I have a very strong impression that an attempt was made here to evade the statute, and that the return was put into such a shape as was eminently calculated, at the very least, to mislead; but upon the grounds I have stated I think the complaint itself was irrelevant, and that the suspender must prevail.

Lord Young—I concur. The property in question is to a large extent let to monthly or weekly tenants; and the annual rent or value of such property is not ascertained by multiplying the weekly rent by 52, or the monthly rent by 12, as in that way too large a sum will be arrived at. One is therefore surprised to find, and it certainly raises some suspicion, that the suspender has not only not made a deduction from 52 times the weekly rent or 12 times the monthly rent, but has actually made an addition. Nevertheless, there may be good reasons for that, although the suspicion against it is somewhat strong. But I think this prosecution, looking to the terms of the complaint, is founded upon a misapprehension of the return, which is, indeed, in itself erroneous, because in the case of premises let by the month or week in the course of the year from Whitsunday 1878 to Whitsunday 1879 there is not in the month of July 1878 any "actual annual rent" at all; there is an actual weekly or monthly rent. Therefore the column in the return headed "actual annual rent," and in which the excessive sums are entered, ought to have been "rent or value," with an explanation that the premises were let by the week or month.

Lord Adam concurred.

The Court suspended the conviction, with £7, 7s. of expenses.

Counsel for the Suspender—Brand. Agents—J. & A. Hastie, S.S.C.
Counsel for Respondents — Vary Campbell. Agent—W. Archibald, S.S.C.

COURT OF SESSION.

Thursday, November 28.

FIRST DIVISION.

[Lord Curriehill, Ordinary.

WAKEFIELD *v.* THE COMMISSIONERS OF SUPPLY OF THE COUNTY OF RENFREW.

Commissioners of Supply—Opposing Bill in Parliament—County General Assessment (Scotland) Act 1868 (31 *and* 32 *Vict. cap.* 82), *sec.* 3.

The Commissioners of Supply of a county having incurred expenses in opposing certain bills in Parliament, *held (diss.* Lord Mure) that they were not entitled to pay these out of the County General Assessment fund in their hands, as incurred (1) in the conduct of county affairs under the 3d section of the County General Assessment (Scotland) Act 1868; and (2) in opposing the laying of new duties on themselves and new burdens on the county.

Observations per Lord Curriehill on the position and duties of Commissioners of Supply.

Trust—Powers of Statutory Trustees—Parliamentary Expenses.

Statutory trustees are not entitled to lay out trust money on anything not sanctioned by their trust-deed or charter of incorporation, and where they object to the provisions of a bill in Parliament their course is not to oppose it, but to petition against it.

This was a suspension and interdict at the instance of Joseph C. Wakefield against the Commissioners of Supply of the county of Renfrew, and James Caldwell, Clerk of Supply of the county, and also against Andrew Hoggan, clerk to the Renfrewshire Road Trustees, for his interest. The complainer (who was himself a Commissioner) sought to interdict the respondents other than Hoggan from applying any part of their funds to pay the expense of opposing certain bills introduced into Parliament in 1876 and 1877 for the alteration and amendment of the law in regard to the management of roads and bridges in Scotland.

The following statement of the circumstances in which the case arose is taken from the note appended by the Lord Ordinary (Curriehill) to his interlocutor:—"In 1876 there was introduced in Parliament by the Lord Advocate and the Home Secretary a bill, one of the chief purposes of which was the abolition of tolls on roads and bridges in Scotland, and the substitution therefor of an assessment on lands and heritages to be paid by the owners. At the general meeting of the Commissioners of Supply for Renfrewshire, held on 1st May 1876, certain persons were appointed as a deputation to meet with the Lord Advocate with the view of getting Lanarkshire and Renfrewshire exempted from the operation of the bill; and, failing this, to oppose the bill in Parliament, with power 'to require the attendance in London of Mr Hoggan, clerk to the County Road Trustees, to assist in carrying out the object of the meeting.' The bill did not pass. In 1877 another bill of the same object, and in terms similar to the bill of 1876, was introduced into Parliament by the Lord Advocate and the Home Secretary; and another bill also regarding roads and bridges was introduced by the members for Lanarkshire and Renfrewshire, and at the annual meeting of the Commissioners of Supply for Renfrewshire on 30th April 1877 both these bills were remitted to a committee, 'with full power to take such proceedings thereanent as they may consider advisable for the protection of the interests of the county.' The bill did not pass. The respondent Mr Hoggan assisted the deputation of 1876 and the committee of 1877 in conducting the opposition to the first two bills mentioned, and he did so on the employment or with the authority of the Commissioners of Supply, who on 25th October 1877 ordered his accounts, amounting to £595, 6s. 1d. to be paid. The only funds under the control of the Commissioners of Supply are derived from a 'county general assessment,' levied by them from the owners of land and heritages in the county under powers conferred upon them by the 'County General Assessment (Scotland) Act 1868' (31 and 32 Vict. cap. 82), and the complainer, as owner of lands and heritages in

the county liable to be assessed under the Act, objects to any part of the assessment being applied in paying any part of Mr Hoggan's accounts.

