PART XXVI.

No. 64.—In the House of Lords.—June 26 and 28, 1883.

Mersey Docks and Harbour Board v. Lucas.

Income Tax.—Profits. Corporation. A harbour board is empowered by Act of Parliament to levy dock dues, &c., to be applied in maintaining the concern, and in paying interest on moneys borrowed; any surplus income remaining after meeting these charges is directed to be applied in forming a sinking fund to extinguish the debt incurred in the construction of the docks.

Held, *that the surplus is profit assessable to the income tax.*

This was an appeal by the Mersey Docks and Harbour Board from the decision of the Court of Appeal reported in Volume I. of these Reports at page 305.

Webster, Q.C. (*Bigham* with him), for the Appellants.—Two points were argued in the Courts below, (1) Whether the sum carried to the sinking fund, and the surplus carried to the following year's accounts, were "profits" within the meaning of the Income Tax Acts, and (2) If they were "profits" whether there was anything in the local Act of the Harbour Board to relieve the Corporation from the payment of the tax.

In the Divisional Court the judgment proceeded upon the second ground, but in the Court of Appeal the attention of the Judges was directed to the opinion delivered by *Lord Blackburn* (*y*) in the House of Lords in the case of *Mersey Docks and Harbour Board* v. *Cameron*, and the Master of the Rolls and the Lords Justices sitting with him, at once assented to the doctrine enunciated in that opinion, and the second point was disposed of in that way.

With regard to the first point.—By the 3rd Rule of No. III., Schedule A., sec. 60., 5 & 6 Vict. c. 35., the "annual value" of docks for the purposes of income tax assessment is understood to be the full amount of the profits received therefrom in the year preceding the year of assessment. Here there is no "produce or value," or to use the more accurate word no "profits," which

(*y*) *See Vol. I., p.* 460, *at line* 23.

MERSEY DOCKS AND HARBOUR BOARD v. LUCAS.

are liable to income tax at all. Where a corporation is authorised by Act of Parliament to carry on an undertaking, the earnings of which are only to be sufficient to meet the outgoings of that particular undertaking, there can be no profit. *Glasgow Corporation Waterworks* v. *Commissioners of Inland Revenue* (z). The Mersey Dock rates are levied simply for the purpose of repaying moneys borrowed; when the debt is paid off the Board will be obliged to collect only just sufficient to keep the concern going. Probably that could not be done mathematically; too much might be raised in one year, but, if so, less would be collected in the following year. The Acts did not intend that the Board, *quâ* trustees, should ever have in their hands anything that could be called profit, or produce, or gain.

Sir H. James, A.G. (*Sir F. Herschell, S.G.*, and *Dicey* with him), for the Respondent, was not called on.

Lord Chancellor.—My Lords, the circumstances under which this case came before your Lordships are these. The question is whether income tax is chargeable upon a sum which on the one side is alleged to be the annual profits of the Mersey Docks and Harbour Board of Liverpool, and which is denied on the other side to be of that character. The Divisional Court (the Queen's Bench Division) determined that question upon a ground which, I may say, I think is practically now abandoned at the Bar as untenable, that ground being that in a local Act, the Mersey Docks Act of 1858, the appropriation of the receipts of the Dock Board is directed, and, after enumerating the purposes there mentioned, these words follow:—"And, except as aforesaid, "such moneys shall not be applied by the Board for any other "purpose whatsoever." It appears to have been thought by the two learned Judges who took part in the judgment in the Queen's Bench Division, that those negative words excluded any application of the moneys to income tax, because among the enumerated purposes to which the proceeds of the concern were to be applied, income tax was not mentioned. Neither, my Lords, were poor rates, excepting that there was a saving clause that nothing in the Act contained should "alter or affect the "question of the liability" "to parochial or local rates." It may be that that is a distinction which from some points of view might be of importance with respect to taxes and rates.

