the Hon. James W. Moncreiff, W.S., to inquire into the facts and circumstances set forth in the petition, and to report as to the propriety of granting the powers craved.

Mr Moncreiff lodged a report in which, after stating that he had verified the above statements set out in the petition, he reported as follows:—"If I am to make any suggestion therefore under this remit, and if your Lordships should approve of this report, I would respectfully suggest that your Lordships might authorise and ordain the said trustees (the concurring petitioners) out of the free annual income of the trust funds in their hands to make payment to the petitioner of (1) the two sums of £407, 0s. 5d. and £643, 8s. 5d. mentioned in the prayer of the petition; and (2) any sums that may be disbursed by the petitioner during the next three years, 1901, 1902, and 1903, in the education and maintenance of the said Marquess of Stafford, not exceeding, say, £600 for each of the years 1901 and 1902, and not exceeding, say, £700 for the year 1903; with liberty to the petitioner at the end of that period to apply to the Court for such further order as may be necessary.

"I may add that I am satisfied as to the propriety of granting the authority craved for payment of these sums, or such other sums as your Lordships may determine, out of the revenue of this large fund which came to the Marquess from his father disentailing these portions of his estate, and it is only reasonable that the Marquess should bear the greater part of the expenses of his own education and maintenance. Other applications, as your Lordships are aware, have been granted by the Court in similar circumstances, and I refer to some of these authorities—*Scott, Petitioner*, December 23, 1870, 8 S.L.R. 260; *Stewart's Trustees*, February 21, 1871, 8 S.L.R. 367; *Edmiston, Petitioner*, July 11, 1871, 9 Macph. 987; *Seddon*, March 18, 1893, 20 R. 675. At the same time it is right to point out there are adverse views in the opinions of the judges in the case of *Fairgrievies v. Henderson*, October 30, 1885, 13 R. 98."

No objections were stated by the *curator ad litem*.

LORD PRESIDENT—It appears that the Marquess of Stafford has in recent years received in respect of the value of his expectancy, under applications to disentail portions of the entailed estate, securities for £90,665, 12s. 3d., producing an income of over £2500 per annum. The expenses incurred by the Duke of Sutherland in the education of the Marquess up to April 1899 have been repaid to him by the trustees, who hold the securities on behalf of the Marquess. The Duke now asks for a further payment to him in respect of the

increasing expense of the education and maintenance of the Marquess, the alternative being that the income of the fund would be added to the accumulations which are being made for his behoof.

It appears to me, looking to the authorities, that the application is one which may reasonably be granted, and as regards the amount I do not think, in view of the position of the Marquess and the necessary expense of his education, that the reporter has erred in his estimate of the sum required.

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

The Court pronounced this interlocutor:—

“The Lords having considered the petition, together with the report by the Honourable James Moncreiff, and heard counsel for the parties, authorise and ordain the concurring petitioners, Donald M'Lean, Thomas Murray Mackay, and Cecil Chaplin, trustees for behoof of the Right Honourable George Granville Sutherland Leveson-Gower, Marquess of Stafford, to make payment out of the free annual income of the trust funds in their hands for behoof of the said Marquess, to the petitioner the Most Noble Cromartie Sutherland Leveson-Gower, Duke and Earl of Sutherland, of (1) (a) the sum of £407, 0s. 5d., being the amount disbursed by the said petitioner the Duke of Sutherland in the education and maintenance of the said Marquess for the year 1899 subsequent to April of that year; and (b) the sum of £643, 8s. 5d., being the amount disbursed for the same purpose for the year 1900; (2) any sums that may be disbursed by the said petitioner during the next three years, 1901, 1902, 1903, in the education and maintenance of the said Marquess of Stafford not exceeding £600 for each of the years 1901 and 1902, and not exceeding £700 for the year 1903, with liberty to the said petitioner at the end of that period to apply to the Court for such further order as may be necessary, and decern,” &c.

Counsel for the Petitioner—Balfour. Agents—Macpherson & Mackay, S.S.C.

Wednesday March 20.

FIRST DIVISION.

UNION BANK OF SCOTLAND,
LIMITED v. INLAND REVENUE.

Revenue—Inhabited House Duty—Separate Tenement—Tenement Occupied Solely for Purpose of Business—Customs and Inland Revenue Act 1878 (41 and 42 Vict. cap. 15), sec. 13, sub-secs. (1) and (2).

The Customs and Inland Revenue Act 1878, sec. 13, provides as to in-

habited house duties, sub-sec. 1, that “where any house being one property shall be divided into and let in different tenements, and any of such tenements are occupied solely for the purposes of any trade or business,” the occupier of the tenement so occupied shall be relieved of the duty; and sub-sec. 2 that “Every house or tenement which is occupied solely for the purpose of any trade or business . . . shall be exempted from the duties.” . . .

Premises owned by a bank, the whole of which were under one roof, consisted of a basement, a ground floor, and first and second floors. The first floor was let to a firm of solicitors, as chambers. The rest of the building was occupied by the proprietors, the ground floor being the bank office, and the second floor the official residence of the bank accountant. Access to the first and second floors was provided by two separate internal staircases. The bank apartments opened separately into the lobby on the ground floor. Both the first and second floors were shut off from their respective staircases by an outer door. From the accountant's house there was a bolt in connection with the bank office which controlled the opening of the safe.

The whole premises, with the exception of the floor occupied by the solicitors, were assessed for inhabited house duty. The bank claimed exemption for the ground floor, as being a separate tenement occupied solely for the purpose of a business within the meaning of section 13. *Held* that as (1) the ground floor and the second floor were not “let,” and as (2) the ground floor was not either structurally or in respect of occupation “a separate tenement,” the exemptions provided by section 13 did not apply.

At a meeting of the Income-Tax and Inhabited House Duty Commissioners for the county of Dumfries, held at Dumfries on November 21st, 1900, the Union Bank of Scotland, Limited, appealed against an assessment of £2, 12s. 6d. made upon them for inhabited house duty for the year 1900-01, at the rate of 9d. per £ on £70, the annual value of “bank” and “house” situated at No. 8 English Street, Dumfries, of which they were proprietors and occupiers.

The Commissioners were of opinion “that the assessment had been properly made on the subjects entered in the valuation roll as ‘bank and house’ of the annual value of £70,” and dismissed the appeal.

The appellants required the Commissioners to state a case.

The following were the facts set forth in the case as found or admitted:—“1. The whole premises at No. 8 English Street, Dumfries (of which the subjects of appeal form part), are owned by the bank, and entered in the valuation roll of the burgh of Dumfries (Fourth Ward) for the year 1900-1901 as follows:—