Thursday, November 30.

SECOND DIVISION.

[Sheriff-Substitute of Glasgow.

CORPORATION OF GLASGOW (POLICE DEPARTMENT) *v.* MORTON.

Police — Sewer — Assessment—Sewer along Public Street — Liability of Adjoining Proprietors for Expense—Glasgow Police Act 1866 (29 *and* 30 *Vict. cap.* 235), *secs.* 328 *and* 329.

By section 328 of the Glasgow Police Act 1866 it is provided that the Magistrates shall make provision for draining in a suitable manner the portions of the turnpike road within the city and the public streets.

By section 329 it is provided that proprietors of lands and heritages adjoining any part of a turnpike road within the city or public street in which no ordinary public sewer previously existed, shall be bound to relieve the Magistrates of the expense of constructing an ordinary public sewer for the drainage thereof in proportion to their frontages, so soon as some building is erected on a land or heritage adjoining such road or street.

Held (1) that by "an ordinary public sewer" is meant a sewer for carrying off the sewage of houses, and not merely for draining the surface of the road or street; (2) that a proprietor was not relieved from liability under section 329 because he had already an effective system of drainage; (3) that a proprietor's liability was not affected by the fact that the sewer was used for the drainage of other streets or districts outwith the particular street or district in which his property was situated; and (4) that his liability was not affected by the fact that prior to the making of the sewer in the road or street adjoining his property a public sewer had previously existed in the same road or street 200 yards to the west of his property.

By section 328 of the said Glasgow Police Act 1866, it is, *inter alia*, provided that "the Magistrates and Council shall make provisions for draining in a suitable manner the portions of the turnpike roads within the city and the public streets, and may with that object construct or continue in or under any of the said roads or streets one or more ordinary or special public sewers, and may from time to time alter, renew, or add to such sewers as to them shall seem proper, and may carry and continue the said sewers into or through any lands or heritages within the city, and may repair, maintain, and cleanse the said sewers."

By section 329 of the said Act it is provided that "the proprietor or proprietors of lands or heritages adjoining any part of a turnpike road within the city, or public street in which no ordinary public sewer previously existed, shall severally be bound to relieve the Magistrates and Council from the expense of constructing an ordinary public sewer for the drainage thereof, in proportion to the frontage thereto of their respective lands and heritages, and such amount may be recovered from them as damages, or may be levied from them by the Magistrates and Council in the same way as a special police assessment, so soon as, but not before, some building is erected on a land or heritage adjoining such road or street: Provided that where the interior sectional area of such sewers exceeds 7½ square feet, the Magistrates and Council shall contribute the extra expense of constructing the same out of the Statute Labour Assessment."

By section 330 of said Act it is further provided that "the Master of Works shall make up and lay before the Magistrates and Council a statement of the expense incurred in constructing any such public sewer, and of the proportions due by the proprietor or several proprietors of lands and heritages, and such statement, in so far as approved of or as altered by the Magistrates and Council, shall be *prima facie* evidence of the amount of expense so incurred, and of the proportions thereof due by each proprietor."

In July 1898 the Corporation of the City of Glasgow (Police Department) raised in the Sheriff Court there an action for £48, 18s. against Alexander Morton, the proprietor of a self-contained house and garden at the corner of Langside Avenue and Seyton Avenue, Langside.

The pursuers averred that Langside Avenue was one of the public streets of the city of Glasgow; that when it was taken over as a public street no ordinary public sewer within the meaning of the Glasgow Police Act had previously existed therein *ex adverso* of the lands of the defender; that the pursuers resolved to construct an ordinary public sewer for the drainage of the street, and the work was commenced on 18th February, and completed on 13th November 1896; that the interior structural area of the public sewer so constructed did not exceed 7½ square feet; that at the date of the construction buildings had been erected on the lands and heritages adjoining Langside Avenue; that a statement of the expense and of the proportions due by the several proprietors had been made up and approved in terms of section 330 of the Act; that the proportion due by the defender was £48, 18s., and that this he had refused to pay.

The pursuers pleaded—"(1) The defender being proprietor of lands and heritages adjoining a public street in which no ordinary public sewer previously existed, and the pursuers having constructed an ordinary public sewer for the drainage thereof, the defender is bound to relieve the pursuers from the expense of such construction in proportion to the frontage to that street of his land and heritages. (2) The

sum sued for being the defender's proportion of the expense of the construction of said public sewer, decree should be granted therefor with expenses."