However, I find, my Lords, that in advising this House in the case of the *Mersey Docks* v. *Cameron*, and *Jones* v. *The Mersey Docks* (a), my noble and learned friend (Lord Blackburn) who then delivered the opinion of the Judges which was adopted by the House, said this, the learned Judge did not rely upon this special clause which I have just read, but he said:—"There "are no negative words prohibiting the application of the rates "to payment of the poor rate; and we think, in conformity with

(z) *Vol. I., p.* 28. 12 Sco. L. R. 466. (a) 11 H. L. C. 443.

"the decision in *The Tyne Commissioners* v. *Chirton* (*b*), that "enactments directing that the revenue shall be applied to "certain purposes and no others are directory only, and mean "that after all charges imposed by law on the revenue have been "discharged, the surplus or free revenue which otherwise might "have been disposed of at the pleasure of the recipients, shall be "applied to these purposes." My Lords, if it were not superfluous now to express concurrence in an opinion which I think may be taken to have been approved by the House of Lords in the year 1864, I should express my full concurrence in that opinion, and it has been very candidly admitted at your Lordship's Bar that that opinion seems not to have received the attention due to it when this case was before the Queen's Bench Division. But I will add further that, even independently of that sound general doctrine laid down in the passage which I have read from the opinion of the Judges delivered in 1864, it seems to me that the view expressed in the Court of Appeal is perfectly right, and that it would be a very strange thing indeed, and wholly inconsistent with the principles which are well established as to the construction of Acts of Parliament, and I may say more especially of local and personal Acts of this nature, if duties given to the Crown, taxes imposed by the authority of the Legislature by public Acts for public purposes, were held to be taken away by general words of this kind in a local and personal Act, and an Act in which the Crown is nowhere mentioned as to be bound by it.

For this purpose it seems to me to be really quite immaterial whether we regard this question as governed in substance by the Income Tax Acts which were passed before the year 1858 or by the Income Tax Acts, or any of them, which were passed since. If by those passed since, then it would be an extravagant proposition indeed to say that a subsequent public Act imposing duties is not to operate because a prior local and personal Act contained negative words of this kind. But if you look to the Act which had been passed before, to any mind the argument is exactly the same. A public Act had imposed duties. There is not a word in this private Act about those duties, nor taking them away from the Crown, nor could these negative words possibly have that effect. In truth, my Lords, the income tax stands in the singular position of being in one sense imposed after and in another sense before this Act; after, because the present rate of income tax is governed by the continuance Acts or by the Acts which have varied the rate from time to time and which are later; but all those Acts refer to the earlier Act and incorporate its provisions, and it is perfectly manifest as a matter of construction that what was taxed by the earlier Acts was meant also to be taxed by the later. I think, my Lords, that this was felt at the Bar, and the consequence has been that the case has been in substance argued before your Lordships upon other grounds.

(*b*) 1 E. & E. 516.

MERSEY DOCKS AND HARBOUR BOARD v. LUCAS.

Then, my Lords, I come to examine those other grounds. First of all, I think the more convenient method of proceeding is to look at the terms of the Acts before one goes at all beyond them. Now, the Income Tax Act that we have to construe expressly imposes the tax upon " the annual value of all the " properties herein-after described " which is to be " understood " to be the full amount for one year or the average amount " for one year therefrom within the respective times herein " limited." Then it goes on to say that this is to be understood, as to the annual value or the yearly profit amongst other things of " docks." The tax is to be upon the profits, as I said before, of the year preceding, and it is to be charged amongst others upon every " corporation carrying on the concern," and it is to be charged " on the amount of the produce or value thereof." What is " thereof " ? Of the concern which the corporation carries on. If we had nothing more than that, I should have thought that we were to consider not the application of the moneys which the Mersey Board received when they had received them, but the " profits of the concern " in the sense of the " produce or value " which could properly be described as " profit of the concern," and that surely would be all the net proceeds of the concern after deducting the necessary outgoings without which those proceeds could not be earned or received.

