statement to which you, the directors, invited me to pin my faith."

Upon the whole matter I am of opinion that the Lord Ordinary was right, and that his interlocutor should be adhered to.'

LORD KINNEAR—I concur.

LORD MACKENZIE—I am of the same opinion. I do not think that the pursuer has set forth any relevant case for getting rid of the shares for which he applied. The pursuer's offer to take these shares was an offer to take them on the terms of the prospectus and on no other terms, and the acceptance of his application of the allotment of the shares was an acceptance of his offer on these terms. But then by the prospectus is meant the prospectus as a whole. I agree with the construction already put upon its terms, and do not think it necessary again to go over the different clauses. I content myself with saying that I am unable, on a just construction of this prospectus, to find that the company put forward Mr Littler as their agent in making any of the representations that are contained in his report, and therefore there is no relevant averment that the company or the directors, either by themselves or through their agent, made any misrepresentation in regard to matters of fact, and more particularly no misrepresentation as set out in article 6 of the condescendence.

But then, if Littler is taken as an outside party—and that was the condition of the alternative argument presented to us by Mr Sandeman—equally I think the pursuer has made no relevant averment, because in order to get relief as against the defenders he would require to aver that the contract that he made with them was not only on the basis of representations contained in the report, but was, to the knowledge of the directors, based upon the statements made by Littler in his report. That is to say, I entirely adopt the view of Mr Justice Romer's judgment in the case of *Lynde*, which, as your Lordship has pointed out, is contained in the ninth edition of Lord Justice Buckley's work at p. 91. The same point is dealt with in the sixth edition of Lord Lindley's book on companies, vol. i, p. 96. As it is impossible for the pursuer here, looking to the terms of the prospectus, to say that the contract he made was, to the knowledge of the directors, based upon statements in Littler's report, I agree that the action must fail.

LORD JOHNSTON was sitting in the Land Valuation Appeal Court.

The Court adhered.

Counsel for the Pursuer and Reclaimer—The Dean of Faculty (Dickson, K.C.)—Sandeman, K.C.—J. A. Christie. Agents—St Clair Swanson & Manson, W.S.

Counsel for the Defenders and Respondents—Macmillan, K.C.—Gentles. Agent—J. Stuart Macdonald, Solicitor.

Saturday, November 16.

FIRST DIVISION.

GLASGOW PARISH COUNCIL *v.* GRAHAM AND ANOTHER.

Local Government — Assessment — House Letting and Rating (Scotland) Act 1911 (1 *and* 2 *Geo. V, cap.* 53), *sec.* 7, *sub-secs.* (1), (2), *and* (3)—*Liability of Owner for Occupiers' Rates where no Occupier Entered in Valuation and Assessment Rolls.*

A parish council is entitled in its capacity of assessing authority to recover from the owner of a "small dwelling-house," in the sense of the House Letting and Rating (Scotland) Act 1911, the occupiers' rates for the current financial year irrespective of the fact whether an occupier is entered in the valuation and assessment rolls or not, subject to repayment to such owner of the proportion of the assessment effeiring to the unoccupied period.

Local Government — Assessment — House Letting and Rating (Scotland) Act 1911 (1 *and* 2 *Geo. V, cap.* 53), *sec.* 7, *sub-sec.* (6)—*Deduction Allowed to Owners to Cover Cost of Collection of Occupiers' Rates.*

The House Letting and Rating (Scotland) Act 1911, enacts—Section 7, subsection (6)—"Every assessing authority shall . . . allow to owners from all occupiers' assessments levied on and recovered from them in place of the occupiers (less any repayments in pursuance of a claim under this section) a deduction, to cover cost of collection, on the following scale (that is to say)—in the city of Glasgow two pounds ten shillings per centum."

Held that such owners were entitled at the time of payment to deduct the allowance of 2½ per cent. from the total assessment then demanded from them, but that if subsequently they claimed repayment in terms of section 7 (3) of the Act, they must then allow as a counter deduction 2½ per cent. on the sum so claimed to be repaid.

On 25th October 1912 the Parish Council of the Parish of Glasgow (*first parties*) and Mungo Macdougal Graham, accountant, Glasgow, and another (*second parties*) presented a Special Case in which they craved the Court to determine, *inter alia*, whether the first parties were entitled, in virtue of the provisions of the House Letting and Rating (Scotland) Act 1911 (1 and 2 Geo. V, cap. 51), to levy on or recover from them occupiers' rates in respect of certain small dwelling-houses of which they (the second parties) were owners, and which at the commencement of the financial year were entered in the valuation and assessment rolls as empty.