"The statute referred to declared it to be unlawful for the Commissioners of Supply of any county to continue to collect 'rogue money,' but empowered them, for the purposes of the Act, to impose annually upon all lands and heritages in the county a 'county general assessment,' to be paid by the owners of such lands and heritages. The assessment is to be sufficiently large to cover the expenses of management and collection, and arrears of former years, and the purposes to which it may be applied are distinctly specified in section 3 of the statute. The words of the section are as follows:—'III. The following salaries, fees, outlays, and expenses, viz. (1) The salaries or fees of clerks, treasurers, collectors, auditors, and other officials necessarily employed in conducting the affairs of each county, together with the necessary outlays of such officials in so far as not covered by their salaries or fees. (2) The salaries or fees and necessary outlays of procurators-fiscal in the Sheriff and Justice of Peace Courts, and clerks of Justice of Peace Court, in so far as such salaries, fees, and outlays are at present in use to be paid by each county. (3) The expenses incurred in searching for, apprehending, alimenting, prosecuting, or punishing criminals.' (4), (5), and (6) The expenses connected with court-houses and buildings, and striking fiars prices, and damage caused by riots, &c. '(7) All expenses or payments presently directed by any Act of Parliament to be defrayed out of the "rogue money;" in so far as any of such salaries, fees, outlays, and expenses are not by law or usage payable or provided from other funds than those raised by the Commissioners of Supply, may be defrayed by the said commissioners out of the County General Assessment to be made and levied by them in terms of this Act.'"

The Commissioners of Supply in their statement of facts averred that their opposition to the bills was promoted on two grounds—First, that the bills, if passed, would impose certain new and important duties on their body; and secondly, that the proposed assessment would fall with undue severity upon Renfrewshire, owing to its proximity to Glasgow, the inhabitants of which made use of the roads to a very large extent.

The complainer pleaded—"(1) It being *ultra vires* of the Commissioners of Supply of Renfrewshire to apply their funds in the payment of the accounts foresaid, the complainer, as a ratepayer of said county, is entitled to interdict as craved."

The respondents pleaded—"(1) The note of suspension should be refused, with expenses, in respect that Mr Hoggan having been necessarily employed by the other respondents for the purpose of conducting the affairs of the county of Renfrew in the matters above set forth the said accounts fall to be paid out of the County General Assessment in terms of the Statute 31 and 32 Vict. cap. 82. (2) The said respondents are entitled to apply their funds in payment of the said accounts, in respect—1. That it was within their powers as Commissioners of Supply to order the said work charged for to be done; and 2, and *separatim*, that the said work was of a class which has hitherto by immemorial usage been authorised by the Commissioners of Supply throughout Scotland, and in particular in Renfrewshire, and paid without objection out of the county rogue money, and thereafter out of the county general assessment. (3) The said accounts having been *bona fide* incurred for the purpose of preventing a radical alteration of the duties of the Commissioners of Supply, and the imposition of fresh burdens on the county of Renfrew, the said respondents were entitled to order them to be paid as aforesaid."

The note of suspension had been passed by the Lord Ordinary in the Bill Chamber (ADAM), and on a record being made up, the Lord Ordinary (CURRIEHILL) subsequently pronounced an interlocutor sustaining the reasons of suspension, and declaring the interdict already granted perpetual, &c. In his note, after stating the facts as quoted, *supra*, he proceeded—"The questions thus raised are of great general importance, and before a satisfactory answer can be given to them, it is necessary to ascertain the position and duties of the body known as the 'Commissioners of Supply' of a county prior to the Act of 1868—the purposes to which the 'rogue money' was directed to be applied—and the changes and alterations in refer to both these matters made by the Act of 1868.

