

Thursday, June 15.

FIRST DIVISION.

COLINTON PARISH COUNCIL v.  
MIDLOTHIAN COUNTY COUNCIL.

*Local Administration—Rates and Assessments—Exemption—Police Stations—Crown.*

*Held*, in a special case, that a county council is not liable in respect of local police stations, although wholly consisting of the residences of the police constables, for parish rates either as owner or occupier.

The Parish Council of Colinton, *first parties*, and the County Council of Midlothian, *second parties*, brought a Special Case for the determination of the question of exemption of police stations from parish rates.

The Case stated—“1. The first parties are by statute charged with the duty of collecting the poor rate, school rate, and other parochial assessments within the parish of Colinton in the county of Midlothian. 2. The second parties are by statute charged with the duty of police administration within the said county.

“3. By the Police (Scotland) Act 1857 (20 and 21 Vict. cap. 72), sec. 55, it is enacted as follows—‘It shall be lawful for the commissioners of supply of any county, if they think fit, to order that station-houses and strong rooms or lock-ups, or any or either of them, for the temporary confinement of persons taken into custody by the constables, be provided upon such plan as shall be approved by one of Her Majesty’s Principal Secretaries of State, and for that purpose to purchase and hold or to rent or hire lands and heritages, or to appropriate to that purpose any lands or heritages belonging to the county which are not needed for the purpose to which they were applied or intended to be applied before such appropriation; and the expense of building, purchasing, hiring, or otherwise providing, repairing, and furnishing such station-houses and strong-rooms or lock-ups, and all other expenses attending the same, shall be defrayed out of the police assessments to be made and levied in terms of this Act.’ Under and in virtue of the Local Government (Scotland) Act 1889 (52 and 53 Vict. cap. 50), sec. 11, the whole powers and duties of the commissioners of supply for the county of Midlothian in the matter of police administration, including the powers conferred by the section above quoted of the Police (Scotland) Act 1857 have now devolved upon the second parties.

“4. In fulfilment of their statutory duties and in the exercise of the powers conferred upon them as aforesaid, the second parties have provided the premises hereinafter described in (1) Colinton, (2) Slateford, and (3) Juniper Green, all within said parish and county.

“5. The second parties are owners and occupiers of the premises at Colinton and Slateford, and are occupiers of those at Juniper Green.

“6. The premises at Colinton, of which the second parties are both proprietors and occupiers, as above set forth, consist of a building of one storey with attics and an annexe, and comprise a charge room, two police cells, and a dwelling-house. The cells are situated in the annexe, and are entered from the charge-room by a communicating door. The dwelling-house is occupied by one married police-constable, with whom one unmarried police-constable resides. The married police-constable is charged 1s. 6d. per week as rent by the second parties by way of deduction from his pay. No deduction for rent is made from the pay of the unmarried police-constable, who occupies his room rent-free. The said premises are entered in the valuation roll for the county of Midlothian for the year 1914–15 as of the yearly rent or value of £25.

“7. The premises at Slateford, of which the second parties are both proprietors and occupiers, as above set forth, consist of a modern building of one storey with attics, which was specially built for a police station, and comprise a charge-room, two police-cells, and a dwelling-house occupied by two police-constables—one married and the other unmarried. The married police-constable is charged rent at the rate of 1s. 6d. per week by way of deduction from his pay. No deduction for rent is made from the pay of the unmarried police-constable, who occupies his room rent-free. The said premises are entered in the valuation roll as of the yearly rent or value of £25.

“8. The premises at Juniper Green, which are the property of John Murray, insurance manager, 9 Strathearn Road, Edinburgh, and of which the second parties are tenants, consist of the ground flat of a two-storey building, and are wholly occupied by a resident police-constable. There is no charge-room, and there are no cells in the premises. The police-constable is charged rent at the rate of 1s. 6d. per week by deduction from his pay. The premises are entered in the valuation roll as of the annual rent or value of £13.

“9. The duties of the members of the police force stationed in each of the three premises above described are those of the members of the county police force generally. Prisoners who are apprehended by the police are lodged in the cells in the police stations at Colinton and Slateford prior to being brought before the nearest Sheriff or Justice of the Peace Court, which is situated at Edinburgh.

“10. On 31st October 1914 the first parties sent . . . [*The case gave particulars of three notices of assessment to the second parties assessing them for poor rate, school rate, registration rate, valuation rate, and special parish rate, as owners and occupiers of the premises at Colinton and Slateford, and as occupiers of the premises at Juniper Green.*] . . .