But, my Lords, the Act does not stop there, it goes on and says that this charge is to apply " before paying, rendering, or " distributing the produce or the value either between the " different persons or members of the corporation, company, or " society engaged in the concern " (those are words which would not apply here, because the proceeds of this undertaking are not so distributable) " or to any creditor or other person whatever " having a claim on or out of the said profits." Therefore, so far as these words go, they distinctly exclude from deduction as regards the question of priority over the tax payable to the Crown all payments " to any creditor or other person whatever " having a claim on or out of the said profits." Now, your Lordships will observe that that proves distinctly that the word " profits " as here used does mean the incomings of the concern, after deducting the expenses of earning and obtaining them, before you come to an application of them even to creditors, who are of course creditors of the concern. With regard to this particular case, the whole application in respect of which it is contended that the character of profits is taken away from the subject matter, is application to creditors. This does not say " dividends or interest payable to creditors " but it says, " before " paying, rendering, or distributing the produce or the value to " any creditor or other person whatever having a claim on or out " of the said profits." No doubt it does on to say that a proportionate deduction of duty is to be allowed by a creditor, that is to say that the duty which is imposed also upon himself, if paid in this manner by the company, and charged upon the company, is to be allowed by him as a deduction in their favour; but that does not take away from the force of the generality of the words

which precede it and which say that no deduction is to be allowed in respect of the application of the " said profits " in the sense I have mentioned, to any creditor or other person having a claim upon them.

Now, my Lords, I should have said that that is quite sufficient to settle the whole matter, because it shows that in these cases you are to charge the corporation or company upon its entire net receipts for the purpose of duty, and to disregard every application which may have to be made, whether in favour of creditors or others, of any part of those receipts. It is clear that in this case it is not under the latter section that the officers of the company pay other men s income tax, but they pay their own, and in paying their own they cover for a certain extent that of other men, and therefore they are permitted to deduct it.

But, my Lords, I will go further, and say that it appears to me that the rules in Schedule D., which are introduced and made applicable by the later Act, entirely confirm this view, which is the natural and prima facie view of the meaning of the words which I have read, which apply to the earlier Schedule. When we come to the later Schedule D., the rules of which are by the later Act applied to this particular class of undertakings, the same reasoning is confirmed. The Rules are these :—" First " case : Duties to be charged in respect of any trade, manufac- " ture, adventure, or concern in the nature of trade not con- " tained in any other schedule of this Act." " First, the duty " to be charged in respect thereof shall be computed on a sum " not less than the full amount of the balance of the profits or " gains of such trade, manufacture, adventure, or concern."

Now I pause there to observe, that although in the Act of Parliament " profits " and " gains " are really equivalent terms, yet the use of the word " gains " in addition to the word " profits " furnishes an additional argument for excluding the contention of the Appellants, that you are to introduce into the word " profits " some ideas connected not with the nature of the thing, but with the manner and rule of its application. What are the gains of a trade? If it could be reasonably contended that the word " profits " in these Acts has reference to some advantage which the persons carrying on the concern are to derive from it, it might be said, perhaps, that the same argument might have been raised upon the word " gains," but to my mind it is reasonably plain that the gains of a trade are that which is gained by the trading for whatever purposes it is used, whether it is gained for the benefit of a community or for the benefit of individuals : whether the benefit is to be obtained by dividends or whether it is to be obtained by lightening and diminishing public burdens, it is all the same.

Then the Schedule goes on to say that it allows an average of three years to be taken where the business has been carried on for three years, and then it says that it " shall be assessed, " charged, and paid without other deduction than is herein-after allowed." So that the Act specifies what deductions are to be

MERSEY DOCKS AND HARBOUR BOARD v. LUCAS.