The Case stated—"1. By section 33 of the Poor Law (Scotland) Act 1845 (8 and 9 Vict. cap. 83) it is provided—'And be it enacted that it shall be lawful for the parochial board of any parish . . . to resolve

that the funds requisite for the relief of the poor persons entitled to relief from the parish . . . shall be raised by assessment. . . .'

"2. Section 34 of the same Act provides—'And be it enacted that when the parochial board of any parish . . . shall have resolved to raise by assessment the funds requisite, such board shall . . . resolve as to the manner in which the assessment is to be imposed, and it shall be lawful for any such board to resolve that one-half of such assessment shall be imposed upon the owners, and the other half upon the tenants or occupants, of all lands and heritages within the parish . . . rateably according to the annual value of such lands and heritages. . . .'

"3. Section 40 of the same Act provides—'And be it enacted that before the expiration of one year from the date at which the first assessment under the provisions of this Act shall have been imposed as aforesaid in any parish . . . and yearly or half-yearly thereafter, the parochial board of every such parish . . . shall fix and determine the amount of assessment for the year or half-year then next ensuing, and shall make up or cause to be made up a book containing a roll of the persons liable in payment of such assessment, and of the sums to be levied from each of such persons, and the roll so made up shall be the rule for levying the assessment for the year or half-year then next ensuing. . . .'

"4. By section 44 of the Education (Scotland) Act 1872 (35 and 36 Vict. cap. 62) it is provided that 'the school board of each parish and burgh shall annually, and not later than the twelfth day of June in each year, certify to the parochial board or other authority charged with the duty of levying the assessment for relief of the poor in such parish or burgh, the amount of the deficiency in the school fund required to be provided by means of a local rate, and the said parochial board or other authority is hereby authorised and required to add the same under the name of school rate to the next assessment for relief of the poor, and to lay on and assess the same, one-half upon the owners and the other half on the occupiers of all lands and heritages, and to levy and collect the same along with the assessment for relief of the poor when that assessment is so imposed and levied, and to pay over the amount to the school board. . . .'

"5. In the practical working out of the foregoing Acts of Parliament and the Local Government (Scotland) Act 1894 (57 and 58 Vict. cap. 58), section 37, the first party, in the month of July yearly, proceed by resolution to raise the funds requisite for the poor and school expenditure in the current year by assessment on the owners and the tenants or occupants, one-half to be imposed on and payable by the owners as a class and one-half by the occupiers as a class. Who the owners and the tenants or occupants may be is not known at the time the assessment is made, because their names only appear on the valuation and assessment rolls to be made up later in the year. The first party on receipt of the valuation rolls after 30th September yearly make up under the above-quoted section 40 a parish assessment roll and proceed to levy the rates in conformity therewith by sending a demand note to each individual ratepayer intimating the amount payable by him and the date on which the same is payable. On default of payment a warrant for recovery is obtained. Although the rate is struck in July and the demand notes issued during October and November, the person whose name appears in the valuation and assessment rolls then current (made up from information obtained in the preceding months of May and June) is liable for the whole year's rates, although during the course of the financial year from May to May he has ceased to own or occupy the subjects in respect of which he was assessed. Such owner or occupier has, by decisions in the Sheriff Courts, been allowed relief against the succeeding owner or occupier for the portion of the year's rates applicable to the period during which the successor owned or occupied the particular subject. Apart from the House Letting and Rating (Scotland) Act 1911 (1 and 2 Geo. V, cap. 53), where a house is unlet no 'occupier' is entered under the existing Acts in the occupier column of the valuation roll or assessment roll, and no occupiers' assessment is or can be imposed, but in these cases the owners' assessment is imposed.

"6. The first party have been in the habit of preparing a supplementary assessment roll in virtue of the powers contained in the Glasgow Corporation Tramways Order 1903, section 21 . . . in the month of March yearly of all subjects not included, and of all subjects included but entered as unoccupied, in the valuation roll made up as at 15th August yearly, which may have come into existence or been in occupancy after the Whitsunday preceding. Advantage is taken of this supplementary assessment roll to supply omissions or make corrections on the preceding assessment roll. The first party recover poor and school assessments from the owners and occupiers appearing in said supplementary assessment roll. . . .

