Saturday, June 11.

FIRST DIVISION.

GLASGOW CORPORATION *v.* GLASGOW PARISH COUNCIL AND OTHERS.

Valuation Roll—Statute—Lands Valuation (Scotland) Act 1854 (17 *and* 18 *Vict. cap.* 91), *sec.* 18—*Glasgow Municipal Act* 1878 (41 *Vict. cap. c.*), *sec.* 11, *and City of Glasgow Act* 1891 (54 *and* 55 *Vict. cap. cxxx*), *sec.* 12—*Implied Repeal by Subsequent Private Acts of Optional Mode of Recovering Expenses of Valuation Roll given in Prior Public Statute.*

The Lands Valuation (Scotland) Act 1854, section 18, specified four modes of defraying the expenses of making up the valuation roll and as applicable to a burgh. These are—(1) An assessment to be levied parochially along with the poor rate, (2) a general assessment for the special purpose to be levied by the Corporation on the whole area of the burgh, (3) a similar assessment but by way of addition to some other assessment, (4) a contribution from the common good, or other fund available. The City of Glasgow adopted the second mode. The Glasgow Municipal Act 1878 (section 11), extending the city boundaries, provided that the expense of making up the valuation roll should be paid "out of the assessments authorised to be levied by the Corporation under the powers of the Valuation Acts and this Act." The City of Glasgow Act 1891 (section 12), further extending the city boundaries, made provision that the valuation roll should be made up as previously provided. The Corporation now proposed to adopt the first mode specified in the Act of 1854. *Held* that the Corporation were limited by the Acts of 1878 and 1891 to "assessments authorised to be levied by the Corporation," and that the first mode was therefore incompetent.

Opinion per Lord Johnston that (1) and (2) were not optional but circumstantial alternatives, (1) being only open where the boundaries of burgh and parish were coterminous, and that (3) was optional for the second but not for the first.

The Lands Valuation (Scotland) Act 1854 (17 and 18 Vict. cap. 91), section 18, enacts — "After the completion of each annual valuation as aforesaid under this Act, the commissioners of supply of each county and the magistrates (*i.e.*, town council) of each burgh shall cause an account to be made up of the costs and expenses attending the same, and shall ascertain and fix the just amount thereof, and shall cause such amount to be apportioned upon the parishes within such county and burgh respectively, according to the yearly rent or value thereof as fixed by such valuation, and the same shall be assessed and levied along with the assessment for the relief of the poor for the current year within such parishes respectively, or they shall cause such amount, along with such reasonable sum as they may deem necessary to meet the expenses of collection, to be assessed upon the lands and heritages within their county or burgh respectively, included in such valuation, by a rateable assessment upon such lands and heritages according to the yearly rent or value thereof as fixed by such valuation, the proprietors and occupiers of such lands and heritages being liable to pay such assessment equally between them, or, in the option of such commissioners of supply or magistrates (*i.e.*, town council) respectively, shall cause such amount to be assessed along with and as part of and by way of addition to any other assessment which may be leviable according to the valuation established by this Act within such county or burgh; and any balance of funds remaining on hand from time to time in any county or burgh, arising from such assessment under this Act in any one year, after answering the expenses of the year with reference to which such assessment was imposed, may be retained and applied by the commissioners of supply of each county, and the magistrates (*i.e.*, town council) of each burgh respectively, in such manner as they may deem fit, for defraying the expenses of making up valuation rolls under this Act in subsequent years, but for no other uses or purposes whatever: Provided always, that where in any county or burgh there are or shall be funds available for the purpose, it shall be lawful for the commissioners of supply of such county or magistrates (*i.e.*, town council) of such burgh, as the case may be, to defray such costs and expenses as aforesaid out of such available funds, in place of resorting to assessment under the provisions of this Act."