allowed. The first part of the Act has excluded deductions for creditors and persons having claims, and this goes on to allow some particular deductions which are not material here, and also to speak of some that are not to be allowed. "Third, in esti- "mating the balance of profits and gains chargeable under "Schedule D., or for the purpose of assessing the duty thereon." First, no sum shall be deducted "for repairs of premises occupied "for the purpose of such trade, manufacture, adventure, or "concern." Then, secondly, "nor for any sum expended for the "supply or repairs," or keeping up the plant and stock-in-trade beyond what has been usually expended on the average of three years. That, at all events, goes strongly against the notion that you are to go afield and enquire into the benefits to be derived by one person or another, and the mode of deriving them in the manner which the argument at the Bar requires. Then it goes on to say, "nor on account of loss not connected with or arising "out of such trade, manufacture, adventure, or concern; nor on "account of any capital withdrawn therefrom, nor for any sum "employed, or intended to be employed, as capital in such trade, "manufacture, adventure, or concern; nor for any capital "employed in improvement of premises occupied for the pur- "poses of such trade, manufacture, adventure, or concern." That is to say, no addition to capital, no improvement made out of capital at all events of premises are to be allowed; and although all those particular things are enumerated, yet they are enumerated after a general provision that the tax is to be paid without any other deduction than that which is afterwards allowed. It is, therefore, quite impossible that according to the principle of the Income Tax Acts these payments to creditors can be taken into consideration.

Then, my Lords, what remains of the argument. Merely this, that a local and personal Act has regulated the application of the gross receipts of the undertaking, and has said that they may be applied to the expenses of collection, to the payment of interest, which it is admitted (at least it must be admitted) is excluded by the Income Tax Act from being taken into account. Then to the construction of works, which would fall within the principle of some of those deductions which are expressly excluded by Schedule D., and in supporting and maintaining the works and the general management of the estate, and all reasonable expenses for maintaining and protecting the same, and then in extinguishing debt, and ultimately the rates are to be reduced. Those applications may be made by the Board "in any order "with respect to priority of such application as they shall deem "expedient;" and it is quite plain, when you look at it, that some of them are expenses which must be incurred in order to earn any gain or profit from the undertaking, and others of them are application of the gain or profit when earned. The expenses of the general management of the estate, and the expenses and charges of collecting rates are manifestly antecedent to the earning of any profit. The rest, the construction of new works, the payment of interest, and the re-payment of principal, all pre-

suppose that the profits have been earned, and that there is a clear fund which can be so applied. To my mind it is exactly the same thing as is there had been a declaration that, after paying the current expenses and all other necessary out-goings, without which nothing could be earned, the clear surplus profits and gains of the undertaking should be applied in a certain maner, that is the substance of it. The mode of the application makes no difference whatever to the question of what is "profit" and what is "gain."

My Lords, that appears to me to be the plain and simple view of the case. It is the same view as has been taken by the Court of Appeal, and, therefore, I move your Lordships that this appeal be dismissed with costs.

Lord Blackburn.—My Lords, I am of the same opinion, and I think that when the manner in which the case is raised and the point in the case itself are understood, it is obvious that that point lies in a very short compass indeed.

The Mersey Docks and Harbour Board, who are the creature of an Act of Parliament, as we are told at page 3 of the point case, obtain a revenue from a variety of sources. I need not go through them all. The Board are proprietors of docks, and in respect of those docks they receive a revenue from exactly the same sources from which any private dock company, say the St. Katherine Dock Company, in London, would receive them. They receive a revenue from dock tonnage, from dock dues, from charges for loading and unloading, from quay rents, from payments made by shipowners for the appropriation of quay space to them and from charges made for the use of cranes and machinery. All those, as I say, are exactly the things from which a private dock company would receive its revenue. Besides those, they have three items of revenue, which are mentiond in the lower part of page 8, namely, "town dues on goods "imported into or exported from the port of Liverpool," "anchor-"age dues on vessels anchoring in the Mersey," "harbour rates "paid by vessels entering or leaving the Mersey, but not using "the Appellants' Docks." Those items are of a different nature. I believe they have been modified and altered and extended by an Act of Parliament, but in their nature they were ancient harbour dues such as any one who refers to Hargrave's Tracts, where there is a great deal about them, will find were enjoyed by a private person in Tynemouth Harbour under an ancient grant. These dues in the case of the Mersey were granted by King Charles the Second to the ancestor of the Earl of Sefton, and by the Earl of Sefton sold to the Corporation of Liverpool, and from the Corporation of Liverpool they have been transferred to the Mersey Docks and Harbour Board. It is enough to say of them that they are property arising from petty customs and harbour dues which might belong to a private person, but as the case states in fact do belong to the Mersey Docks and Harbour Board. Besides that, the Board derive a revenue from the rental of various properties, that is mentioned on page 4.