"7. By section 7 of the said House Letting and Rating (Scotland) Act 1911 it is provided — 'Subject as hereinafter provided, the provisions of all Acts applicable within the respective areas in which this Act may be in operation respecting the liability for, and the imposition and recovery by an assessing authority of, any assessment, shall subsist in full force and effect: Provided that within every such area — (1) The occupier of a small dwelling-house shall in no case be liable to pay occupiers' assessment therefor in respect of any period prior to the commencement or subsequent to the termination of his occupancy, but any liability to pay occupiers' assessment, which would by law be imposed on a person occupying the small dwelling-house throughout the year from Whitsunday to Whitsunday, shall

be imposed on any such occupier or successive occupiers during the year, whether their names appear in the valuation roll or not, to such extent or in such shares as shall be proportionate to the period or periods of their respective occupancies of the small dwelling-house. (2) Subject as hereinafter provided, the owner of a small dwelling-house shall be responsible for all assessments liability to pay which is imposed on the occupier thereof, and the same shall not be recovered or recoverable by the assessing authority from the occupier, but shall be recovered by the assessing authority from such owner in the same manner as provided for under existing Acts with respect to the recovery of assessments from owners, and the assessing authority shall be entitled to recover occupiers' assessments from the owner for the year from Whitsunday to Whitsunday, notwithstanding that the house may not be occupied throughout the year, and for that purpose to issue to the owner through their collector or other officer appointed by them any notice, schedule, demand note, or intimation which under existing Acts may be issued in respect of the year's assessments to the occupier. (3) Notwithstanding any payment by the owner of occupiers' assessments in respect of the occupancy of a small dwelling-house, if, in respect of any period, rent or other consideration shall not be received by the owner for any small dwelling-house in respect of which such payment has been made, the owner shall, upon lodging, on or before dates to be fixed by the respective assessing authorities (one of which dates shall be fixed not earlier than the first or later than the twentieth day of May in each year), with the clerk to any such authority, . . . a claim for repayment, which shall set forth the period or periods during which the small dwelling-house was not let, or in respect of which, though the house was let, no payment of rent or other consideration was received by him, and a declaration to the effect that no rent or other consideration has been paid or given for such period or periods, be entitled to repayment without any unnecessary delay from such authority of the proportionate amount of such assessment for the said period or periods without prejudice to the right of the authority to make adjustments with the owner in respect of any such rent or other consideration subsequently recovered by him. . . . (6) Every assessing authority shall, in respect of the occupancy of small dwelling-houses, allow to owners from all occupiers' assessments levied on and recovered from them in place of the occupiers (less any repayments in pursuance of a claim under this section) a deduction, to cover cost of collection, on the following scale (that is to say)—In the city of Glasgow, two pounds ten shillings per centum. . . .'

"8. By section 8 of the said House Letting and Rating (Scotland) Act 1911 it is provided—'Every payment of an assessment by an owner under or in pursuance of the provisions of the immediately preceding section shall, notwithstanding any deduction which the assessing authority is required to allow therefrom, be deemed a payment of the full assessment or (where the owner pays by instalments) of a proportionate amount of the assessment, as the case may be, by the occupier for the purpose of any qualification or franchise which depends on such payment: Provided that, where an owner who is responsible therefor omits or neglects to pay any such assessment, or where, having paid the same, he has claimed repayment thereof in respect of any period during the occupancy of the said occupier, the occupier may pay the same to the assessing authority and deduct the amount from the rent due or accruing due to the owner, and the receipt for such assessment shall be a valid discharge of the rent to the extent of the assessment so paid. . . .

"10. In conformity with the interpretation put upon the foregoing sections of the above-mentioned Acts of Parliament, and in particular of the said House Letting and Rating (Scotland) Act 1911, by the Local Government Board for Scotland, the first party, being an assessing authority within the meaning of section 1 of the said Act, have made up a parish assessment roll for the year 1912-13, in which they have entered the yearly rent or value of small dwelling-houses as determined by the burgh and county valuation rolls, and have imposed for the poor and school rates an assessment, one-half on owners as a class and one-half on occupiers. The second parties are owners of certain small dwelling-houses not occupied by them, and entered in the valuation roll and in the parish assessment roll for said year as empty. Demand notes for occupiers' assessments for the year from Whitsunday 1912 in respect of these small dwelling-houses have been intimated to each of them . . . [*the houses were stated*] . . . The above houses were unlet and unoccupied on 28th May 1912, and were accordingly entered in the valuation roll and in the parish assessment roll as empty. The above houses are 'small dwelling-houses' in terms of section 1 of the said House Letting and Rating (Scotland) Act 1911, to which reference is hereby made.

