trustees in such district. Therefore, if any trustee considers, that there has been an improper application of the funds for the repair of particular roads, or that the roads are not taken in the proper order for repairs, he may bring the matter forward at a general meeting, and if a difference of opinion exists, the dissentient trustee may appeal to the next general meeting. Or if he can get any other trustee to entertain the same opinion as he does upon the subject, they may then go to the Court of Quarter Sessions, and the Court of Quarter Sessions will decide whether there is any proper ground of complaint as to the order in which the roads were directed to be repaired, or as to the appropriation of the services or money, and the decision of the Court of Quarter Sessions upon that subject is final. That is the provision which is made for the due exercise of all the duties of the trustees under this Act. This section seems to cover every case in which the trustees are called upon to exercise the powers which are intrusted to them.

But then they may, in the exercise of those powers, commit some wrong or injury to some individual. Well, is there any provision made for that? That provision is to be found, if at all, in the 64th section, which provides, that all actions and complaints for all or any of the penalties and forfeitures imposed by this Act for any wrong or injury done or suffered in any matter relative to, or in consequence of, any of the powers by this Act given and granted, shall, unless herein otherwise provided, be originally brought before two or more Justices of the Peace of the said county, and shall be commenced within a certain time.

Now, Mr. Anderson argues, that this does not apply to a case of nonfeasance or injury consequential upon neglect to perform the duty, but that it applies merely to some Act by which immediate wrong or injury is produced to an individual. I confess, that I do not construe this section in the limited way suggested, because it is perfectly clear, that the object was to redress any wrong or injury which might be suffered in any matter relative to the powers of this Act. Now, what is the meaning of the words "relative to the powers of this Act"? Why, the omission to perform the duties imposed upon the trustees, and the injury consequential upon that is an injury relative to the powers of this Act. And it being admitted, that, supposing the injury which is received is not the immediate effect of the act done, but is the consequence of it, and that for that consequential injury, an action may be brought, I cannot understand why an injury arising from an omission by the trustees to do their duty under the powers intrusted to them by the Act should not be ground upon which a party, under the words of the Act, should be entitled to maintain an action.

If that be so, there is a specific remedy provided for the duty which is cast upon the body newly constituted by this Act. And, therefore, according to the principles laid down in several decisions, which are perfectly well known, it is clear, that that remedy alone can be pursued, and that the parties cannot apply to the Court of Session, it being by the 65th section expressly provided, that upon an appeal from the Justices of the Peace or Commissioners of Supply, the decision of the Court of Quarter Sessions shall be final, without being subject to review in any court by advocation, suspension, reduction, or otherwise.

This appears to me to be the proper construction of this Statute Labour Act, and I think it is a very strong circumstance in favour of that construction, that for nearly 200 years since the passing of the Statute in 1669 no such action as the present has ever been brought. Under these circumstances, I cannot hesitate for one moment to be of opinion, that the interlocutor of the Second Division is perfectly right, and ought to be affirmed.

LORD KINGSDOWN.—My Lords, I am of the same opinion.

Interlocutors affirmed, with costs.

Appellant's Agents, J. and F. Anderson, W.S. ; D. M'Luckie, Westminster.—*Respondent's Agents*, J. Forrester, W.S.; Loch and Maclaurin, Westminster.

MARCH 2, 1866.

MAJOR WELLER and Others (Trustees of the Marriage Settlement of Robert Ker, Junior), *Appellants*, *v.* Mrs. E. KER or URE and Others (Trustees of the late Robert Ker), *Respondents.*

Trust—Discretion of Trustees—Power to restrict provision in case of misconduct—*K., in his trust disposition, directed his trustees, on R. K., his eldest son, (and failing him, the next elder son,) attaining twenty five, to convey to R. K. the residue, and, in particular, the estate of A.; but in case any of the children conducted themselves so as not to merit the approbation of the trustees, then the provision should belong to them in liferent only. R. K., on attaining twenty*

three, married, with the approval of the trustees, and his wife's marriage contract disposed of R. K.'s interest under the father's trust disposition; but the father's trustees were not parties to the contract. At twenty five the trustees being dissatisfied with R. K.'s conduct, declared his provision to be restricted to a liferent.