"The Commissioners of Supply owe their existence solely to statute. They were first appointed by the Act of Convention of 1667; and thereafter in each successive Act granting supply a special body of commissioners was appointed to carry the Act into effect. For a time their powers and duties were confined to assessing and levying the cess or land-tax so voted by Parliament for the service of the Crown, and to dividing the valued rent of the county among the various land-owners. In 1798 the tax was made perpetual, and the commissioners therein named were made permanent, additions to their number being made by Parliament from time to time to supply vacancies. At length in 1854, by the Valuation of Lands Act, the qualification for Commissioners of Supply was finally regulated; and in 1856, by the Act 19 and 20 Vict. cap. 93, it was declared that all persons having the requisite qualification should be Commissioners of Supply for the counties in which their lands respectively lay, without the necessity of being named in any Act of Parliament. But during the period of nearly two centuries which had elapsed between 1667 and 1856 various additional duties and functions had come to be imposed upon the Commissioners of Supply of counties. Thus by the Act of 1686, cap. 6, they were authorised to act with the Justices of the Peace in maintaining bridges and ferries within their counties, and their duties in these matters continued until transferred to the trustees under the General Turnpike and Statute Service Acts. They were and are Judges of Appeal under the Assessed Taxes Statutes and under the Valuation of Lands and Heritages Acts. They were also charged with certain duties in reference to the election of parochial schoolmasters. One of their most important fuuctions was in connection with the 'rogue money,' which was an annual assessment originally imposed and levied by the freeholders of counties under the Act 11 Geo. I., cap. 2S, for defraying the charges of apprehending criminals and alimenting them in prison until conviction or liberation. By the Act 2 and 3 Gul. IV. cap. 65 all the powers, duties, and functions vested in or exigible from the free-

holders were transferred to the Commissioners of Supply; and by the Act 2 and 3 Vict. cap. 65, the commissioners were empowered to levy an assessment additional to the 'rogue-money' for the maintenance of a police force within their respective counties. It is alleged by the respondents—and the truth of the allegation may for the purposes of this case be assumed—that the Commissioners of Supply have been in use for upwards of forty years to defray out of the 'rogue-money' the expenses of clerks and of the officials for managing the affairs of the county, and such expenses as they might consider beneficial in promoting the interests of the county, whether by opposing bills in Parliament or otherwise. But usage, however inveterate, and however it may be pleaded as to past transactions, will not sanction a continuance in an illegal application of trust funds; and it appears to me that the application to general county purposes of funds levied by authority of Parliament for special parposes was not lawful, and that it was in order to put a stop to these irregularities, and to provide funds for such general purposes as the Legislature considered to be proper county purposes, that the County Assessment Act of 1868 was passed. Now, I confess that I am unable to see any ground for maintaining, as the respondents do, that opposing in Parliament a public bill for the abolition of tolls on roads and bridges can be held to be necessary or incidental to the proper performance of the duties of the Commissioners of Supply under any of the Statutes, from which alone they derive their existence or power of acting. In the first place, it is quite clear that by the Act of 1868 the county general assessment, in so far as it comes in the place of 'rogue money," is not to be applied to all the purposes to which that fund may have been previously applied, even by inveterate usage. On the contrary, it is to be applied only in defraying such expenses as were by prior statutes directed to be paid out of that fund; and it is not, and cannot be maintained, that the expense of opposing bills in Parliament was ever authorised by any statute to be so paid; and, in the second place, I can see nothing either in the previous history of the Commissioners of Supply or in the Act of 1868 (by which they are for the first time constituted a corporation) to indicate that the opposing in Parliament bills of the nature of the Road Bills of 1876 or 1877 is incidental to their statutory duties as trustees of the funds which they are authorised to levy, or is necessary for the proper conduct of the affairs of the county. The grounds upon which they opposed these bills, and upon which they now maintain that they are entitled to apply ther statutory funds in defraying the expenses of the opposition are twofold—viz., that in these bills it was proposed (1) to alter and enlarge their own statutory duties by making them managers of the roads and bridges in their respective counties; and (2) to impose upon the lands and heritages in the county an assessment in lieu of tolls for the future maintenance of the roads and bridges.

"Now, as regards the first of these grounds, I am of opinion that the objection of the Commissioners was truly one of a personal nature. As I have said, they are a purely statutory body, called into existence for the discharge of certain statutory duties, and if they felt aggrieved by the proposal to alter or increase these duties, they were fully entitled to use all proper constitutional means for bringing their grievance before Parliament. The necessary expenses might have been raised by them as individuals, or by voluntary subscription, but it appears to me to be quite illegal to attempt to secure their own personal and individual relief from additional duties at the expense of the general body of the ratepayers of the county. And as regards the second ground—viz., that additional burdens were proposed to be laid upon the lands and heritages in the county—I am unable to see in what respect the Commissioners of Supply are the proper protectors of these subjects against proposed taxation. The proper objectors to such threatened burdens are the owners of the lands and heritages proposed to be affected, or such of them as might object to be so burdened. The Commissioners of Supply are no doubt themselves all owners of lands in the county, and as such are liable to pay all assessments imposed on their lands, but they are not the only owners of lands and heritages, and they in no sense represent the general body of landowners. Many of these proprietors may, like the complainer, have preferred the new assessment to the old burden of tolls; and it would be contrary to the well-settled principles applicable to such cases to allow the Commissioners, as statutory trustees, to apply the trust-funds levied by them from other persons, especially from persons whom they do not even represent, in defraying expenses which are not authorised by the statute under which alone they became the custodiers of the funds in question.