"11. The said small dwelling-house of one room and kitchen situated in the property 9 Glenpark Street, East, Glasgow, has been let by the said William Clark Faulds to James Cunningham, tenant there, who now occupies it as from 28th August 1912 on a monthly contract of let at a rent of 17s. 9d. terminable by either party thereto on eleven days' notice. The first party have intimated that in the event of the first question of this case being answered in the negative they will hold the said William Clark Faulds liable in payment of occupiers' assessments for poor and school rates in respect of said house, and that for the period of nine months at a rent for that period of £6, 11s., being three-quarters of an annual rent of £8, 15s., calculated on the basis of the monthly rent payable by the said James Cunningham, and that whether the said dwelling-house

and the name of the said James Cunningham as occupier be entered in the said supplementary roll or not."

The *contentions* of parties as stated in the Case were as follows—"The first party, in accordance with the interpretation put upon said Act by the Local Government Board, maintain that the effect of section 7 of the House Letting and Rating (Scotland) Act above quoted is to place upon owners of small dwelling-houses the liability to pay all tenants or occupiers' rates, both in the case where an occupier's or tenant's name appears in the valuation and assessment rolls and where such houses are entered as unlet and unoccupied, subject to subsequent adjustment with the rating authority, in terms of sub-section 3 of that section of the Act. In the event of a negative answer to the first question in this case, the first party contend that under the statutory provisions foresaid they are entitled to assess such small dwelling-houses as are entered as unlet and unoccupied in the valuation and assessment rolls and have become let or occupied for periods either prior to the supplementary roll, but do not appear therein, or have become occupied after the date of the completion of the said supplementary roll, and to demand occupiers' assessments in respect thereof from the proprietors for the whole financial year, or otherwise for the whole portion of the financial year remaining after the date when said small dwelling-houses become so let or occupied.

"The second parties maintain that the first party is not entitled to recover from them occupiers' rates for the year or any proportion thereof in respect of small dwelling-houses which are entered in the valuation and assessment rolls as unlet and unoccupied at the commencement of the year and are not included in the supplementary roll.

"A further question has arisen, viz., whether in regard to all occupiers' assessments leviable on the second parties, the second parties are entitled to deduct from the amount of said assessments at the time of payment the allowance of 2½ per cent. payable to them by the first party in terms of section 7, sub-section 6, of the said Act. The second parties claim that such deduction falls properly to be made on payment of the assessments levied on them. The first party, on the other hand, in accordance with the Local Government Board's interpretation of said Act, contend that such allowance is not to be made by way of a deduction from the rates when paid by the second parties, and does not fall to be made till the close of the financial year, when the net amount of the assessments actually in their hands shall have been ascertained."

The *questions of law* were—"1. Is the first party entitled to recover from the second parties occupiers' rates for the whole financial year ending Whitsunday 1913 (subject to any right to repayment of any portion thereof under section 7, sub-section 3, of said Act) on the said small dwelling-houses entered as unlet and unoccupied in the valuation and assessment rolls? 2. In the event of the first question being answered in the negative, is the first party entitled, in virtue of the provisions of the last-mentioned Act, to recover from the said William Clark Faulds occupiers' rates in respect of the said small dwelling-house situated at 9 Glenpark Street, East, Glasgow (subject to any right of repayment as aforesaid) (*a*) for the whole financial year, or (*b*) for the portion of the financial year remaining after the date when said small dwelling-house has become let or occupied, where said small dwelling-house is not entered in the said supplementary roll? 3. Are the second parties entitled to deduct from the assessments recoverable from them the allowance of 2½ per cent. in terms of section 7, sub-section 6, of the said Act at the time of payment; or does such allowance fall to be deducted after the net amount of assessments received from the second parties has been ascertained at the close of the financial year?"

Argued for the first parties—(*Questions* 1 *and* 2)—Entry on the roll was an irrelevant consideration, for the effect of the Act was to impose on owners liability for occupiers' assessments irrespective of the fact whether any occupiers' names appeared on the roll or not—House Letting and Rating (Scotland) Act 1911 (1 and 2 Geo. V, cap. 53), sec. 7 (1) and (2). The Act created a *pro rata* constructive liability for occupiers' assessments and transferred that liability to the owners. It was not a condition-precedent that there should be an actual occupier at the date when the roll was made up, for the words were "any such occupier or successive occupiers"—not the first and succeeding occupier. "Occupancy," and not "entry on the roll," was the criterion of eventual liability, for if the premises were never let the owner who had paid the assessments was entitled to recover them at the end of the year—section 7 (3). (*Question* 3)—The deduction to cover cost of collection fell to be made from the net sum after deducting the rebate allowed to the owner—section 7 (6). It could not therefore be determined until the close of the financial year.