HELD (affirming judgment), (1) *That the eldest son was included under the description of "children;"* (2) *That the trustees were not bound to declare their dissatisfaction till R. K. attained twenty five;* (3) *That they had not precluded themselves by approving of R. K.'s marriage from afterwards restricting his disposition to a liferent;* (4) *That they had no power to preclude themselves from declaring such dissatisfaction by anything they could do previously to R. K. attaining twenty five.*[1]

This was an action of multiplepoinding raised by the trustees of the late Robert Ker of Argrennan.

The facts shortly stated in the condescendence were as follows :—The late Robert Ker, by a trust disposition and settlement, dated 1839, disponed his lands and estate to Mrs. Ker, his wife, and to James Stewart, Esq. of Cairnsmure, and David Maitland, Esq. of Barcaple, in trust to pay his debts and certain provisions. Mrs. Ker was to possess the mansion house till the truster's eldest son should arrive at the age of twenty one years, (afterwards extended to twenty five years,) on which event Mrs. Ker was to receive an annuity of £1000. A sum of £15,000 was provided for the younger children of the marriage. Then the sixth purpose of the deed was, that "the trustees shall hold the residue in trust for the use and behoof of Robert Ker, my eldest son, and the heirs whatsoever of his body, whom failing, to the second son," etc. Then the trustees were, on the sons in the order expressed attaining majority, forthwith to convey and make over to the said Robert Ker the said residue and remainder of his means and estate; and, in particular, to convey to the said Robert Ker the estate of Argrennan, with the household furniture. The deed contained also this clause :—"Declaring that, in case any of our said children shall marry, or otherwise conduct themselves so as not to merit the approbation of my said trustees, or a majority of them accepting and acting at the time, the provisions hereby made in favour of said children so marrying or acting shall only belong to them in liferent for their liferent use allenarly, and to their issue or heirs above mentioned in fee; but it is hereby declared that a regular minute must be entered in the sederunt book of the trustees expressing their disapprobation of the conduct of any of my said children, to restrict them to a liferent as aforesaid."

In a codicil, dated 1847, the truster directed his trustees not to convey to his son Robert the estate of Argrennan, as therein provided, on his attaining the age of twenty one, but that the conveyance should be postponed till he should attain twenty five.

The truster died in 1854, leaving Robert Ker, his eldest son, and four other children. In 1861 Robert attained the age of twenty five. Before that event he had acted so as not to merit the approbation of the trustees. Accordingly, after mature deliberation, they felt it to be their duty to record their unanimous disapprobation of his conduct, and, in the exercise of the power contained in the trust disposition, to restrict the provision in his favour to a liferent. They declared, accordingly, that the estate of Argrennan should belong to him only in liferent, for his liferent use allenarly, and to his issue or heirs, as mentioned in the deed, in fee.

The trustees of the marriage settlement of Robert Ker, jun., (defenders, and now appellants,) alleged, in answer, that in 1858 Robert Ker, jun., married Miss Elizabeth Macalpine, daughter of the late James Macalpine, of the county of Mayo. Before the marriage there was a contract of marriage in the Scotch, and also in the English form, her fortune of £15,000 being settled in the latter deed. Robert Ker, jun., in his Scotch contract of marriage, bound himself to pay his wife an annuity of £400; and in security thereof he disponed all his right and interest in the estate of Argrennan under his father's trust disposition. The purposes of this marriage settlement were to pay £2000 of debt then owing by Robert Ker, jun., to pay the annual proceeds to him for life, etc.; and Mrs. Ker, jun., accepted these provisions in lieu of her legal rights. This marriage was intimated to the father's trustees before it took place, and they expressed their approval in these words :—"Minute of meeting of trustees of the late Robert Ker, Esq. of Argrennan, held 14th September 1858. Present—Mrs. Ker, David Maitland. Mr. Robert Ker stated that he had contracted a marriage with Miss Elizabeth Macalpine, and of which marriage the trustees hereby approve. (Signed) E. KER. D. MAITLAND."

A correspondence had also previously taken place between Mr. Waddell, W.S., as the agent of the father's trustees, and of Robert Ker. jun., and Messrs. Skene and Peacock, W.S., as acting for Miss Macalpine. The latter had at first required the father's trustees to become parties to the marriage contract of Robert Ker, jun., but this was refused; and ultimately the trustees made the minute above stated, simply approving of the marriage. In the interval between the

[1] See previous report 2 Macph. 8; 36 Sc. Jur. 176. S. C. L. R. 1 Sc. Ap. 11; 4 Macph. H. L. 8; 38 Sc. Jur. 256.

marriage of Robert Ker, jun., and his attaining the age of twenty five, he granted various deeds purporting to affect his rights and interests in his father's succession, which deeds were disapproved of by the father's trustees. The creditors interested under these deeds were parties to the present action of multiplepoinding.