The defender averred that for many years prior to 1891 Langside Avenue had been feued off by the proprietors af the estate of Langside, and the feus covered with villas and self-contained houses; that these houses were effectually drained by means of a main sewer running south-westwards down Albert Road starting at a point close to Langside Avenue, and terminating in the river Cart, which main sewer and its connections had been constructed by the proprietor of Langside, and the expense allocated on the feuars, including the defender or his authors; that in 1891, when Langside was annexed to Glasgow, no change took place in regard to the drainage of Langside Avenue or its requirements; that within the last year or two a new district had grown up to the south-west of that in which the defender's house was situated, and that it was in order to provide this new district with drainage that the pursuers had constructed the sewer passing along Langside Avenue, for a proportion of the expense of which they were now charging the defender.

The defender pleaded—"(2) Langside Avenue not being a turnpike road or public street in which no ordinary public sewer previously existed, or at anyrate not being such within the meaning of the Act cited by the pursuers, the construction of the sewer in question was unnecessary and *ultra vires* of the pursuers, or at anyrate, the pursuers are not entitled to levy any part of the cost thereof on the defender. (3) The sum sued for not being the expense incurred in constructing an ordinary public sewer in Langside Avenue for the drainage thereof, or the lands and heritages therein, the defender is not liable for said sum, and should be assoilzied."

After proof the Sheriff-Substitute (BALFOUR) on 21st March 1899 pronounced the following interlocutor:—"Finds that between February and November 1896 the pursuers constructed a public sewer in Langside Avenue from Pollokshaws Road eastwards to Camphill Avenue: Finds that the boundaries of the city of Glasgow were extended in the year 1891, and the extension included, *inter alia*, Langside Avenue and the district of Langside: Finds that Langside Avenue is now one of the public streets of the city, and until the construction of the sewer referred to, no ordinary public sewer existed in the avenue *ex adverso* of the property of the defender: Finds further that several buildings have been erected on the lands fronting Langside Avenue: Finds that after the annexation of the district the pursuers received from the previous local authority two plans of drainage areas which had been contemplated by that authority, but Langside Avenue was not in either of these two drainage schemes: Finds that in January 1895 certain complaints were received by the Master of Works regarding the drainage arrangements of the district, and in the immediate neighbourhood of the defender's property, conform to the letters No. 12 and 13 of process, and thereafter, and particularly with a view of meeting the general requirements of the district, present and prospective, the pursuers resolved to construct the sewer in question: Finds that a sewer had previously existed in a portion of the avenue between Pollokshaws Road and Albert Road, more than 200 yards to the west of the defender's property, but there was no sewer westwards from Albert Road in Langside Avenue: Finds that when the new public sewer was made, that sewer was cut off at Albert Road and connected to the public sewer, and the drainage now finds its way into the public sewer, so that the whole of Langside Avenue from Pollokshaws Road to Camphill Avenue is drained or has the means of drainage into the public sewer, and the whole surface of the avenue is actually drained by the sewer: Finds that the defender is the proprietor of a villa at the corner of Langside Avenue and Seyton Avenue, and he has taken advantage of a system of drainage carried out by the proprietor of Langside in the year 1878, and which is shown in the plan, and consists of his sewage being led into a 13-inch pipe in Seyton Avenue thence into a 15-inch pipe in Lethington Avenue, and thereafter into a brick sewer in Albert Road, by which it reaches the river Cart: Finds that the cost of this system of drainage was defrayed by the proprietor of Langside and an adjoining proprietor, and the system has proved an effectual means of draining the defender's house, and it may be said to be a good system of drainage: Finds that there are about eight villas fronting Langside Avenue between Albert Road on the west and Seyton Avenue on the east, and these all presently drain either into the sewer in Albert Road or into the pipe-sewer in Seyton Avenue, and they have not meantime been connected with the public sewer in Langside Avenue: Finds that by the 328th and 329th sections of the Glasgow Police Act, the pursuers are empowered to construct ordinary public sewers in any of the roads or streets of the city, and the proprietor of lands adjoining any part of a public street in which no ordinary public sewer previously existed is taken bound to relieve the pursuers from the expense of constructing an ordinary public sewer for the drainage of the lands in proportion to the frontage thereto of the lands in question, and such amount is to be recovered in the manner specified in the Act, but not before some building is erected on a land or heritage adjoining such street: Finds that the public sewer in question has been constructed by the pursuers in terms of these provisions of the statute, and that a statement of the expense incurred in constructing said sewer has been made up and laid before the pursuers and approved of by them, all in terms of the Act of Parliament, and the proportion of said expense payable by the defender is £48, 18s.: Therefore finds the defender liable for said proportion," &c.