MERSEY DOCKS AND HARBOUR BOARD *v.* LUCAS.

Now, when we see how the question arose between the parties we find what is the real point in the case. The Mersey Docks and Harbour Board returned their assessment for the income tax as they ought to do, and they stated the amount upon which they considered themselves assessable thus, "the amount due and payable by them for interest on the debt during the year of assessment being the sum of 532,252*l.*" The Surveyor of Taxes surcharged them, and by such surcharge the sum was increased to the amount of 697,964*l.*, as the profits for the year preceding "of the concern under the management of the Appellants." On appeal to the Commissioners of Income Tax the contention was "that their liability to income tax (if any) did not extend beyond "the sum which was paid as interest upon the debt and ought "not to extend to the said sum of 100,000*l.*, carried from the "revenue to the sinking fund account or to the surplus carried "forward to the next year's account. On the other hand, it was "contended on behalf of the Respondent that under the provisions of the Income Tax Acts the Appellants were liable to "assessment to income tax in respect of the profits arising or "accruing to them from the concern under the management "and not in respect of interest due or payable by them, and that "for the purpose of ascertaining the amount for such assessment "the total amount of their receipts should be taken from which "there should be deducted the cost of working, maintaining, and "repairing the sources of revenue, but not the interest payable "upon the debt nor the said sum of 100,000*l.* The Commissioners "concurred in the view put forward on behalf of the Respondent, "and having satisfied themselves that allowance had been made "in respect of rents for warehouses, &c. (that is their real "property) already charged under Number 1 of Schedule (A), "confirmed the surcharge in the sum of 697,964*l.*" So that there never was any real dispute at all that Her Majesty, whether she got it in one way or got it in another, was to have income tax upon the 532,252*l.*, which goes in payment of the interest on the debt; but the contest was, and is, whether under the peculiar local Acts of this Mersey Board there was anything to say that they were not to pay income tax on the residue which, after deducting all the expenses of earning it, and after taking away all that was chargeable under Schedule (A) has in fact been found to be 165,712*l.* The real question in dispute is whether income tax is payable upon that sum.

The first ground upon which the case of the Appellants was put was, that by the terms of the local and personal Acts of the Mersey Docks and Harbour Board, it was enacted that they were to pay this sum in reducing debt (I am putting it roughly) and nothing else whatever, and that that meant that they were not to pay income tax upon it. That seems to have been the opinion to which Mr. Justice Grove and Mr. Justice Lindley came in the Divisional Court, and they decided upon that ground. Their attention was not called either to the arguments which were used, nor to the authority in the cases of *Cameron* v. *The Mersey Docks*

and Harbour Board and *Jones* v. *The Mersey Docks and Harbour Board* (*c*) upon these very same Acts, and with regard to this very same body, it was decided that this very same provision did not amount to an enactment forbidding them to pay poor rate. But as soon as it was made clear to the Court of Appeal that that had been the decision, they said "That point will not do at all," and there was a further reason which was given, namely, even if it had been said that they were not to pay poor rate, the income tax stood in a much better situation. For all those reasons, in fact, that ground has been substantially abandoned in the argument at your Lordships' Bar, and after what the noble and learned Lord on the woolsack has said I will say no more about it.