The Lord Ordinary (Kinloch) held, that the trustees of the father, Robert Ker, validly restricted the son's interest in the estate of Argrennan to a liferent. At the same time, he expressed a regret that the trustees or their agent should have so proceeded in their communications with the marriage trustees of Robert Ker, jun., as not unnaturally to have fostered the idea, that Robert Ker would at the age of twenty five be fiar of Argrennan. On reclaiming to the First Division, the Court—consisting of the Lord President M'Neill and Lord Curriehill—agreed with the Lord Ordinary; while Lord Deas dissented. The present appeal was then brought by the marriage trustees of Robert Ker, jun.

The appellants in their printed case prayed for a reversal of the judgment for the following reasons:—1. Because the discretionary power of restriction conferred upon the trustees of Robert Ker, senior, upon a sound construction of his trust disposition and deed of settlement, did not include the eldest son or other heir who might be entitled to succeed to the estate of Argrennan. 2. Because the power of restricting the provisions in their favour in regard to the heir and other children of the truster did not extend, on a sound construction of the trust deed and codicils of the truster, to the period of Robert Ker's attaining twenty-five years. 3. Because, on a sound construction of the power conferred on the trustees, it was competent to them to approve of the marriage of the heir and the settlements made on the occasion of the marriage in such a manner as to preclude themselves from afterwards restricting Mr. Ker to a liferent to the prejudice of his wife and children. 4. Because, as matter of fact, the marriage of Mr. Robert Ker, junior, and the settlements made in contemplation thereof, were entered into with the approval of the trustees of Mr. Robert Ker, senior, and it was therefore incompetent for the trustees thereafter to restrict Mr. Ker's rights to a liferent, so far at least as such restriction might prejudice the rights of Mrs. Ker, junior, and her children under the contract of marriage. 5. Because, if it be not actually and sufficiently proved by the documents and evidence in this case, that the late Mr. Ker's trustees approved of the marriage settlements, at all events they permitted the parties to enter into the marriage contract on the faith, that the provisions of the Scotch settlement would not afterwards be impugned by them. 6. Because Mrs. Ker, the widow, had precluded herself at all events from exercising the discretionary power of restriction to the prejudice of any persons interested under the settlements, and it was not competent, under the circumstances of the case, for two out of three trustees, though nominally constituting a quorum or majority, alone to exercise that discretion.

The *Attorney General* (Sir R. Palmer), *Lord Advocate* (Moncreiff), and *Bruce*, for the appellants:—The power vested in the trustees to restrict the disposition to a liferent is to be strictly construed, and the Court will only give effect to it so far as is necessary. The power does not extend to the eldest son, for the word "children" is used in the deed as synonymous with younger children, and the eldest son is not elsewhere described as one of "the children." But even assuming, that the power extended to the eldest son, then that power must be exercised at his majority, and not afterwards. It was not at all necessary for the purpose of giving effect to the deed to extend the power of restricting the disposition to the period between the heir attaining twenty one and twenty five. Even if that power did exist, it was capable of being excluded by the trustees having deliberately contracted on the footing, that they would not alter their resolution after once expressing it. They approved of the marriage in 1858, and thereby impliedly agreed and contracted not to alter their resolution of approval in 1861; and they ought to be held precluded from afterwards altering it, for to do so was to annul the provisions made by the wife of Robert Ker, junior, on the faith of her husband obtaining not a liferent, but the fee of the estate. Their conduct in afterwards restricting the dispositions amounted to a legal fraud on the wife of Robert Ker, junior, who was induced to enter into the marriage on the faith, that the trustees would not reduce the fee to a liferent. The House ought therefore to reverse the judgment, as the only mode of protecting the wife and children under the marriage contract of Robert Ker, junior.

Rolt Q.C., and *Anderson* Q.C., for the respondents, were not called upon.