Note.—"The main question which arises

for determination in this case is whether a proprietor who has property fronting a public street in which a public sewer has been constructed for the first time is liable for his proportion of the cost of the public sewer when he has already an effective system of drainage. In this case there can be little doubt that the system of drainage carried out by the Langside proprietor in 1878 is a good and sufficient system to drain the defender's property, but the public sewer has been constructed by the pursuers in terms of the provisions of the Police Act, and it makes the adjoining proprietors liable for the cost of the sewer, provided (1) that no ordinary public sewer previously existed in the street, and (2) that some building is erected on the land adjoining the street. It is quite clear in this case (although the defender in his defences denies it) that no ordinary public sewer existed in Langside Avenue opposite the defender's villa until the present sewer was constructed; and further, that there are many buildings erected on the lands adjoining or fronting Langside Avenue. It would therefore appear that the fact of a proprietor having a separate means of drainage which may be quite effective is not sufficient to clear him of liability for the cost of the public sewer. The fact is, that if the proprietor were not liable, it might lead to endless confusion in regard to the execution by the proper authorities of a public undertaking. A public sewer is constructed for the benefit of a district and not for the benefit of one or two proprietors, and it must be treated as a sewer for the benefit of the whole proprietors in the district, to be paid for by them according to their respective frontages. The levying of the cost may be much harder for one proprietor than for another, because one proprietor may have a private system of drainage within his own lands which quite suffices for the drainage of his property, and another set of proprietors may combine (as in the present case) and take advantage of a sewer existing in another road at a certain distance from their properties, and in both cases the proprietors might say that they would not pay their proportions of the cost of a public sewer passing their doors. This, however, is not the meaning or intention of the Act of Parliament, which has in view the carrying out of a public benefit to suit many proprietors, each of whom is to bear his share of the cost, and if private means of drainage were to be taken into consideration it might nullify the powers of a public body in carrying out a public scheme.

"The next question for consideration is, whether the fact of the sewer being ultimately utilised by a number of tenements on Langside near Mansionhouse Road affects the defender's liability. The defender attempted to make out that the sewer was a mere conduit passing his door, and that it was really intended for the new tenements at Langside, and while it is clear that a considerable number of tenements have been erected in Mansionhouse Road and Colquhoun Street, as shown in red on the plan, that plan is not correct in regard to the tenements shown in Algie Street, both as regards their number and their drainage into the sewer. It may, however, be taken that a considerable number of tenements in Mansionhouse Road and Colquhoun Street drain, or have the means of drainage, into the sewer in Langside Avenue, but it does not at all follow that the sewer was made for these tenements alone. As explained by the pursuers' officials, the pursuer had in view the requirements present and prospective of the whole district, and they do not provide a sewer in each street for the requirements only of that particular street. And apart from the surface drainage of the avenue they have to keep in view the sewage that may be discharged into the sewer from private drains and common sewers. As Mr Nisbet, the Assistant Master of Works, says—'When they take a sewer past a man's front door they do not pause to consider whether he has a scheme of his own or not, but they take the general good into consideration.' And this mode of laying out a sewage scheme is the one adopted by the defender's own engineer Mr Frew.

"I have to add that the pursuers themselves are the owners of Camphill Park on the opposite side of Langside Avenue, and they have borne their share of the cost of the sewer from Pollokshaws Road to Camphill Avenue, and there are no buildings on their property, and they make no use of the sewer by means of buildings.

"It therefore appears to me that the pursuers were within their rights in constructing the public sewer, seeing that two drainage schemes had been in contemplation for other portions of the district by the previous local authority, and complaints were made to them regarding the drainage of Langside Avenue after the annexation, and I think it would have been unwise for the pursuers not to take some action in the matter."

The pursuers appealed, and argued—(1) The public sewer referred to in sections 328 and 329 was for the drainage of the turnpike road or street, and not for the drainage of the houses therein. This was apparent from the distinction between "public sewer" and "common sewer" made in the interpretation clause of the Act, section 4. A "public sewer" was intended for the drainage of surface water, while a "common sewer" was for the drainage of the houses. (2) Section 329 only applied to streets or roads "in which no ordinary public sewer previously existed." In the present case a public sewer had existed in the same road long before the sewer in question was built. Section 329 did not therefore apply. (3) The defender had a sufficiently good system of drainage for his property, and did not drain into the sewer, part of the cost of which he was now asked to pay. This system existed before 1891, when the Langside district was annexed to Glasgow, and had been taken over by the Commissioners along with the district. The defenders' dwelling being sufficiently drained before

the existence of the sewer in question, and he having never required or made any use of that sewer, it was inequitable that he should be asked to pay a share of the expense. (4) The new sewer had really been constructed to provide a new district beyond Langside with drainage. Now under section 329 the public sewer, for the expense of constructing which the adjoining proprietors were to pay, was to be "for the drainage thereof," viz., the lands and heritages adjoining the public road. The defender was therefore not liable.