“11. Upon the 4th of November 1914 the Midlothian County Clerk wrote on behalf of the second parties to the first parties, intimating an appeal by the second parties against the assessments comprised in the said three notices on the ground that police

stations are exempt from all rates. The practice with regard to rating upon police stations has for some time past in Scotland been very variable. The practice with regard to the assessment and payment of parochial rates as regards the three premises now in question has been as follows:—For some years prior to 1907 no parochial rates were paid. From the year 1907-8 to the year 1911-12, both inclusive, all the rates mentioned except the poor rates were paid. None of the rates mentioned have been paid for the years 1912-13, 1913-14, and 1914-15.”

The first parties contended “that in respect there is no exemption of police offices or stations, or of dwelling-houses occupied by constables, from taxation by Act of Parliament, and that the premises now in question are not in the occupation of the Crown, the second parties are liable both as owners and occupiers in respect of the Colinton and Slateford premises, and as occupiers in respect of the Juniper Green premises.”

The second parties contended “that they are exempt from the said assessments in respect that the police stations in question are buildings used for the purposes of the preservation of public order and the administration of justice.”

The question of law for the opinion and judgment of the Court was—“Are the second parties liable in respect of (1) The Colinton premises, and (2) The Slateford premises, either (a) as owners, or (b) as occupiers, and in respect of (3) The Juniper Green premises as occupiers, for all or any of the rates specified in the assessment notices mentioned in the case?”

Argued for the second parties—The premises in question were exempt from all the rates sought to be recovered by the first parties. They were held by the second parties for the Crown, and were used for the preservation of public order and the administration of justice. The premises at Juniper Green, though they contained none of the apartments characteristically for police purposes which were found in the other two cases, were nevertheless a police station, i.e. the official residence of the local officer—*Parish Council of Edinburgh v. Magistrates of Edinburgh*, 1907 S.C. 1079, per Lord McLaren at p. 1087, 44 S.L.R. 811; *Coomber v. The Justices of Berkshire*, 1883, L.R., 9 A.C. 61, per Lord Blackburn at p. 69. *Clerk v. Dumfries Commissioners of Supply*, 1880, 7 R. 1157, 17 S.L.R. 774, was overruled by *Coomber*. *Showers v. Chelmsford Union* [1891], 1 Q.B. 339, was distinguished, for the facts were different from those in the present case. *Martin v. Assessment Committee of West Derby*, 1883, 11 Q.B.D. 145, was distinguished, for the premises there were simply the private as opposed to the official residence of the police officer. *Glasgow Courthouse Commissioners v. Glasgow Parish Council*, 1913 S.C. 194, 50 S.L.R. 97, was also referred to.

Argued for the first parties—The Crown if not mentioned in the rating statutes was exempt both from local and imperial taxes,

but to bring premises within this exemption it must be shown that they were in the beneficial occupation of the Crown—*Martin's case (cit.)*, per Bowen, L.J., at p. 153, *Brett, L.J.*, p. 151, and Coleridge, C.J., p. 149; *Gambier v. Overseers of Lydford*, 1854, 3 E. & B. 346, per Campbell, C.J., at p. 359; *Showers' case (cit.)*, per Day, J., at p. 344. If the user of the premises was predominantly as private residences they were rateable, their character as premises for police uses being lost in the quality given them by the predominant user. *The Edinburgh Parish Council v. The Magistrates of Edinburgh (cit.)* was not in point, for the question in it was the construction of a private Act. The principle of predominant user was given effect to in *The Surveyor of Taxes v. Smith*, 1901, 4 F. 31, 39 S.L.R. 20. Consequently none of the buildings in question were exempt from owners' or occupiers' rates, for their main use was as residences; their public use was the minor element in the user.

LORD PRESIDENT—It is common ground that police stations are exempted from the assessments specified in this Special Case, and I am of opinion that the three sets of premises mentioned in this case are just police stations, and none the less so that the policemen reside within the three stations. Two of the three seem to be somewhat more fully equipped than the third. But that fact can, I think, make no difference.

The result of the case of *Gambier v. Overseers of Lydford*, 1854, 3 E. & B. 346, as summarised by Lord Chief-Justice Coleridge in the case of *Martin*, (1883) 11 Q.B.D. 145, at p. 150, shows that case to be a very clear decision in favour of this view. As the Lord Chief-Justice observes—“The Court will not look at whether this or that particular room or set of rooms is or is not occupied so as to give a benefit to the persons who occupy, but if such room or rooms form an integral part of a whole which in itself is not rateable the persons who so occupy are not rateable.” And as Lord Justice Brett, in the same case of *Martin*, says (at p. 152)—“It is the result of all the decisions that police stations . . . have been recognised as coming within the class to which the exemption applies.”