The Glasgow Municipal Act 1878 (41 Vict. cap. c), by which the municipal boundaries of Glasgow were extended, section 11, enacts—"The assessor for the burgh under the Acts in force for the time being for the valuation of lands and heritages in Scotland shall, at the same time as he makes up the valuation roll for the existing burgh for the year from Whitsunday 1878 to Whitsunday 1879, make up also a valuation roll for the district added; and the assessor for the city and royal burgh of Glasgow shall annually thereafter make up a valuation roll for the city and royal burgh of Glasgow; and the procedure and right of appeal and forms shall be such and the same as are provided by the said Acts in relation to the burgh; and for all municipal and other purposes, and for all assessments, the said rolls shall be deemed to be the valuation rolls under the said Acts, and all other Acts, general or local, and the expense of making up such roll shall be paid out of the assessments authorised to be levied by the Corporation under the powers of the Valuation Acts and this Act. . . ."

The City of Glasgow Act 1891 (54 and 55 Vict. cap. cxxx), by which the municipal boundaries of Glasgow were further extended, section 12, enacts—"The assessor for the city and royal burgh under the Valuation Acts, shall, at the same time as he makes up the valuation roll for the existing burgh for the year from Whitsunday 1891 to Whitsunday 1892, make up a valuation roll for the district added, and the assessor shall annually thereafter make up a valuation roll for the city and royal burgh, and the procedure therefor and the right of appeal and forms shall be the same as nearly as may be as are provided by the said Acts in relation to the existing burgh, and for all municipal purposes and for all assessments such rolls shall be deemed to be the valuation rolls under the said Acts and all other Acts, general or local. . . ."

The Glasgow Corporation Tramways Order 1903 (confirmed 3 Edw. VII, cap. ccxxviii) enacts, section 21 (1) — "The assessor for the city under the Lands Valuation (Scotland) Acts shall make up on or before the 15th day of March annually a supplementary valuation roll showing for the portion of the year to Whitsunday then next, in the form prescribed for the valuation roll of the city, the rental or value of all subjects not included, and of all subjects included but entered as unoccupied, in the valuation roll made up at the 15th August annually which may have come into existence or occupancy after the Whitsunday preceding, and the provisions of the said Acts, including the provisions as to notices, appeals, and courts for hearing the same, shall apply to such supplementary valuation roll as if it were therein referred to."

The Corporation of the City of Glasgow (*first parties*) and the Parish Councils of the Parishes of Glasgow, Govan, Cathcart, Eastwood, and Rutherglen (*second parties*) presented a special case to the Court dealing with the method by which the Corporation could recover the expenses of making up the burgh valuation roll. [The case also dealt with the expenses of making up the parliamentary and municipal voters' rolls, but this raised no separate and distinct point of law.]

The case stated—"1. The first parties, who are the Corporation of the City of Glasgow, annually cause to be made up on or before 15th August and completed by 30th September in every year, by an assessor appointed by them for the purpose, a valuation roll showing the yearly rent or value for the time of the whole lands and heritages (excepting those valued by the Assessor of Railways and Canals) within the municipal boundaries, and separately within the parts of each parish situated within the said boundaries, as required by the provisions of the Lands Valuation (Scotland) Act 1854, and particularly sections 1, 3, and 4 thereof. Under section 21 of the Glasgow Corporation Tramways Order 1903, confirmed by Act of Parliament, a supplementary valuation roll is also made up annually by the city assessor on or before 15th March in every year, showing, for the portion of the year to Whitsunday then next, the rental or value of all subjects not included, and of all subjects included but entered as unoccupied, in the valuation roll made up at 15th August annually, which may have come into existence or occupancy after the Whitsunday preceding. . . The municipal boundaries embrace parts only of each of the five parishes of Glasgow, Govan, Cathcart, Eastwood, and Rutherglen, and the second parties are the respective parish councils of these parishes. 2. The valuation roll, and supplementary valuation roll, after the same have been completed, are duly authenticated, and the town clerk of the first parties, as required by section 12 of the Lands Valuation (Scotland) Act 1854, thereafter furnishes to the clerks of the second parties a copy of so much of the roll as relates to the parts of their respective parishes within the burgh. The valuation roll and supplementary valuation roll form the basis on which the burgh assessments levied by the first parties are imposed, and also form the basis on which the assessment rolls for the poor and school rates levied by the second parties are made up, the assessments or rates being charged at a certain rate per £ of the annual value of the lands and heritages entered in the said rolls. . . . 19. The cost of compiling the said valuation roll and registers of parliamentary and municipal voters in Glasgow has increased from £2300 in 1855 to £14,000 or thereby in 1909, and has hitherto been defrayed by the first parties by special assessments levied by them for the purpose, under the Lands Valuation (Scotland) Act 1854, and Acts amending the same, as regards the cost of the valuation roll, and under the Burgh Voters Registration (Scotland) Act 1856, and Acts amending the same, as regards the cost of the parliamentary and municipal voters' rolls, and collected by the first parties along with the other local rates assessed and levied by them. The first parties recently proposed to apportion the cost among the parishes embraced in part within the municipal boundaries of the city of Glasgow according to the yearly rent or value of the parts of the respective parishes situated within the municipal boundaries, and to call upon the second parties to levy the same along with the poor rate. The second parties, however, on being communicated with, disputed the legality of this proposal, and the present special case has accordingly been brought to have the questions at issue determined."