LORD CHANCELLOR CRANWORTH.—My Lords, as I find that my noble and learned friends have arrived at the same opinion as that at which I have arrived, we shall relieve the counsel for the respondents from the necessity of addressing the House. The question arises upon a trust deed executed on the 23rd September 1839 by a gentleman of the name of Robert Ker. It is sufficient to say that, having made certain special provisions, he directs, that his trustees "shall hold the residue of my means and estate in trust for the use and behoof of Robert Ker, my eldest son, and the heirs whatsoever of his body," whom failing, for the use and behoof of his second and other sons in succession.

The trust deed then proceeds in these words, "And I do hereby appoint and direct my said trustees upon the said Robert Ker, my son, attaining the years of majority," (I leave out all that

relates to the other children,) "forthwith to convey and make over to the said Robert Ker the said residue and remainder of my means and estate, and all the rights and securities thereof vested in my said trustees."

Then, later in the settlement there is this passage: "Declaring, that in case any of our said children shall marry or otherwise conduct themselves so as not to merit the approbation of my said trustees, or a majority of them accepting and surviving at the time, the provisions hereby made in favour of the said children so marrying or acting shall only belong to them in liferent for their liferent use allenarly, and to their issue or heirs above mentioned in fee."

That settlement was to a certain extent varied by a codicil dated the 26th January 1847, several years after the date of the deed itself, whereby the truster declared, "that the trustees named in my said deed, or those to be assumed by them, shall not convey to my eldest son, Robert Ker, or failing him, any other heir male or female of my body, my estate of Argrennan, with the household furniture and pertinents as directed in the said deed, or residue or remainder of my means and estate as therein provided, on his or their attaining the age of twenty one years, but that the said conveyance shall be postponed till the said Robert Ker or other heir succeeding as thereby provided shall attain the age of twenty five years, and then as to one of the daughters, she is not to succeed until she attains the age of twenty-eight years." The truster or testator died in the year 1854. The eldest son, Robert Ker, attained his majority in the year 1857, and, of course, therefore, did not attain his age of twenty five years until four years later, namely, in 1861. In the mean time, between attaining his majority and attaining the age of twenty five years, namely, in the year 1858, he married, and for the present purpose I shall assume that, having married, as he certainly did, with the consent of the trustees, these trustees also approved of the settlement then made. By a settlement then made of his Scotch estate, he was made liferenter only with a power of raising £2000 out of the *corpus* of the estate; and subject to that liferent, the estate was for the benefit of his children in the mode therein mentioned. As I have said, the trustees certainly approved of the marriage, and I will assume that they approved also of the settlement.

The question now is, the trustees having, since the date of the marriage and before Robert Ker attained the age of twenty five, been dissatisfied with his conduct, have they the power under that clause which I have read authorizing them, in case of the children or any of them misconducting themselves, to confine the estate of the child so misconducting himself to a liferent only? The Lords of Session have held, that the power still continued, and that the trustees having exercised it, it took effect and put aside the settlement, and made him only a liferenter under the original trust, instead of a liferenter with the other incidents attached to it under the settlement that was executed.

Against the validity of that interlocutor of the Court of Session, the appellants relied upon three grounds of objection. In the first place, they said, that this power did not apply to the eldest son at all. That, however, although put forward, was not insisted upon. I do not know whether it was formally abandoned or not. I need hardly say, that it is a point that would not bear a moment's discussion. The next point, which was one that had more of plausibility in it, was this, that although the power extended to all the children, yet that it extended only to each child during his minority; that although by the codicil the age of majority, so to speak, is altered from twenty one to twenty five, yet the power that was given in the trust deed to endure only during the minority, was not extended by the codicil to the time at which the estate was to be conveyed, namely, twenty five instead of twenty one.

I was at one time a little impressed by that argument, but on further consideration I think it is unfounded. If, indeed, the power had been a power declared to endure only till the time when the child shall attain the age of twenty one, there might have been great force in the argument. But this is a power which endures to all time, so to say; it endures till it is put an end to, not by the child attaining the age of twenty one, but by an act which was to take place when the child was at the age of twenty one, and which by the codicil takes place at a later period. Therefore it seems to follow as a matter of course, that this power, which was to endure to all time as far as the language of it was concerned, and which was only limited by the deed to the attaining the age of twenty one, because then all the property would be gone out of the trustees, was, according the true construction of the will and codicil taken together, to endure as long as the property was in the hands of the trustees. That I think is the true meaning.