"It is true that by these bills it was proposed that certain of the preliminary expenses should be defrayed out of the 'county general assessment,' and the respondents pleaded that this would have been an injury to the fund under their management, and that they were bound to protect that fund against any such encroachment. But this argument is fallacious. The assessment was authorised by the Act of 1868 for certain specified purposes, the rate was unlimited, and the Commissioners were entitled to raise as much money as might be required for these purposes. But the proposed bills which were introduced by the Government, and which had they become law would have been public Acts, would not have in any way encroached upon the assessment. They would certainly have added by the authority of Parliament one more to the specified purposes to which the county general assessment was to be applied, but they would not in the slightest degree have prevented the Commissioners from carrying out all the purposes of the Act of 1868. It might have been necessary for the Commissioners to raise a somewhat larger sum as the county general assessment, but their power of assessment and their area of assessment would not have been in any way curtailed.

"The respondents founded strongly upon the case of *Brighton* v. *North*, 13th February 1847, 16 Law Journal (Chancery) 255, in their contentions. But that case in no respect resembles the present. A private company had applied to Parliament for power to reclaim land from the Wash, into which the river Ouse falls, and they were opposed by the Commissioners, who had been appointed by an Act of Parliament for the purpose of maintaining the banks of the Ouse for the protection of the adjoining lands, and who had power to levy

rates for that purpose. The ground of opposition was, that the operations of the private company under their bill, if it passed would seriously damage the banks of the Ouse and endanger the lands adjoining. While the opposition was still proceeding, two landowners, liable to be rated, applied for an injunction against any part of the rates being applied by the Commissioners towards the expense of the opposition; but it was held that the proposed application of the rates was not *ultra vires* of the Commissioners, as it was their duty to protect the estate under their charge at the expense of their statutory funds; and that such duty, though not specified in the statute under which they were acting, was clearly incidental to their specified duties. In the present case, as I have already explained, the assessments entrusted to the respondents—which is the only trust-estate held by them—would not have been encroached upon even had the bills passed into law, and it was not their right or their duty to apply their funds—*i.e.*, the money of the general body of the ratepayers—in opposing a measure which could not diminish all these funds though it might have rendered necessary an increased assessment. The present case appears to me to fall within the principle of the cases of *Cowan and Mackenzie* v. *Law*, March 8, 1872, 10 Macph. 578, and *The Queen* v. *The Mayor of Sheffield*, June 1871, 6 L.R., Q.B. 652, in one of which it was held that statutory trustees could not apply the trust-funds in promoting measures for the enlargement of their powers, and in the other of which it was held that such trustees could not apply their funds in opposing measures where such opposition though beneficial to the community was not authorised by the statute creating the trust.

"On the whole matter, I am of opinion that although the respondents may have acted—as I have no doubt they did act—in a *bona fide* belief that the proposed legislation would have been disadvantageous to the interests of the county, and although their opposition may have been successful in delaying the proposed measures, and may have thereby benefited the great body of the ratepayers (a matter on which I express no opinion), it is *ultra vires* of them to apply any part of the county general assessment in defraying the expense of opposition. The complainer must therefore have the remedy which he seeks in this suspension, with expenses."

The Commissioners of Supply reclaimed, and argued—Mr Hoggan's accounts were payable out of the county general assessment funds under section 3 of the Act of 1868, as he was "necessarily employed in conducting the affairs of the county." The expense was incidental to the duties of the Commissioners, and their action in opposing bills was not *ultra vires*. For (1) the bills objected to sought to impose new duties on the Commissioners of Supply; and also (2) to lay unfair burden of assessment on the county of Renfrew.

An additional argument was pleaded in the Outer House to the effect that the expenses were of a class paid by immemorial usage out of the county "rogue money," and thereafter (since the 1868 Act) out of the county general assessment, but was not stated to the Court.