Argued for pursuers—The Lord Ordinary's interlocutor should be affirmed, the arguments in his note being sound.

LORD JUSTICE-CLERK—The Magistrates and Council of Glasgow have power under the Glasgow Police Act to make provisions for draining in a suitable manner the portions of the turnpike roads within the city and the public streets, and for that purpose they have the power to construct or continue such sewers as they may think proper. The proprietors of lands and heritages adjoining a public street in which no public sewer previously existed are bound, according to the extent of their respective frontages, to free and relieve the Magistrates and Council from the expense of constructing an ordinary public sewer for the drainage thereof, in proportion to the frontage of their respective lands and heritages. In this particular case the Magistrates and Council came to the conclusion that it was advisable to construct one general sewer throughout the whole length of Langside Avenue, with connections for sewers both incoming and outgoing for the drainage of that district. That they had power to make the sewer could not be doubted, because whether it was a question of taking in sewage or not they had power to make the sewer if they thought it necessary for the purpose of making the roads suitable by drawing off the surface water. In doing so they seem to have considered it right and advisable, looking to the prospects of the district, to make such a sewer as would carry both the surface drainage and the sewage which might be necessary to carry off from the district. I can see nothing in what they did in excess of their powers. I do not at all understand the argument based upon the interpretation clause to the effect that a public sewer means one thing and a common sewer means another. I think in both these cases a sewer means the same thing, with this difference, that in the one case it is a sewer beginning in private property and running out of private property into some public sewer; but the purpose is the same—to carry off both such surface water as it is necessary to carry for the purpose of properly draining the land, and also sewage from any cause such as building within the ground. That is called a common sewer by the Act, and it is explained as such. A public sewer is a sewer for the purpose of carrying off in the interests of the general public whatever may come from the lands or off the road in the way either of surface water or of sewage projected into the drain. It is entirely for the Magistrates and Corporation to consider, when they have made up their minds that a sewer shall be placed in a particular street or road, what its dimensions shall be—what purpose they intend to fulfil by it; they are the judges of what is necessary in a particular district at a particular time. There is one provision which is made and does not apply to the present case, and that is, if in any particular circumstances it is thought necessary to make a sewer of larger dimensions than a figure named—I think 7½ square feet in area — that in that case, instead of the burden of such a sewer being thrown upon the inhabitants of the district only, a proportion above what is necessary for the 7½ feet shall be thrown upon the whole community—that is to say, the Magistrates shall pay it themselves out of the general rates of the city. And the equity of that is obvious, because when you are getting a drain of that enormous size it is quite plain that it is with the object of carrying off the drainage and sewage from a much greater distance and to a much larger extent than is involved in the question of draining a particular area. Now, the Magistrates and Council here have thought it proper to make this drain, and unless there is something in the circumstances or something in the Act of Parliament hitting this particular case and preventing the ordinary rule from applying to it, those who have a frontage to it are liable for their share of the expense. The argument which is raised here is that this particular litigant whom we have before us is not liable because there is a drain by which he gets his lands drained without using this particular drain. If we were to recognise that in all cases in which an individual within a town had some means already in existence by which his own individual drainage might be carried away without using the public drain he shall be exempt from paying any of the expense of the drain, I think it would lead to most inequitable results. To begin with, the whole district benefits by this public drain. He may benefit less or more in the special circumstances in which he is placed. It is a drain provided for the future and not for the present merely, and as building extends, and the city becomes larger at that point in the way of buildings the necessity for the drain becomes greater and greater. but the Act does not recognise, so far as I can see, any right upon the part of a proprietor to say, "Although I am on the road, and although it is necessary to make that drain, you cannot charge me with any of the expense, because somehow or other I have means of getting rid of what I want to get rid of without using your sewer." He is just in the position that other citizens are occasionally in when a particular Act of Parliament is passed for the general benefit — it may act a little hardly upon him. But that he has any legal right to say that he is not bound to

pay his share is a proposition to which I cannot give any assent. I think the Sheriff-Substitute dealt most properly with this case in deciding it, and there is no plea available to this defender to entitle him to resist payment of the assessment.