Then comes the second point which was argued, and which was in effect this. After the Mersey Docks and Harbour Board have done all that would have been done by the St. Katherine Docks Company, or any other private Dock company who own docks in order to receive their income; after they have done all that would have been done by Lord Sefton, if his ancestor has not, unfortunately for him, sold the town dues and the Mersey anchorage dues at a time when they were of much less value; after having done all this, the Act of Parliament says, you must apply the surplus to reducing debt, and when the debt is paid you must diminish your dock rates, and of course when you have paid off your debt your rates will be reduced (if you or your successors do your duty) by the amount of 500,000*l.* odd, and then there will be in future less revenue raised, and of course less income upon which to pay income tax. And the argument which is endeavoured to be urged is this, that, inasmuch as they are ordered to apply to that purpose the sum which remains after all those expenses have been deducted, therefore the Queen is not to have income tax upon it. With reference to that I have endeavoured in vain to grapple with what the Counsel for the Appellants were saying, in order to bring it to a definite point. There is no ground whatever for saying it, that I can see; there is nothing in the nature of things, there is nothing in the words of the Act, to say that when an income has been actually earned, when an actual profit upon which the tax is put has been earned and received by any person or corporation, Her Majesty's right to be paid the tax out of it in the least degree depends upon what they are to do with it afterwards, unless there is an express enactment, which I think there is in some cases, that they are to apply it to charities and other purposes. If the amount thus received is to be applied at their pleasure, they must pay the tax. If it is to be paid over to shareholders or to creditors, or to anybody else, the Queen is still to have her tax. Although it is expressly said that she is to be paid "before" they pay it over to any such person, it does not mean that she is not to be paid unless they are going to pay it over to any such person. It is impossible to construe it in that

(*c*) 11 H. L. C. 443.

way. Whether it is to be applied in one way or the other, the Queen is to have her tax upon it. The question, therefore, is solely whether or no the sources which produce this revenue are among those things which are enumerated (I care not whether in Schedule A. or Schedule D.) as those upon which the tax has been granted to Her Majesty. It appears, as I have already pointed out, that in this particular case every one of these things is a thing in which a private person might have property and from which a private person might receive revenue just as the Mersey Board does; and, if so, a private person would certainly be taxable upon it, and I see no reason whatever why the Mersey Board should not be taxable.

There was a case cited from the Scotch Courts which was relied upon by the Appellants, namely, the case of the *Corporation of Glasgow*, or the *Glasgow Waterworks*, I think it was, v. *The Inland Revenue* (*d*). That case was decided by the Court of Session. I have looked at it. I have not looked at the Acts relating to the Glasgow Waterworks, or the Acts under which that particular point was raised, and I am not competent to form an opinion upon them; but knowing perfectly the general very great care and accuracy of the Lord President, I have no doubt that he construed those Acts rightly in construing them as he did. He decided upon a different principle, and in that I am inclined to think he was right. There the Appellants relied very much upon some dicta (they were only dicta) in the case of *The Attorney General* v. *Black* (*e*), where the question was this. The Corporation of Brighton had become entitled to a considerable income raised from duties on coals imported into Brighton, and that income they were obliged to bestow upon their corporate purposes and bring into their borough funds. It was held there that they were liable to pay income tax upon that as being an income derived from coal duties. But in the course of the discussion it was said, amongst others, I see, by myself, in the Exchequer Chamber, that this was because it was an income, or profit, or revenue within the meaning of the Income Tax Act, and that it did not apply in such cases as that of a poor rate, where the overseers levy a large rate, or a highway rate, where the surveyors of the highway levy a rate for the purpose of the highway, or in the case of a municipal corporation who levy a borough rate for the purpose of spending the money upon borough objects. It was said that these were not in the nature of "profits" or income at all, and that they would not be taxable. It was a mere dictum, but the Lord President thought that it was right; and with reference to the Glasgow case he said, construing the Glasgow Acts, and looking at their provisions, "This "is not income at all, it is not a profit at all, it is not a revenue "of the sort which is mentioned. In this particular case," said he, and the other judges too, "it is merely a rate upon the in- "habitants of Glasgow which is approprated for the purpose of

(*d*) *Vol. I., p.* 28. 12 Sco. L. R. 466. (*e*) *Vol. I., p.* 52. L. R. 6 *Ex.* 308.

"doing various things, and is not in the nature of a profit or "gain at all." Now, as I said before, I have not looked at the Glasgow Acts and I have no material before me with reference to that case, therefore I express no opinion as to whether that was a right construction of the effect of the Glasgow Acts or not, but if it was, the principle on which the Court of Session there acted was one with which I am not at all prepared to quarrel. It is not necessary to say whether that decision was right or wrong, but it is ceretainly in conformity with the dictum which, as I said before, I seem myself to have expressed some years prevously, and, whether it was right or wrong, it does not apply to the present case.

