

high neap tides; *blackware*, at low water, spring, and neap tides—and that the manufacture of sea-weed had recently been revived among the islanders, and formed a source of very considerable profit to the proprietor.

The respondents argued that although they were entitled to the right of gathering and cutting seaweed from the shores and rocks above and below high-water mark in the parish of North Uist, which they manufactured into kelp, iodine, and other substances, they had no exclusive right to do so, and had no formal lease of any lands or kelp shores in North Uist; that they had merely to pay an annual rent or lordship of £800 for the right to gather and remove the seaweed in common with the tenants on these islands, and that they had merely the privilege of going on the lands for the purpose of collecting the seaweed—the said lands being let for agricultural and other purposes to other tenants, who paid rent therefor.

They further referred to the interpretation clause of the Act 17 and 18 Vict. cap. 91, as showing that the right to gather kelp or seaweed is not comprehended under the words "lands and heritages" in the Act, and contended that the assessor had no right to include in his valuation roll any pertinent or accessory of land not specially mentioned in said clause, and that in practice no such right has heretofore been valued or assessed.

Their Lordships reversed the decision of the Commissioners.

CLYDE NAVIGATION TRUSTEES v. ASSESSOR FOR THE COUNTY OF LANARK.

*Valuation of Lands Act.* Question as to the valuation of quay belonging to the Clyde Trustees.

Counsel for Trustees—Mr Gifford.

This was an appeal by the Clyde Navigation Trustees against an entry in the valuation roll of the county of Lanark of £4061 as the value of Mavisbank Quay, being a portion of the harbour of Glasgow, situated in the parish of Govan, and beyond the boundary of the city, and of which they are entered as proprietors and occupiers. In this appeal the question was raised for the first time as to the principle on which the quays and wharves on the river Clyde are to be valued. It appeared that the valuation included the buildings and erections on the quay in question, and that it had been arrived at and determined by the assessor on the basis of the revenue of the trust as follows:—

Revenue for year ended 30th June 1864—			
Dues on vessels.....	£23,656	8	10
„ goods.....	76,473	0	11
	£100,129	9	9
One-half assumed as applicable to quays.....	£50,064	0	0
Add crane dues—net.....	£1,357	0	0
„ Transit sheds.....	84	0	0
„ Water „.....	50	0	0
	1,491	0	0
	£51,555	0	0
Deductions—			
Harbour - Master's department.....	£1,551	4	6
Lamps.....	1,582	13	9
Police.....	3,123	15	6
	£6,257	13	9
Proportion of general expense.....	4,325	0	0
	10,582	0	0
	£40,973	0	0
Tenants' profits—20 per cent on net revenue.....	8,194	0	0
Carry forward,	£32,779	0	0

Brought forward,	£32,779	0	0
Deduct annual value of offices in Robertson Street.....	360	0	0

Which leaves the sum of.....£32,419 0 0 applicable for distribution amongst the different parishes in which the harbour is situated, according to the length of quay in each.

The total length of the quays, wharves, &c., is 4359 lineal yards; and as Mavisbank Quay is 546 yards in length, the proportion of the total sum of £32,419 applicable to it is £4061.

It also appeared that that portion of the river Clyde lying below Stockwell Bridge, and under the management of the trustees, is, for the levying of dues on goods and vessels, divided by their Acts of Parliament into three stages—the first or lowest stage extending from Newark Castle to the mouth of the Dalnuir Burn, a distance of about ten miles; the second from Dalnuir Burn to the old ferry of Renfrew, a distance of about 3½ miles; and the highest, from a point opposite Elderslie House to the Hutchesontown Bridge, a space of about 5½ miles in length. According as ships passed one or other of these stages, a different proportion of rates was exigible. For each of the first two of these stages the proportion of dues leviable was one-sixth of the whole; whilst for the third stage it was two-thirds of the whole. (Clyde Navigation Consolidation Act, 21 and 22 Vict., c. 149, sec. 99.) The whole dues, both on goods and vessels, are exigible although the vessels do not enter the harbour. The total length of the harbour and river is 18½ miles; and the lowest and middle stages are situated in the counties of Renfrew and Dumbarton.