The *question of law* was—"(1) Are the first parties entitled to apportion upon the parish councils of the parishes situated in part within the boundaries of the city of Glasgow, according to the yearly rent or value of the parts of the respective parishes situated within the boundaries of the said city, the amount of the costs and expenses attending the preparation of the valuation roll for the said city, as annually ascertained in terms of the Lands Valuation (Scotland) Act 1854, and to call on the

second parties to assess and levy in their respective parishes the proportions of the costs and expenses of the said valuation roll respectively apportioned upon them by the first parties, along with the assessments levied by the second parties for the relief of the poor for the current year in their respective parishes, and to pay over the sums so assessed or levied to the first parties?" [A second question dealt with the expenses of making up the parliamentary and municipal voters' rolls, raising the same point, and consequently not requiring also to be included in this report.]

Argued for the first parties — Under the Lands Valuation (Scotland) Act 1854 (17 and 18 Vict. cap. 91), there were four alternatives conferred on town councils under which they could recover the expense of making up the valuation rolls, viz.—(1) Apportionment according to yearly rent on parishes within the burgh to be collected along with the poor rate; (2) Assessment on lands and heritages within the burgh according to yearly rent, to be paid equally between them by occupiers and proprietors; (3) Assessment along with and as part of, and by way of addition to, any other assessment which might be leviable in the burgh; (4) Payment out of the common good or some such fund. Any one of these four modes was open to the Corporation and the choice lay with them alone. There were two suggestions made by the second parties, viz. —(1) That the first mode of recovering the expense of making up the valuation roll only applied where the boundaries of the parish and burgh were coincident, and (2) that the subsequent Acts dealing with extended boundaries superseded the Act of 1854. The former was not a likely construction unless it was expressed in clear terms. The Statute of 1854 distinctly gave the town council an alternative option (1) to present a demand note to the parish councils; (2) to levy assessments out of their own rates in one of two ways. The argument of the second parties was, in effect, to read in the words "wholly within the burgh" into section 18, but until the case of *Edinburgh* there never was such a case, and therefore this construction of the statute started with the assumption that the section would be entirely nugatory as regards burghs and could only apply to counties. As to the second suggestion of the second parties, the later Acts were only intended to carry forward to the roll of the extended burgh all the provisions of the earlier Act. Something much more definite would be required to imply that the options of the earlier Act were thereby repealed.