That being so, the question is, whether or not the trustees, by consenting to the marriage, and as I think I may assume for the purpose of this argument, consenting to the settlement, did or did not deprive themselves of this power. Now undoubtedly, by the law of England, I should say it was clear, that they could not divest themselves of this power. I hope I shall not be understood as meaning to say, that there is any difference between the law of England and the law of Scotland in this respect. I do not believe there is, but that question has not been fully canvassed, and for the purpoe of the argument I do not mean to embarrass myself with it. But it seems a very strange proposition, that if a testator gives power to trustees evidently to be exercised only with reference to the interests of his children, or those for whom he was providing,

the trustees should be able to say, "We give up that power,"—a power which was given to them, not for their own benefit, but for the benefit of others. But without going into the question, whether they had the power of divesting themselves of that power or not, my clear opinion is, that they never did divest themselves of that power, even if they had the right to do so. I have assumed for this purpose, that they consented to the settlement. Now, what were the settlements that were executed? They were settlements of the interest which the eldest son took under the trust deed, which was an interest liable to be defeated by the exercise of that power. That power has been exercised, and has thereby defeated that interest.

My Lords, it appears to me, that on these very short grounds I may advise your Lordships to concur with the decision of the Court of Session, and to affirm the interlocutor which is appealed against.

LORD CHELMSFORD.—My Lords, I entirely agree with the opinions of the Lord Ordinary, and of the majority of the First Division.

In the first place, I have no doubt that the power in question extended to the heir as one of the children. The power in terms applies to real estate, for it declares, that the provisions made in favour of the children marrying or otherwise conducting themselves so as not to merit the approbation of the trustees, shall only belong to them in liferent for their liferent use allenarly, and to their issue or heirs in fee.

The trustees are appointed and directed to convey the estate of Argrennan to the eldest son and heir, or failing him, to any other heir male or female of the truster's body. As it is to such estates as the trustees are empowered to convey, that the power of limiting the interest must apply, it seems clear, that it is applicable to the estate of Argrennan, and, therefore, to the eldest heir as well as to the rest.

The next question is, to what period the power is limited. By the trust deed the conveyance was to be made to Robert Ker upon his attaining his age of majority. This, therefore, was the time at which originally the trustees were required to act.

But by a codicil to the deed a conveyance was not to be made, till the son arrived at the age of twenty five years. It was argued on the part of the appellants, that although the time was extended with respect to the conveyance, yet the powers remained limited as in the trust deed to the age of twenty one. But this cannot be the case. The time at which the trustees were required to convey was the time at which they were to determine, whether the heir should have the fee or merely a liferent, and when the period for making the conveyance was deferred to the same period, their judgment as to the kind of conveyance was then to be made.

Lord Deas expresses an opinion, that the trustees might have exercised the power at the date of the heir's marriage. But with great respect, I think this view cannot be correct. It was evidently the truster's intention, that the trustees should exercise their judgment upon a review of the conduct of the heir at the time when the estate was to be conveyed to him. Before that period it is clear, that they could not have deprived themselves of the exercise of a future judgment by giving him the fee, and there seems to be no reason why they should have been able to anticipate the time of passing judgment upon the conduct of the heir by restricting him to a liferent at an earlier period than the age of twenty five. The heir might have redeemed himself in their estimation by subsequent good conduct. There was apparently no intention, that the heir should either have the fee conveyed to him, or that he should be deprived of it by any judgment of the trustees before the period when they were bound to make the conveyance.

But the more important questions are, whether it was competent for the trustees to undertake, that their power should not be exercised, so as to prejudice the rights and interests created by the marriage settlement of the heir, and if this was within their competency, whether they have or not, in fact, so undertaken.

It appears to me, that the trustees could not either abandon or fetter the exercise of the power intrusted to them. It was a power coupled with a duty of the most important character. It was evidently intended, that it should be retained and freely exercised down to the time when they were called upon to convey the estate.

But even assuming, that the trustees might have bound themselves not to interfere with the rights and interests created by the marriage settlement, by giving their consent to it, in point of fact no such consent was ever given. That they consented to the marriage is clearly proved, and this would, of course, prevent their afterwards making it the ground of objection to the conveyance of the fee to the heir. But it is not correct to say, that the consent to the marriage carried with it a consent to the marriage settlement. The trustees' names were designedly omitted as consenting parties to the settlement. But if they had consented to the settlement, it would in my judgment have made no difference. All parties knew, or ought to have known, that the provisions of the settlement would only be contingent, and conditional, depending upon the conduct of the heir till his age of twenty five years, and the settlement itself refers to a conveyance of the estate from the trustees, and binds the heir, upon obtaining this conveyance, to complete his feudal title, and to grant the necessary deeds and conveyance for vesting the estate in the trustees under the settlement.