Argued for the respondents — The expenses could not be paid out of the county general assessment, for the Commissioners being a statutory body had no power to spend county money except on the purposes to which it was destined by statute. The objection as to new duties sought to be opposed was a purely personal one, and did not interest the Commissioners as a corporate body. The opposition to the bills, if made at all, should have been made by private petition to Parliament, and by the owners of lands and heritages in the county, not by the Commissioners of Supply in their corporate capacity.

Authorities—*Brighton* v. *North*, February 13, 1847, 16 L.J. (Chan.) 255; *Cowan and Mackenzie* v. *Law*, March 8, 1872, 10 Macph. 578; *The Queen* v. *The Mayor of Sheffield*, June 1871, 6 L.R. (Q.B.) 652.

At advising—

Lord President.—The question raised by this suspension and interdict is, Whether the Commissioners of Supply of the county of Renfrew are entitled to apply funds in their hands as a corporation to payment of expenses incurred in opposing certain bills in Parliament in 1876 and 1877, which they did, as they say, on behalf of the county and as representing it. The complainer is one of the Commissioners of Supply, and asks for interdict as against an illegal application of funds destined by statute to specific purposes. The position of Commissioners of Supply is very clearly explained by the Lord Ordinary in his note, and it is sufficient to say here that their present duties, so far as they are of importance in a consideration of this case, consist very much in the administration of that assessment which came in place of "rogue money," and of the assessment for police purposes. The revenue which comes into their hands for maintaining the police force was quite inapplicable to payment of the expenses in question, and it was not proposed that any part of that should be so expended. But what these Commissioners do propose to apply is some part of the revenue which they levy under the head of county general assessment. By the Statute of 1868 this comes in place of "rogue money."

We must pay particular attention to the terms of this statute, but before doing so it is necessary to ascertain exactly what the Commissioners of Supply did in opposing these bills. The bills proposed to abolish tolls, not only in Renfrew, but in all the counties of Scotland. Such bills are of a public character, and if passed become public general statutes. No doubt the interests of landowners in Renfrewshire were nearly affected, but so in the same way were those of landowners in every other county of Scotland. In one way, however, those in Renfrewshire were peculiarly affected, owing to their proximity to Glasgow. Their roads were used by the citizens of Glasgow to so great an extent that it was thought no assessment would be fair which did not lay a large share of the burden upon Glasgow. No doubt a peculiar interest was thus constituted, but interests thus arising are entirely the interests of the owners of heritable estate. And I do not think that Commissioners of Supply of a county have any right or title to represent the owners of heritable property in the county unless in respect of what they are entitled to do by statute, nor was it so contended. They were in their origin a merely statu-

tory body, and are now by statute a corporate body. They are all of them landowners in the county, but they are not all the landowners. The two bodies are not identical. If entitled to speak at all, it must be merely as a representative body —and that was never imposed on them as a duty by statute.

The question is rather—Was their opposition within their ordinary functions as Commissioners of Supply? and are the funds, under the 1868 Act, applicable for the purpose for which they were used?

Section 2 of the County General Assessment (Scotland) Act 1868, after abolishing rogue money, provides that Commissioners of Supply shall have right to levy county general assessment in place thereof. Section 3 sets forth certain outlays and expenses to be defrayed out of this County General Assessment, and to these specific purposes alone must the fund be applied. There are seven heads of these purposes. I need not go over them all, but they are very various, and all very important public objects. Only under the first of these heads has it been contended that the expenses incurred and proposed to be paid may be brought. The words of the Act are—"1. The salaries or fees of clerks, treasurers, collectors, auditors, and other officials necessarily employed in conducting the affairs of each county, together with the necessary outlays of such officials, in so far as not covered by their salaries or fees." It could not be well contended that the expenses here incurred fall under the first clause of the above section, but it is maintained that they come under that of "necessary outlays of such officials, in so far as not covered by their salaries or fees." What the commissioners actually did in 1876 and 1877 was to employ Mr Hoggan, clerk to the County Road Trustees, to prepare materials to enable them to prosecute their opposition to the bills. It is not necessary to say that Mr Hoggan might not be an "official" in the statutory sense if employed in any county matter falling within the duties of the Commissioners of Supply. The real question is, whether the business on which he was employed was or was not within the scope of the county affairs committed to the Commissioners of Supply?

It is here that the Commissioners fail entirely in their case. They have no right as Commissioners to spend any money on this opposition as falling within their duties under the head of county affairs. At first sight the argument is plausible. The Commissioners of Supply, it is said, are interested in the opposition of these bills, because it is proposed to lay new duties upon them. But I do not think that a statutory corporation is entitled to use the funds committed by statute to their hands for the opposition of a bill. As a corporation they had no interest. They might not like the duties proposed; but then they were at liberty to use their personal influence and their private funds in supporting their opposition.