Argued for the second parties — Section 18 of the Act of 1854 dealt with both burghs and counties. The first alternative only applied where the whole parish was within the burgh. The second was not a true alternative, and it was only when you came to the third that you got a true option. It might be admitted that in 1854 the number of burgh areas conterminous with parishes was at any rate very small. But if this were not the true construction of the section the administration would be landed in inextricable confusion. No power was given by statute to the parish to levy the contribution to be made to the burgh on that part only of the parish which lay within the burgh area. This meant that the parish must levy the contribution on the whole parish, landward as well as burghal, and this would be a most inequitable result. In other words, the constituency assessed under the first option differed from the constituency assessed under the second. In any event, however, section 18 was superseded by the terms of the later Acts. If section 18 had still been intended to apply it would have been easy to say so, or else to leave matters as they stood.

At advising—

LORD PRESIDENT — The question that is here raised is between the Glasgow Corporation and the parish councils of various parishes parts of which are within the city of Glasgow, and it relates to the legality of the Glasgow Corporation calling upon these councils to raise by assessment along with the poor-rate the sum necessary for making up the burgh valuation roll. Admittedly the expenses necessitated by the making up of the burgh valuation roll have hitherto been defrayed by an assessment levied *eo nomine* by the Glasgow Corporation themselves upon lands and heritages within the city and included in that valuation roll. But the Corporation propose to alter that method of assessment, and, the legality of the method now proposed being questioned, the present special case has been brought to determine it.

The matter depends, first, upon the provisions of the Lands Valuation (Scotland) Act of 1854, and then on the provisions of certain local Acts which deal with the preparation of the roll.

I need scarcely remind your Lordships that the Act of 1854 was the first general Act providing for land valuation, and it provided for the establishment of an annual valuation in counties and burghs. The 18th section is as follows—"After the completion of each annual valuation as aforesaid under this Act, the commissioners of supply of each county, and the magistrates [*i.e.*, town council] of each burgh, shall cause an account to be made up of the costs and expenses attending the same, and shall ascertain and fix the just amount thereof, and shall cause such amount to be apportioned upon the parishes within such county and burgh respectively, according to the rent or yearly value thereof as fixed by such valuation; and the same shall be assessed and levied along with the assessment for the relief of the poor for the current year within such parishes respectively." There ends the first of the various courses that are open, and then comes the second—"Or they shall cause such amount, along with such reasonable sum as they may deem necessary to meet the expenses of collection, to be assessed upon the lands and heritages within their county or burgh respectively included in such valuation by

a rateable assessment upon such lands and heritages according to the yearly rent or value thereof as fixed by such valuation, the proprietors and occupiers of such lands and heritages being liable to pay such assessment equally between them." That is the second course open, and that is the course which admittedly has hitherto been followed. The third is—"Or, in the option of such commissioners of supply or magistrates [*i.e.*, town council] respectively, shall cause such amount to be assessed along with and as part of and by way of addition to any other assessment which may be leviable according to the valuation established by this Act within such county or burgh." There is also a fourth, which I need not read, which provides that where there are funds belonging to the burgh (such as the common good) the amount may be taken out of these funds.

To paraphrase those provisions roughly, the three alternatives might be expressed in more common language thus—You may either put it on the poor rate, in which case you, not being a poor rate authority, must ask those who are, namely at the time of which we are speaking the parochial board, now of course the parish council; or you may levy an assessment by yourselves; or, if you like, instead of levying a special assessment, you may take it along with any other assessment which you do levy, provided that that assessment is one which is "leviable according to the valuation established by this Act." I have no doubt about the meaning of that phrase. I say this because there was some argument as to whether it had specially in view the exceptional position of railway property. It may have that effect, but the meaning of the phrase is, I think, beyond doubt. It means that you must take a *real* rent assessment. Your Lordships remember very well that in 1854 there were certain assessments which were levied according to the *valued* rent, and this provision meant that you must not take the *valued* rent assessment, you must take the *real* rent assessment.

Now, as I have said, the practice having been to take the second of the three courses, the Corporation now propose to revert to the first. They are met by two objections put forward by the second parties. They are met by the objection that the first of the courses does not apply to any case except the case where the boundaries of the burgh are coterminous with the boundaries of the parishes, and that is not the case in Glasgow. They are also met by the objection that, however that may be, the matter is otherwise settled by the Glasgow Acts which followed the Act in question.