LORD YOUNG—I concur.

LORD TRAYNER—I have had all through the hearing of this case some difficulty in understanding what was the ground of defence upon which the defender was insisting. The case it seems to me is an extremely simple one. By section 328 of the Glasgow Police Act 1866 the Magistrates have authority according to their discretion to construct suitable drains in any public street. In section 329 it is just as clearly enacted that when they put down a public sewer in a street where no public sewer previously existed, the expense of that is to be borne by the adjoining heritors according to the extent of their frontage. In this case there was a public sewer put down in a public street where there never had been a public sewer before. The expense has not been said to be extravagant in one way or another, and the defender is not asked to pay more than the proportion of the expense which effeirs to the extent of his frontage. I therefore think with your Lordships that the Sheriff's judgment ought to be affirmed.

LORD MONCREIFF—I concur.

The Court dismissed the appeal, found in fact and in law in terms of the findings in fact and in law of the interlocutor appealed against, and of new decerned against the defender in terms of the prayer of the petition.

Counsel for Pursuers—Lees—M. P. Fraser. Agents—Campbell & Smith, S.S.C.

Counsel for Defenders — W. Campbell, Q.C. — Macaulay Smith. Agents — Tait & Johnston, S.S.C.

Tuesday, December 5.

FIRST DIVISION.

COMMISSIONERS OF INLAND REVENUE *v.* CAMPBELL.

Revenue—Inhabited-House Duty—Occupier—Dwelling-House Partly Licensed—Inhabited-House Duty Act 1808 (48 *Geo. III. cap.* 55), *Schedule B, Rule VI.—Inhabited-House Duty Act* 1851 (14 *and* 15 *Vict. cap.* 36), *schedule.*

Under the statutes imposing inhabited-house duty, 9d. per £ is exigible from dwelling-houses when the rental exceeds £60, but (14 and 15 Vict. cap. 36, sched.) only 6d. if the house "shall be occupied by any person who shall be duly licensed by the laws in force to sell therein by retail beer, ale, wine, or other liquors."

By Rule VI. of 48 Geo. III. cap. 55, Schedule B, it is provided—"Where any house shall be let in different stories, tenements, lodgings, or landings, and shall be inhabited by two or more persons or families, the same shall, nevertheless, be subject to, and shall in like manner be charged to, the said duties as if such house or tenement was inhabited by one person or family only, and the landlord or owner shall be deemed the occupier of such dwelling-house, and shall be charged to the said duties."

Part of a house belonging to A was let by him as an hotel, and the remaining part as a club. A was not himself the holder of a licence, though the tenant of the hotel was. *Held* that this house, the rental of which exceeded £60, was chargeable at the rate of 9d. per £, in respect that under Rule VI. A was the occupier, and as he did not hold a licence the premises did not fall to be assessed at the lower rate.

At a meeting of the Commissioners for executing the Acts relating to the inhabited-house duties for the County of Bute, Mr Nicol Campbell, advocate, appealed against an assessment at the rate of 9d. per £ on £440, the annual value of the premises situated in Argyle Street, West Bay, Rothesay, belonging to him.

The following statement of facts admitted or proved was made in a case stated by the Income-Tax Commissioners—"1. For the year 1879-80 the building was assessed to inhabited-house duty at the rate of 6d. per pound, under 14 & 15 Vict. cap. 36, and according to Rule VI. of 48 George III. cap. 55, Sch. B, which enacts that 'where any house shall be let in different stories, tenements, lodgings, or landings, and shall be inhabited by two or more persons or families, the same shall, nevertheless, be subject to, and shall in like manner be charged to, the said duties as if such house or tenement was inhabited by one person or family only, and the landlord or owner shall be deemed the occupier of such dwelling-house, and shall be charged to the said duties: Provided that when the landlord shall not reside within the limits of the collector . . . the duties so charged may be levied on the occupier or occupiers respectively, and such payments shall be deducted and allowed out of the next payment on account of rent.' Mr Campbell appealed against this assessment; and on a case stated at his request, the Court of Exchequer pronounced judgment confirming the assessment—*Campbell* v. *Inland Revenue*, February 21, 1880, 7 R. 579. In that case the rate of duty was not before the Court.

"2. It was admitted that the following is an accurate description of the premises. The appellant being proprietor of the Queen's Hotel, Rothesay, erected an addition, to be occupied partly by the Royal Northern Yacht Club and partly as an extension of the hotel. On the street floor, in the new addition, the club occupy a reading-room, a committee-room, steward's