Setting this aside, we must always come back to the main inquiry—Was the opposition to the bill a matter with which as a statutory body the Commissioners had anything to do? Corporate funds, statutory funds, or trust funds, can only be applied to the purposes to which they are destined by the statute, or trust-deed, or the charter of incorporation, and not a shilling may be laid out in any other way. This is the general principle which is at the foundation of all our law on this subject. Let me not be misunderstood as questioning the right of any individual to petition Parliament. This is a right at common law, and no Court would seek to interfere with it. Nor does the exercise of the right necessarily involve any considerable expenditure. But it is not the petitioning of Parliament which is here objected to, but the systematic opposition of a bill, and that bill one of a public character. To this purpose no statutory funds can be applied, unless it is included in the purposes to which they are by statute destined.

Lord Deas concurred.

Lord Mure—This case is not unattended with difficulty, and is one of considerable importance. I have been unable to arrive at the same conclusions as your Lordships. I agree with your Lordships in holding that statutory funds of this kind can only be applied to the purposes to which by statute they are applicable. But I am unable to read the clause of the statute in the same way; and I think that the Commissioners of Supply were within the provisions of section 3. This section confers very large powers. It contains seven sub-sections; and in six of these specific purposes are severally enumerated to which the assessments may be applied. The main object was to repeal the old Act by which rogue money was levied; and one of the six specific articles expressly includes "all expenses or payments presently directed by an Act of Parliament to be defrayed out of the rogue money." Sub-section 1, in addition, includes "the salaries or fees of clerks, treasurers, collectors, and other officials necessarily employed in conducting the affairs of each county." The question, therefore, now raised for consideration is, whether the expenses here in dispute can fairly be said to have been incurred under this section of the statute? If so, there is no ground for the present suspension.

The circumstances under which the expenses were incurred are clearly stated on the record, nor was there any difference with regard to them between the parties. On the introduction in 1876 of a bill in Parliament, which came before the annual and statutory spring meeting of the Commissioners of Supply, the Commissioners resolved to send a deputation with reference to the bill, with a view to procuring the exemption of Lanarkshire and Renfrewshire from its operation. At this meeting the Commissioners empowered the deputation to require the attendance and services of Mr Hoggan. And again in 1877 the Commissioners remitted to a certain committee "The Roads and Bridges Bill now before Parliament, with full power to take such proceedings thereanent as they may consider advisable for the protection of the interests of the county." Throughout all these proceedings we hear of no objection on the part of any of the Commissioners of Supply. Now of this body the complainer was one; and whatever may have been the extent of his knowledge in 1876, he might in 1877 have come to know in what direction they were moving. Yet we have no indication of any opposition on his part; and it is not an unimportant element in considering the duties of Commissioners of Supply to note the absence of this or any opposition. We have had the reason of the Commissioners for their opposition to the bills very

clearly before us. With a view to the modification of the assessment clauses and the removal of their injurious effects on the county of Renfrew they employed Mr Hoggan, a man thoroughly well-informed on the subject, to get the information necessary to enable them to take the steps which they proposed. Their proceedings were successful. The exact effect of the Act of 1878 was not stated; but we were told in the discussion that a clause has been inserted for the relief of the counties of Renfrew and Lanark. And from section 89, sub-section 2, we see that that part of Glasgow which lies in Renfrewshire is made to relieve Renfrew and Lanark of £12,500 per annum. Putting half of this sum to the county of Renfrew, we have the result of the action of the Commissioners of Supply. Now this object (as the mere statement of it shows) was of great importance to the county of Renfrew; and Mr Hoggan's business and his outlay seem to me to fall fairly within section 3 of the statute, as business connected with the affairs of the county.

I am unable to see how the Commissioners of Supply, though a corporation, and though not perhaps including all the county landholders, could, holding the opinions which they did of the probable results of these bills, avoid in duty taking the course of action which they did. I think it was their duty and within their powers so to act, as representing substantially the interests of the county of Renfrew. Had they instructed Mr Caldwell, their own clerk, I imagine that his outlay and fees would have been allowed to fall within the purposes of the statute as "conducting the affairs" of the county; as it was, Mr Hoggan was employed, and though he was not strictly an "official," I think the Commissioners were quite entitled to employ him.