The first question I think is a question of very considerable difficulty, and the difficulty appears as soon as you come to close quarters with the words in that first alternative, and find that they are certainly very difficult to apply as they stand to a case where the boundaries are not coterminous. What are the Town Council to do, having got the expenses? They are to cause these to be "apportioned upon the parishes within such county and burgh respectively." That would certainly seem to take the parishes as entities which are to be compared one with another. But that meaning cannot easily be put upon the section in a case where the boundaries are not coterminous, because it goes on "according to the yearly rent as fixed by such valuation." Now take the case of a burgh. The burgh makes up its valuation roll. It has—let me suppose a concrete case—one purely burghal parish, it has another parish partly within its bounds which is burghal-landward. Well, the two parishes are the two entities. So far as the first words go you would have to apportion as the proportion of the value of the one parish is to the value of the other. But then you cannot find the value of the landward-burghal parish "as fixed by such valuation," namely, the valuation in question, because the valuation in question does not include the landward portion of the burghal-landward parish. Therefore you would have to read into the words one of two things. You would either have to read in "the proportions of (1) the burghal parish and (2) that part of the burghal-landward parish which is within the burgh valuation" (which, of course, is not taking the words exactly as they stand); or you would have to read the words "as fixed by such valuation" as extending, over and above the valuation *de quo tractatur*, namely, the burgh valuation, to the valuation appointed by the Act, namely, that intended county valuation which takes in this particular bit of the landward-burghal parish.

Both these methods seem to me to be forcing these words into a somewhat Procrustean bed, and I would easily have come to the conclusion that they were really only meant to deal with the case where the burgh boundaries and the parish boundaries were coterminous, in which case it is quite obvious that no difficulty would arise, were it not for the fact that, taking one's knowledge into account as one is entitled to do, I do not believe that there was a single county or burgh in Scotland to which, upon that reading, this section could have applied; because I do not believe that in 1854 there was a burgh or, for the matter of that, a county—and nobody has been able to suggest the name of any one to me—where the boundaries of the parishes were exactly coterminous with the area of the county or burgh (as the case might be) which was being valued. There was no reason that there should be, because, as your Lordships remember, the origin of parochial divisions is lost in antiquity,—but it was certainly ecclesiastical. The creation of the burghs was long after the creation of parishes, and the creation of burghs was by royal charter. I am talking, of course, of the royal burghs where certain lands were erected into a burgh and held burgage, and that entirely irrespective of the parochial boundaries. The truth is that the idea of having an absolutely coterminous boundary (which

is very convenient) is quite a modern idea; and at this present moment it has been achieved, so far as I am aware, only in Edinburgh.

I am therefore somewhat loth to put a construction upon the clause which would really come to this, that those who drew the 1854 Act were so practically unaware of the state of the boundaries in Scotland that they drew a clause which would apply nowhere, and I think if I had to make my election between my difficulties I would rather do some violence to the words in the way which I have already indicated than I would hold that the clause was entirely inept by having nothing to apply to.

But in the view that I take of this case it is not necessary to decide that question. I have gone into the matter because I think it probably had historically something to do with the situation as we find it—that is to say, that anyone coming to look at the clause at close quarters would find that to employ it in the case of a burgh where there were burghal-landward parishes was no easy matter. I think therefore that the state of the clause is very probably a historical reason why, to begin with, the Corporation of Glasgow never tried to adopt the first alternative, but were content to take the perfectly easy, the perfectly clear, course which is given them by the second alternative method of assessment.