Mr GIFFORD, for the appellants, contended that the valuation put upon Mavisbank Quay was excessive, and greatly beyond the sum at which the subjects might in their actual state be reasonably expected to let from year to year, and that the subjects ought not in any view to be entered at more than £2480.

In support of this view it was argued:—

1. That in terms of the decision of the Court of Session in the case of Adamson v. Clyde Trustees, 26th June 1863, M'Ph. 974, resulting from the oldest case of the same name, 22 D, 606, the assessor is not entitled to take into account, in valuing the quays, the revenue payable in respect of the waterway of either the river or harbour, but only "such dues, rates, and duties as can be shown to be payable in whole or in part in return for the use of, and the accommodation afforded by, the quay." That he has not so limited his estimate, but has taken into account the whole dues and rates leviable by the trustees on the total length of the river and harbour under their management and jurisdiction, extending to 18½ miles, and passing into three different counties, and also the burgh of Glasgow, and that although the two-sixths of these dues payable for the lower stages are for pure waterway, and are not earned in Lanarkshire. Besides, the dues levied are not a proper criterion for ascertaining the value of the quays, and the assessor has not shown to what extent such dues are levied as a return for the use of the quays.

2. That while the assessor assumes one-half of the revenue to be a fair deduction for waterway, the result of his process of valuation is really to allow only one-fourth on this account, inasmuch as, paying no regard to the statutory division of the dues, he takes the two-sixths payable for the lower stages, and includes them in the gross sum before giving any deduction; thus:—

The gross revenue from dues on the 18 miles of river is as nearly as may be.....	£100,000
Of this there is earned in the highest stage.....	£66,666
And in the two lower stages—one-sixth each.....	33,334

By including this latter sum, and then taking it off again with only one-sixth in addition (or £16,664) from the earnings of the upper stage, he leaves

£50,000 for the quays in the harbour, which is excessive.

3. If the revenue of the river is adopted as the test for ascertaining the annual value of the quays in the harbour, only the revenue earned within the parish of Govan should be taken into account. But even if the whole revenue earned within the high stage should be taken, the amount is £66,666; and from this should be deducted, according to the assessor's own principle, one-half as the revenue of the waterway, the remainder—viz., £33,334—being considered as the gross valuation of the quays and wharves in the harbour, subject to deduction of expenses, and amounting to about £9172; and to a further deduction of 20 per cent. for tenants' profits, leaving a sum of about £19,801 to represent the total valuation of the quays. The total length of the quays being 4359 yards, that of Mavisbank Quay being 54 yards, £2480 would be the proportion payable as its annual value.

4. If this mode of valuation be not adopted, the appellants are willing to concur in a rent at the same rate per mile for the third stage, as is admitted to have been fixed by the Legislature for the second stage. That stage is but  $3\frac{1}{2}$  miles in length, and yet by statute as large a proportion of the dues is leviable in it as in the lower stage of ten miles. The reason is obvious. The further up the more costly has the river been to deepen and improve. Then if one-sixth of the dues has been appropriated to the middle stage of  $3\frac{1}{2}$  miles as the river rent, a still higher proportion requires to be apportioned as the rent of the upper stage, which is  $5\frac{3}{8}$  miles, and has cost ten times more to deepen and improve than the middle stage. The appellants, however, offer to take it in this way—If  $3\frac{1}{2}$  miles give £16,666 for river rent,  $5\frac{3}{8}$  miles will give £28,666; and this sum deducted from £66,666, the gross revenue in the first stage, leaves £38,000, instead of £50,000, as brought out by the assessor, which is £4667, more than the half of the gross revenue in the first stage.

5. Further, in determining what is a proper deductational allowance for the waterway, the extensive nature of the operations of widening, deepening, and improving the river and harbour must be kept in view. These, including the purchase of land thrown into the waterway, have involved an expenditure of considerably upwards of £1,000,000 sterling, while the cost of the works in the harbour liable to assessment has not exceeded one-half of that sum, notwithstanding that many of them have been more than once entirely renewed. A rent for the waterway, based on these proportions, would bring out a result almost similar to that proposed by the appellants.