On looking into the authorities cited by the Lord Ordinary in his note, I think the view which I have taken of this question is fully borne out by the case of *Brighton*. The case of *Cowan* has no special bearing on the case before us, because in the statutory constitution of the water trust in that case no express power was given to the trustees to go to Parliament at all, and they were therefore held not entitled to expenses incurred in applying to Parliament for additional powers. The *Sheffield* case turned on a clause as to charges being "necessarily incurred in carrying into effect the provisions" of an Act, and it was held that the expenses in question did not fall under such warrant. But in 1847, in the case of *Brighton*, we find that Lord Chancellor Cottenham, in reversing a decision of Knight Bruce, V.C., says, that though the Vice-Chancellor states "that he does not find in the Act of Parliament any distinct authority to the trustees to apply the fund for the purposes stated in the bill, that may be very true, but the real question is whether it is not incident to these duties they have to perform." And his Lordship had no difficulty in allowing the trustees to take the course they did, and to apply the funds in the manner they desired. This shows us that trustees for public bodies adopting any course which they believe to be for the advantage of their body are to be liberally dealt with; and where, in addition, they adhere to the terms of the Act of Parliament which authorises county expenditure, they are the more entitled to be protected in their course of action.

Lord Shand—I agree with the majority of your Lordships that the interlocutor of the Lord Ordinary should be adhered to. In the Outer House it was maintained for the Commissioners that the expenditure in question was justified by the Acts under which rogue money was introduced or administered. No such argument was, however, addressed to your Lordships; and the only question is whether under subsection (1) of section 3d of the Act of 1868 this expenditure can be represented as incurred by the Commissioners in the conduct of county affairs. In considering this it is important to observe from what sources the funds in the hands of the Commissioners are obtained. From the terms of the statute (section 4) we see that the assessments are imposed on the owners of all lands and heritages within the county according to their yearly value as established by the valuation roll for the year. The next inquiry is, What were the proposals made in the bills which the respondents resolved to oppose? Their leading feature was to abolish tolls, and to substitute therefor an assessment leviable "upon all lands and heritages within the various districts, and payable one-half by the proprietor and the other half by the tenant or occupier." Thus, the burden which Parliament was asked to impose was to be laid on a different body of ratepayers, viz., half upon owners and half upon tenants or occupiers. It is true there was a specialty in the proposed legislation owing to the neighbourhood of Renfrewshire to Glasgow; still, the fact remains that the result was to affect not the body from whom the Commissioners of Supply collect assessments, being the owners of lands and heritages, but owners to the extent of one half, and tenants and occupiers for the other half. The legislation was for the abolition of tolls, and led to the imposition of new burdens on a new class of the community. And the importance of the case lies here—that if it were held that the Commissioners were entitled to incur expenses in opposing measures of that kind, no distinction can be made in future cases where Commissioners of Supply think fit to incur expenses in opposing bills which aim at inflicting enlarged or new burdens on persons owning or occupying property in the country. The result would be that Commissioners of Supply throughout Scotland would be entitled to incur expenses in collecting materials for aiding opposition to all such measures and in sending officials to London for that purpose. This would be a serious consequence, and I am glad to think that nothing in the common or statute law seems to lead to this result.

I shall not go in detail into the terms of the Act of 1868. Section 3 seems to me to enumerate exhaustively the outlays which commissioners may make. They require a clerk and other officials under section 4 for making up the assessment rolls, and other officials under subsections (2) to (7) of section 3. But the words "officials necessarily employed in conducting the affairs of each county" would be read too widely if we held that commissioners are thereby entitled to employ parties to oppose or to promote any bills in Parliament which seem likely to affect the ratepayers in the county. A course of procedure of every day occurrence was open to the Commissioners, viz., petition to Parliament, or they might arrange for opposition by voluntary subscription; but I see nothing in the nature of this expenditure which can bring it by reasonable construction within the statute.

I agree with your Lordships that there is nothing in the specialty of the employment of Mr Hoggan. It was just the same as if the Commissioners' own clerk had been employed. Mr Hoggan had more time and was more conversant with the whole matter, and if the Commissioners had been entitled to employ an official at all to be paid out of the assessments, I see no reason to doubt that they were entitled to employ him.

As to the second ground on which the Commissioners opposed the bills, viz., the contemplated imposition of certain new and important duties upon themselves and on their convener and clerk, I am quite clear that it affords them no reason for charging the expense on the funds under their administration.

I have only to add that I think *Brighton's* case is clearly distinguishable from the present. There the trustees incurred expenses in defending the trust property; for the operations in question would have directly injured the trust property. In such a case the expenditure was no doubt justifiable, but there is no such case here. The broad rule is that trustees are not entitled to lay out trust money on anything which is not sanctioned or authorised by their trust deed or deed of incorporation, or by the statute under which they act, and that rule is sufficient for the decision of this case.