That being so, Glasgow afterwards extended its boundaries, and in the Municipal Act of 1878 there is a special section dealing with the valuation roll. This is all the more noticeable, I think, because, supposing one had been drawing an Extension Act for Glasgow in 1878, I am not clear that one would have thought it necessary to have a section dealing with the valuation roll at all. It would have been probably enough in law if one had arranged the extent of the new territory and then had inserted a general section which subjected the new territory to all the incidents of the old. But that was not the way in which it was done, and in section 11 we have a section which first of all provides for making up the valuation roll for that particular year, viz., 1878-1879, for the added district, and then goes on—"And the assessor for the city and royal burgh of Glasgow shall annually thereafter make up a valuation roll for the city and royal burgh of Glasgow; and the procedure and right of appeal and forms shall be such and the same as are provided by the said Acts in relation to the burgh; and for all municipal and other purposes, and for all assessments, the said rolls shall be deemed to be the valuation rolls under the said Acts and all other Acts general or local, and the expense of making up such roll shall be paid out of the assessments authorised to be levied by the Corporation under the powers of the Valuation Acts and this Act."

It is quite clear that after that Act of 1878 was passed the only roll which an assessor of the city and royal burgh of Glasgow could make up was a roll under the provisions of this section 11, and the expenses of this roll are to be paid out of the assessments authorised by the Valuation Acts to be levied by the Corporation. When you turn back again to the Valuation Acts it is quite clear that the only assessments authorised to be levied by the Corporation are what I have called alternatives 2 and 3—that is to say, either a direct assessment or an assessment levied along with any existing assessment levied upon the real rent. Now that does not astonish me, because I think it was simply looking in the face and perpetuating the practice that up to that time existed, and I think that these words were *in initio* chosen by the Glasgow advisers themselves. I think they simply took matters as they found them, and for their own purpose chose to perpetuate them in that form.

When you look at the subsequent Acts it seems to me that they leave things precisely as you find them in the Act of 1878. Again in 1891 the assessor is told to make up a roll, and then the roll is to be a valuation roll under all the Acts that had been passed up to that time. That seems to me really to say in so many words—"This shall be the roll as provided for by your Act of 1878." The provision as to the additional roll in the Corporation Tramways Order of 1903 does not appear to me to alter the matter.

I am accordingly of opinion that by the phraseology of the Glasgow Acts the Corporation have tied themselves down to the existing practice, and that it is not absolutely necessary to consider whether if these Acts had not been passed they could or could not have made the alteration now contemplated under the powers given by the Act of 1854. I am therefore for answering the first question in the negative.

The second question, which deals with the parliamentary voters' roll and the municipal voters' roll, must be answered exactly in the same way. I do not need to go through the thing again, because, although the provisions are contained in other Acts, the expressions are really *totidem verbis* of the first Act, and of course the same reasoning *mutatis mutandis* applies to these Acts. I therefore think that the second question also ought to be answered in the negative.

LORD KINNEAR—I agree entirely with the Lord President.

LORD JOHNSTON—When the Valuation Act 1854 provided for a uniform valuation for the purposes of assessment of counties and burghs in Scotland—and "burgh" in that Act was defined as meaning and including only royal burghs and the parliamentary burghs of that date, *i.e.*, those created by the Reform Act 1832—it was necessary to provide for the expenses of making up the valuation rolls. Separate rolls were (sec. 1) to be made up for every county and every burgh, "and separately within each parish or part of a parish situated within such county or burgh respectively." These words have an important bearing on the question at issue. The

roll of each year is to be made up on or before 15th August. But appeal is allowed, all such appeals to be disposed of by 30th September. The valuation roll cannot therefore be said to be completely adjusted until the end of September in each year, after which it becomes the valuation roll of the county or burgh, as the case may be, from the Whitsunday previous to the Whitsunday following, and is to be the basis of all assessments for that year.