6. By the assessor's method the extraordinary result is brought out of the trustees being liable to have the same valuation put upon their property in any one of all the parishes through which the river passes; for as the gross valuation has no reference to the extent of quayage, but would apply to 4 yards equally as to 4000, the assessor in any one parish, where a quay or landing-place is situated, however small, would be entitled to value it precisely in the same way as the assessor has done in the present case. Had there been only the Mavisbank Quay in the harbour of Glasgow, the assessor would have concentrated the entire gross rental upon it. The rental could not have been increased, although the river had been lined with quays along its whole length.

7. In the event of the dues on vessels or goods being adopted as a criterion or data for ascertaining the rent of the quays, &c., the appellants claimed that the cost of dredging the harbour and along the quays should be deducted from such rent, as an expense necessarily incurred from day to day to keep a way open to the quays which would, unless continuously dredged, very soon be inaccessible for vessels. This cost should be deducted (1) whether it is to be held as part of the necessary expense of a tenant in keeping clear the way to the subjects let, and the amount of which he would take into con-

sideration in fixing his rent; or (2) whether it is to be held as a charge upon the river and waterway of the harbour, in which case an extra proportion of the dues would fall to be allocated on the river, to compensate the expense of dredging the harbour. This claim should be allowed either by the Valuation Court or by the parochial boards, but both have refused to make the deduction—each deciding that it falls to be dealt with by the other. The cost under this head is upwards of £10,000 per annum.

To these arguments it was stated, for the assessor, in the case prepared for the opinion of their Lordships, that in proceeding to estimate the annual value of such subjects as the quays and wharves belonging to the Clyde Trustees, which are situated in different parishes, he could only, as in the case of a gas or water company, deal with the subjects *in cumulo*, and having ascertained the nett value of the whole, apportion the amount according to the length of quay in each parish. With regard to the objections offered to the mode of valuation followed by him, the assessor contended that the plan of dividing the river into stages appeared to have been adopted with the view of enabling the trustees to levy rates on vessels entering the lower stages of the river, for the purpose of proceeding to the harbours of Dumbarton, Bowling, or Renfrew; that the revenue with which he had dealt was that derived solely from vessels which had entered the harbour, and made use of the quays, &c., belonging to the Clyde Trustees; that he was justified in so doing, as the quays must be looked upon as the producing subject, but inasmuch as the harbour and quays, without the river as a means of access, would be of as little value as would the river even in its present state were there neither harbour nor quays to which vessels could come, and as the trustees themselves do not undertake to separate the dues, and show what amount is paid for the use of the quays, and what for the use of the river and harbour waterway, he considers that in allocating the revenue as applicable in like proportion to each, he has done what is both fair and reasonable, unless the trustees can prove that the sum allocated is insufficient to maintain the river and harbour waterway in their present state.

Their Lordships without deciding either way remitted to the commissioners to make further inquiries.

Tuesday, Feb. 6.

## FIRST DIVISION.

SIDEY AND CRAWFORD *v.* MUNRO.

*Process—Issue.* A pursuer must take an issue in conformity with his averments on record.

Counsel for Pursuers—Mr Clark and Mr Watson. Agent—Mr Lockhart Thomson, S.S.C.

Counsel for Defender—Mr Gifford, Mr Trayner, and Mr Deas. Agents—Messrs Duncan & Dewar, W.S.

This was a question as to the terms of an issue. The pursuers, who carry on business in Montreal, and transact business with merchants in this country through agents appointed by them, averred that on or about 21st July 1864 the defender commissioned them, through their agents in Glasgow, to purchase for him and ship to Glasgow a quantity of butter. The pursuers proposed to put in issue, "Whether the defender ordered the pursuers to procure for him the butter." The defender objected to this issue, that the order averred was to purchase and ship, and that these words must therefore be put in issue. The pursuers' object in using the word *procure* was to meet the case of a purchase made before the order reached Montreal, which they hold would be, according to mercantile usage, fulfilment of the order as averred on record.

The Court held that the defender was right in his contention, and that the words "purchase and ship"