The Court adhered.

Counsel for Complainer (Respondent)—M'Laren—Black. Agents—Curror & Cowper, S.S.C.

Counsel for Respondents (Reclaimers)—Lord-Advocate (Watson)—Balfour—Moncreiff. Agent—John Martin, W.S.

Friday, November 29.

FIRST DIVISION.

[Court of Exchequer.

INLAND REVENUE *v.* FARIE.

Revenue — Income-Tax — Mines and Minerals — Schedule A, Rule No. 3, and Schedule D (5 and 6 Vict. cap. 35), sec. 60; and sec. 100, 1st Case, Rule 1; Act 29 Vict. cap. 36, sec. 8.

Held that by the Act 29 and 30 Vict. cap. 36, sec. 8, Income-Tax duty on the subjects included in No. III. of Schedule A of the Income-Tax Act (5 and 6 Vict. cap. 35) is to be laid on in the manner prescribed by the said No. III., but that the rules for ascertaining the annual value are not those in Schedule A, but are to be taken from Schedule D; and therefore that the duty chargeable in the case of mines and minerals is to be determined by a three years instead of a five years' average.

Revenue—Income-Tax—Mines and Minerals—Case of Succession to a Colliery where Profits had decreased owing to "Specific Cause"—Act 5 and 6 Vict. cap. 35, sec. 100, Schedule D, I. and II., Rule 4, also sec. 133; Act 28 Vict. c. 30, sec. 6; Act 29 Vict. cap. 36, sec. 8.

Held (1) that a depression in the coal trade is a "specific cause" within the terms and meaning of the Act 5 and 6 Vict., Schedule D, Cases I. and II., Rule 4; (2) that such a "specific cause" need not necessarily have occurred to the business in question before the change of partnership or the succession, provided it be proved that the profits and gains have fallen short since the date of either event; (3) that the effect of that exception clause is to introduce the provisions of the common law, leaving the assessment to be laid upon the actual profits of the year, and not in terms of the Act 5 and 6 Vict. cap. 35, sec. 133, as amended by the Act 28 Vict. cap. 30, sec. 6.

Revenue—Income-Tax—Mines and Minerals—Deduction for Exhausted Capital; Act 5 and 6 Vict. c. 35, sec. 100, Schedule D, 1st Case, Rule 3, and sec. 159; Act 29 Vict. cap. 36, sec. 8.

Where a coalmaster, who was also owner of the pit he worked and of the estate of which it formed a part, claimed a deduction from his profits in respect of capital lost through partial exhaustion of the mine, *held* that such a deduction was contrary to the policy of the Income-Tax Acts, and could not be given effect to.

This was a Case stated by the Income Tax Commissioners for the lower ward of Lanarkshire at the instance of the Surveyor of Taxes for the 3d district of Glasgow.

James Farie of Farme, the respondent, who carried on business as a coalmaster at Farme Colliery, near Rutherglen, had appealed to the commissioners against an assessment of £3500 made upon him under Schedule D of the Act 5 and 6 Vict. cap. 35, and subsequent Income Tax Acts referring thereto. Mr Farie was proprietor of the estate of Farme and occupier of the Farme colliery, forming part of that estate, to both of which he succeeded upon the death of his father on 30th September 1876.

The Act 29 Vict. c. 36, sec. 8, enacted—"The several and respective concerns described in No. III. of Schedule A of the Act 5 and 6 Vict. c. 35, shall be charged and assessed to be duties hereby granted in the manner in the said No. III. mentioned, according to the rules prescribed by Schedule D of the said Act, so far as such rules are consistent with the said No. III," &c.

No. III. of Schedule A of 5 and 6 Vict. c. 35, sec. 60, contained "Rules for estimating the lands, tenements, hereditaments or heritages hereinafter mentioned which are not to be charged according to the preceding general rule.

"The annual value of all properties hereinafter described shall be understood to be the full amount for one year, or the average amount for one year of the profits received therefrom within the respective times herein limited. . . .

"2d Of mines of coal . . . . on average of the five preceding years, subject to the provisions concerning mines contained in this Act."

Schedule D of 5 and 6 Vict. c. 35, sec. 100, contained the following enactments:—"First case—Duties to be charged in respect of any trade, manufacture, adventure, or concern in the nature of trade not contained in any other schedule of this Act.

"RULES.

"1st, 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 upon a fair and just average of three years. . . .

"3d, In estimating the balance of profits and gains chargeable under Schedule D, or for the purpose of assessing the duty thereon, no sum shall be set against or deducted from . . . such profits