There is one comprehensive section (sec. 18) which makes provision for the expense of making up the roll, and which deals with both counties and burghs. As it is somewhat curt in its expression, a certain amount of doubt as to its meaning and effect exists. Reading it as if it applied only to burghs, it provides that the magistrates shall cause an account of the costs of making up the roll to be prepared and shall adjust the amount thereof. But having done so, three or four different modes of raising the amount so adjusted are provided, and the question which has first to be determined is, are these modes optional alternatives, or are they circumstantial alternatives. In considering the terms of the section, it must be premised that a burgh may be composed of one or more parishes entirely burghal, that is, with boundaries conterminuous with those of the burgh, although it is doubtful whether there are any such in Scotland, and if there are they must be few in number. But a burgh may be, and in the ordinary case is, composed of the burghal part or parts of a parish or parishes partly burghal partly landward, in which case the valuation of the landward part of such parish or parishes will be found in the county valuation roll, and of the burghal part of such parish or parishes in the burgh valuation roll.

The four modes of providing the cost of making up the roll are, putting them shortly, (1) an assessment to be levied parochially along with the poor rates, or (2) a general assessment for the special purpose on the whole area of the burgh, or (3) a similiar assessment by way of addition to any other assessment levied in the burgh, or (4) a contribution from the common good or other fund available.

Consideration of this latter mode may be discarded.

I have come to the conclusion that the first two modes must be read, not as optional alternatives, but as alternatives depending on circumstances, and that the third mode is an optional alternative for the second mode but not for the first.

What is first to be done under the first mode is to apportion the amount of the ascertained cost upon the parishes within the burgh according to the yearly rent or value as fixed by the valuation, and then the apportioned sum is to "be assessed and levied along with the assessment for the relief of the poor for the current year within such parishes respectively." It is impossible to read this as applicable except where a burgh is composed of a parish or parishes wholly burghal. It may be that the Legislature provided for a case that did not exist in fact. But it is impossible to read the words "parishes within the burgh" as meaning "parishes or parts of parishes within the burgh." And it is still more impossible to adjust the method of assessing and levying indicated in the latter clause of the provision to the case of a part of a parish. We must, I think, take the words as we find them, and, so taking them, the only conclusion that can be drawn is, that the Legislature, it may be only to provide for all possible circumstances and having no special cases in view, made this provision for the possibility of a burgh being composed of nothing but a burghal parish or parishes.

There is indeed no intrinsic improbability in the opposite contention being the real intention. But as I have endeavoured to show the Legislature had it prominently before it at the outset that the valuation would have to be made separately not only within each parish, but within each "part of a parish situated within" burgh. And there is no reason why the contended intention should not have been as clearly expressed. Accordingly this first mode of raising the apportioned amount cannot as things were in 1854 have applied to Glasgow, which was composed in large part, if not altogether, of the burghal parts of burghal landward parishes.

The second mode is adapted to such circumstances. It provides for a special assessment over the whole area of the burgh irrespective of parochial divisions.

And the third mode is introduced by the significant words, "or in the option of" the magistrates, and provides that instead of a special assessment under the second mode, an addition may be made to any existing assessment levied on the whole area of the burgh.

Did therefore the first question in the case depend upon the Valuation Act of 1854 alone, it would, I think, fall to be answered in the negative.

But that this is the proper answer to the question is put beyond doubt by the 11th section of the Glasgow Municipal Act of 1878, which extended the boundaries. For, recognising the inapplicability of the first mode of raising the necessary sum, and consistently with the practice which had followed on the Act of 1854, it says "the expense of making up such roll shall be paid out of the assessments authorised to be levied by the corporation under the powers of the Valuation Acts and this Act." That cannot possibly apply to the first mode of assessing and levying under the Act of 1854, along with the poor rate, but can only apply to the second and third modes above referred to.

It follows *pari ratione* that the second question in the case must also be answered in the negative.

The Court answered the question in the negative.

Counsel for the First Parties—Sol.-Gen. Hunter, K.C.—D.-F. Dickson, K.C.—Macmillan. Agents—Simpson & Marwick, W.S.

Counsel for the Second Parties—Clyde, K.C.—Hon. W. Watson. Agents—Mackenzie, Innes, & Logan, W.S.

Wednesday June 29.

FIRST DIVISION.

DAILUAINE-TALISKER DISTILLERIES, LIMITED *v.* MACKENZIE AND OTHERS.