The case of *Showers*, [1891] 1 Q.B. 339, upon which Mr Brown mainly relied in support of the view that these premises were liable to assessment, seems to me to be, when carefully examined, an authority hostile to the Parish Council here, for when I turn to the judgment of the Court of Appeal in that case (at p. 345), expressed in two sentences, I find in one an exact authority, as I think, for the decision which I propose to your Lordships we should pronounce—“This case shows”—says the Court of Appeal—“that Springfield Court is not a single building in the occupation of the county, and used for the purposes of a police station.” The case before us shows exactly the opposite, viz., that the three buildings in question are in the occupation of the county and are used for the

purposes of a police station. Accordingly, even on the authority of *Showers' case*, exemption would follow.

I propose that we should dispose of this case by answering the question in the negative.

LORD JOHNSTON—I think this case is disposed of as soon as one reads the authoritative statement of the law on the subject in the House of Lords in the case of the *Mersey Docks Case*, 1865, 11 H.L.C. 443, at p. 464, which as quoted, first of all by Lord Watson from Lord Blackburn in *Coomber's Case*, 1883, L.R., 9 A.C. at p. 12, and then by Lord M'Laren from Lord Watson in the *Parish Council of Edinburgh*, 1907 S.C. 1079, at p. 1087, 44 S.L.R. 811, is this—"Where property is occupied for the purposes of the government of the country, including under that head the police and the administration of justice, no one is rateable in respect of such occupation."

When it comes to applying that doctrine I think one must look at the circumstances of the case in question. The County Council are here charged with the policing of the county. They do so in this way—one is entitled to use one's own personal knowledge in a public matter of this sort—they have their headquarters or citadel in Edinburgh, and they have dotted over the county certain stations which are just their outlying forts or redoubts. These are garrisoned by their officers. It may be that some of the stations have only two—a sergeant and a constable—and some of them even only one, a constable; but still these stations are there for the purpose of distributing the police throughout the county and giving to each man a portion of the county which it is his duty to patrol, and when he has patrolled it to come back to what is his official residence. It does not make it less his official residence that as an incident of that residence he has to reside there domestically. It is his official residence, and as his official residence it is an office of the County Council as the police authority of the county for the purpose of doing the duty which is imposed upon them, in the government of the country, of policing the area which is under their jurisdiction.

I think the question should be answered accordingly.

LORD MACKENZIE—I am of the same opinion. I do not understand that there is a controversy in regard to the legal principle to be applied in the settlement of this case. I take the statement of that principle as enunciated by the Lord Chancellor (*Westbury*) in the case of the *Mersey Docks*, 1865, 3 Macph. (H.L.) 102 at p. 123. In order that the property in question here may be exempt we must be satisfied that the purposes for which it is occupied "must be such as are required and created by the government of the country, and are therefore to be deemed part of the use and service of the Crown."

If that is the question to be asked, it humbly appears to me that the question can admit of only one answer. It is provided

by the Police Act of 1857 that it shall be lawful for the Commissioners of Supply—whose successors are represented in this case—to provide station houses. Now from what is stated in the Case it appears to me that it is not unfair to represent the accommodation which is provided in all these cases as really approaching the minimum; that they were all houses where the police were stationed; that while the policeman was so stationed, it was his duty no doubt to go his rounds, but that so long as he was in the house he was just as much on duty as when he was going his rounds. He was stationed at a particular place. And as regards the instance which Mr Brown considered to be most open to attack—that at Juniper Green—there is a notice, we are informed, that that is Juniper Green Police Office.

In those circumstances I do not think that any of the subtleties arise in this case which have been canvassed in many of the cases that have been decided in England, and in some of the cases that have been decided in Scotland. It appears to me that the present case is a plain one.

LORD SKERRINGTON—The Special Case might have been more distinct in the way of stating that the three premises which we are asked to consider are in fact used and occupied as station-houses. But I think that even in the case of the premises at Juniper Green one is able to read that between the lines, and the fact was not disputed by counsel in the course of their argument.

In these circumstances it appears to me that in view of the authorities it is hopeless to contend that these premises are not exempted from assessment. And it seems to me irrelevant to emphasise the fact, as to which there is no dispute, that the police-constables who reside in these premises do obtain a benefit similar in character to the benefit which any ordinary occupier of a house enjoys. That circumstance does not in the least detract from the fact that the premises are used as police stations and that police stations are necessary for the government of the country.

The Court answered the question in the negative.

Counsel for the First Parties—C. H. Brown. Agents—Dundas & Wilson, C.S.

Counsel for the Second Parties—Macmillan, K.C.—Pitman. Agent—A. G. G. Asher, W.S.