Now that was the only authority cited or referred to at all in support of the argument for the Appellants, and it does not seem to me to be applicable. The consequence is that I quite concur with what has been proposed, namely, that, without hearing the counsel for the Respondent, your Lordships should dismiss this appeal with costs.

Lord Fitzgerald.—My Lords, I entirely concur in the judgment which has been announced, and I desire to add a few words.

The principal question for your Lordships' decision seems to me to be whether the sum of 697,964*l.*, being the amount of the nett receipts of the Appellants for one year and arising out of their corporate estates, constituted "profits received therefrom" within the meaning of No. 3, Schedule A., of the Income Tax Act of 1842. The statute, it will be observed, does not speak of "profit" received by any particular person or body for their own benefit or that of any other person or body, or of its purpose or object or application, but simply of "profits received therefrom," and seems to me to use "profit" in the sense of income acquired from the estate, of whatever character it may be, over and above the costs and expenses of receipt and collection.

It is not unimportant in the particular case before us to look to the constituent part of the corporate estate of the Appellants, which are thus stated. "1. Dock tonnage rate on ships enter-"ing into or leaving the docks. 2. Dock dues on goods imported "into or exported from the port of Liverpool, and brought into "the docks or landed at, or deposited upon, or carried over "any of the Appellants' quays, piers, landing stages, or land. "3. Town dues on goods imported into or exported from the port "of Liverpool. 4. Anchorage dues on vessels anchoring in the "Mersey. 5. Harbour rates paid by vessels entering or leaving "the Mersey, but not using the Appellants' docks. 6. Charges "for unloading and housing in and delivering from the Appel-"lants' warehouses goods from vessels. 7. Quay rents levied in "respect of goods not removed by the owners from the quay "within the prescribed time, and rents for quay space occupied "by owners of goods by permission of the Board. 8. Rental "of various properties belonging to the Board and occupied for

MERSEY DOCKS AND HARBOUR BOARD v. LUCAS

BOARD v. LUCAS

" the storage of timber, as shipbuilding yards, stores, coal yards, " &c. 9. Payments made by ship owners for the special appro- " priation to their use of quay space. 10. Charges made for the " use of cranes and machinery, and tolls levied for the use of the " Appellants' dock railways;" and it is to be observed that the income embraces, in addition to rates on ships using the docks on the river Mersey, and dues on goods imported or exported, also warehouse and quay rents, charges for use of machinery, railway tolls, and rentals of various properties enumerated in No. 8. A portion of this property the Appellants derive from the old Corporation of Liverpool; and I apprehend it would not be contested that so much of the income would have been liable in the hands of the old corporation had it remained in their hands (See *Attorney-General* v. *Black* (*f*)). There is nothing to be found in this income in the nature of a district or local rate, or of a rate or tax which could be considered as a payment by which the inhabitants of the locality procure for themselves some local benefit. The dues are in effect levied on the whole world coming to the Mersey or to Liverpool, and on those taking advantage of the docks or other property of the Appellants. In this respect the case is so distinguishable in its facts from the Glasgow case that it seems to me unnecessary to consider the authority of that case.

My Lords, on this question I adopt the language of Sir George Jessel, in the Court below, " I have so clear an opinion that I can " entertain no doubt whatever," and of Mr. Justice Blackburn in the Brighton case (*g*).

The remaining questions in the case have been satisfactorily disposed of in the Court of Appeal, in accordance with the opinion of the judges as delivered in your Lordships' House in *The Mersey Docks* v. *Cameron* (*h*), and with the principles laid down in that case.

My Lords, I entirely concur in the decision now announced, and in the reasons expressed by the Lord Chancellor and by the noble and learned Lord opposite (Lord Blackburn) for that decision.

Appeal dismissed with costs.

(*f*) *Vol. I., p.* 52. L. R. 6 Ex. 300. (*g*) L. R. 6 *Ex. at pp.* 309-10.
(*h*) 11 H. L. C. 443.