Process—Company—Companies (Consolidation) Act 1908 (8 *Edw. VII, c.* 69), *sec.* 120—*Order Asked for Meetings—Objection in Single Bills to Competency of Petition—Opportunity Given to Lodge Answers.*

A petition was presented, or bore to be presented, by a certain company for authority under section 120 of the Companies (Consolidation) Act 1908 to call and hold meetings to consider, and if so resolved approve of, a scheme of arrangement whereby the company would be absorbed in another company, the shareholders of the company receiving in return shares of the other company. A motion was made in Single Bills, in terms of the prayer of the petition, for intimation on the walls and in the minute-book in common form, and for an order for meetings to be convened of the members of the company, and of particular different classes of shareholders within the company, to consider, and if so resolved approve of, the scheme of arrangement. Objection was taken on behalf of certain shareholders to the order for meetings on the ground that the petition was the petition of the directors and not of the company, and not having been proposed "between the company and its members" was incompetent under section 120. The Court, *holding* that it was necessary that an opportunity should be given for anyone who conceived that the petition was incompetent and did not fall within the provisions of the statute to be allowed to say so, appointed the petition to be intimated on the walls and in the minute-book in common form, and allowed all concerned to lodge answers, if so advised, within four days thereafter.

Company—Companies (Consolidation) Act 1908 (8 *Edw. VII, c.* 69), *sec.* 120—"*Arrangement Proposed between a Company and its Members*"—*Competency.*

The Companies (Consolidation) Act 1908, section 120 (1), enacts—"Where a compromise or arrangement is proposed between a company . . . and its members or any class of them, the Court may, on the application in a summary way of the company or of any . . . member of the company . . . order a meeting of . . . the members of the company or class of members, as the case may be, to be summoned in such manner as the Court directs."

A petition was presented in the name of a company, but admittedly really by the directors thereof, for authority under section 120 of the Companies (Consolidation) Act 1908 to call and hold meetings to consider, and if so resolved approve of, a scheme of arrangement whereby the company would be absorbed in another company, and finally for sanction of the scheme.

The Court *held* that the petition was premature, because before they could order a meeting under section 120 they must have before them an arrangement or proposed arrangement between the company and its members, and be asked by the company or by its members to interfere for the purpose of calling a meeting, and that neither of these conditions was satisfied, because the directors were not entitled to speak for the company in this matter, amalgamation not being an ordinary purpose of management; but *sisted* the petition to give the directors an opportunity of bringing about that an arrangement should be proposed between the company and its members.

The Companies (Consolidation) Act 1908 (8 Edw. VII, c. 69), section 120 (1), is quoted in the rubric, *supra.*

The Dailuaine-Talisker Distilleries, Limited, presented a petition for authority to call and hold certain meetings, and for sanction of a scheme of arrangement. The nominal capital of the company authorised by the memorandum and articles of association was £580,000, divided into 29,000 preference shares of £10 each and 29,000 ordinary shares of £10 each. The whole of the said share capital was issued, and was fully paid. Of the said ordinary shares 9000 were voluntarily surrendered to the company by shareholders conform to special resolution passed on 4th and confirmed on 25th May 1901. That reduction of capital was duly sanctioned by the Court. Accordingly the capital of the company was at the date of the petition £490,000, divided into 29,000 preference shares of £10 each—£290,000, and 20,000 ordinary shares of £10 each—£200,000. The preference shares were entitled to a fixed cumulative preferential dividend at the rate of 5 per cent. per annum, and to rank both as regards dividend and capital in priority to the ordinary shares.

The company was established, *inter alia*, for the following objects:—"(1) To acquire and take over as going concerns the business of distillers, maltsters, bonded store and warehouse-keepers, merchants, and others, heretofore carried on at Dailuaine Distillery in the county of Banff, Talisker Distillery in the Isle of Skye, the Imperial Distillery and the Central Glenlivet Bonded Warehouses, Carron, Strathspey, in the