On these short grounds I think that the interlocutors are right, and that they ought to be affirmed.

LORD KINGSDOWN.—I entirely concur with my two noble and learned friends.

Interlocutors affirmed, and appeal dismissed with costs.

Appellants' Agents, W. Sime, S.S.C.; Domville, Laurence, and Graham, Lincoln's Inn, London.—*Respondents' Agents*, W. Waddell, W.S.; Dodds and Hendry, Westminster.

MARCH 8, 1866.

THE COMMISSIONERS OF THE LEITH DOCKS, *Appellants*, *v.* JAMES MILES (Inspector of the Poor of the Parish of North Leith) and Others, *Respondents*.

Poor—Assessment — Docks—Public Statutory Trustees—Exemption—*The commissioners or trustees of docks, harbours, wharves, and property of that description, are liable to be rated to the poor, in respect of their receipts over and above expenditure, whatever be the purposes to which those receipts are by Statute directed to be applied, if the Statute do not expressly exempt such trustees.*

Res Judicata—Rateability to Poor Rate—*The House of Lords previously decided that the commissioners were not assessable except as to an annual sum of £7860.*

HELD, *That that previous decision was conclusive only as to the rate for that year, and did not preclude the question being again raised, that as to future rates the commissioners were liable, though the circumstances in both years were precisely the same.*[1]

Since the judgment appealed against in this case was delivered, judgment had been given in the appeals of *Clyde Trustees* v. *Adamson*, 4 Macq. Ap. 931; 37 Sc. Jur. 512, *ante*, p. 1351; and *Mersey Docks* v. *Cameron*, 11 H. L. C. 443.

The Attorney General (*Palmer*), *Lord Advocate* (*Moncreiff*), and *Anderson* Q.C., for the appellants.—There are three points on which the appellants rely—(1.) that the point as to their exemption from rateability, in respect of the harbour, is *res judicata*; (2.) that the revenues are appropriated by Statute to certain public purposes; (3.) that dues derived from a harbour are not assessable.

1. As to *res judicata*, the former action was between substantially the same parties, and relating to the same subject matter. The judgment of the Court of Session of 1852, so far as not appealed from, is therefore *res judicata*. The declarator in that action was to have it found and declared, that the said Commissioners and their successors are liable to pay poor's rates in the parish of North Leith, and that on account of the foresaid subjects, in all time coming. The Court of Session there found that the Commissioners were not liable, and only held them liable to the extent of the £7860, part of their revenue, on which last point alone that judgment was reversed by the House on appeal, 2 Macq. Ap. 28; 27 Sc. Jur. 229, *ante*, p. 432. The House, it is true, did not in 1855 go into the general question of liability, but rather assumed there was no liability.

[LORD CHANCELLOR.—My recollection of that case is, that the judgment of the Court below was held to be wrong, because it in form assessed a sum of £7680, instead of assessing the land; and we said nothing at all as to the general question of rateability.]

There was nothing in the judgment of the House on that occasion inconsistent with the finding of the Court of Session, that the docks were not rateable generally. The same interest, therefore, being now represented as in the former case, the judgment is *res judicata*, for the fact that there is a different collector of rates can make no difference—*Marquis of Huntly* v. *Nicol*, 20 D. 374; *E. Leven* v. *Cartwright*, 23 D. 1038; Ersk. iv. 3, 1. It is not intended, on the part of the appellants, to dispute the general principle, which the House had laid down in the last session of Parliament, relating to the rateability of the Mersey Docks and the Clyde Docks; but the present case differed in some points from those cases. If the case of *Adamson* v. *The Clyde Trustees* be examined, it will be found that the conclusions of the summons in that case were much the same as in the present case, and there was no appeal to the House against the decision of the Court of Session, relating to the Clyde harbour itself. Therefore, the House has not yet

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[1] See previous report 2 Macph. 1234: 36 Sc. Jur. 617. 1 S. C. L. R. 1 Sc. Ap. 17: 4 Macph. H. L. 14; 38 Sc. Jur. 279.