Argued for second parties—(*Questions* 1 *and* 2)—The Act imposed no liability on owners where there was no liability on occupiers. It only transferred to owners the liability presently on occupiers. Where therefore there was no occupier there was no liability to transfer, and there could not be liability where, as here, there was no entry on the roll at the date when it was made up. What was assessed was not property but persons—*Adamson* v. *Clyde Navigation Company*, June 26, 1863, 1 Macph. 974, *per* Lord Neaves at p. 991; *Argyll County Council* v. *Walker*, 1909, S.C. 107, *per* the Lord President at p. 109, 46 S.L.R. 107—and that implied entry on the roll at the time it was made up. The Act did not create any new liability. It merely spread the liability imposed by the Poor Law (Scotland) Act 1845 (8 and 9 Vict. cap. 83), section 40, over all the actual

occupiers instead of leaving it as formerly on the occupier at the time the roll was made up. The object of the Act was to adapt the existing liability to short lets. The words in section 7 (1) "whether their names are in the valuation roll or not" were not inconsistent with that view, for they meant that though the name of the occupier at the date when the roll was made up was necessarily on the roll and the names of succeeding occupiers were as necessarily not on it, liability was henceforth to be imposed on all of them *pro rata*. (*Question* 3)—The question was one of impression. The words "shall . . . . allow . . . . from all occupiers' assessments . . . . a deduction," meant a deduction from the gross sum actually paid over by the owners to the rating authority, and not a deduction from the net sum.

At advising—

LORD PRESIDENT—This is a Special Case presented by the Parish Council of the parish of Glasgow and two inhabitants of Glasgow who are proprietors of houses, and who as such are liable to be assessed for poor and school rates—the rates which are collected through the medium of the first parties, the Parish Council. The houses belonging to the second parties were unlet at the time when the valuation roll was made up.

As your Lordships are aware, the valuation roll is begun to be made up in the early portion of the summer, and when finally authenticated it forms the basis of all assessments. The valuation roll enters each item of property; in one column it specifies the owner, and in another it specifies the tenant or occupier if any.

The poor rate rests initially upon the Poor Law Act of 1845. Your Lordships are quite familiar with the fact that although under the Act of 1845 there were alternative methods of levying the poor rate, by subsequent legislation one alone of those methods was left, namely, to raise the sum necessary for the support of the poor by two moieties, one moiety imposed upon owners and the other upon occupiers. The actual assessment depends upon the 40th section of the Act, which provides for the making up of a roll of the persons liable in payment of such assessment. In 1845 that roll was, so to speak, made up directly by the Poor Law authorities themselves. But by the subsequent legislation of 1854, which introduced the valuation roll, the procedure was altered in so far that although the assessment roll had still to be made up for the poor rating, the actual entries in it were, and—so far as concerned the yearly rent or value of the subjects—had to be, taken from the valuation roll.

Under ordinary practice what happened was that if a house was unlet and unoccupied at the time when the valuation roll was made up, no name could appear in the occupiers' column, and accordingly for the year to which that valuation roll applied an occupier's assessment was not payable by anybody, even although an occupier might have made his appearance later in the year. There was some legislation designed to check that result by providing for a supplementary roll, which was made to apply to Glasgow by the Glasgow Corporation Tramway Order 1903, section 21, and to burghs generally by the Burgh Police (Scotland) Act 1903, section 60.

That was one side of the question. There was also the other side of the question, that if an occupier was in occupation on the date at which the valuation roll was made up, he was then entered in the valuation roll and became liable for the whole of the occupier's assessment even although, as a matter of fact, his tenancy determined within the year to which the valuation roll applied.

But in 1911 an Act was passed called the House Letting and Rating (Scotland) Act 1911, and by it certain changes were made. Section 7, upon which this case turns, I shall read—"Subject as hereinafter provided, the provisions of all Acts applicable within the respective areas in which this Act may be in operation respecting the liability for, and the imposition and recovery by an assessing authority of, any assessment, shall subsist in full force and effect: Provided that within every such area—(1) The occupier of a small dwelling-house shall in no case be liable to pay occupiers' assessments therefor in respect of any period prior to the commencement or subsequent to the termination of his occupancy, but any liability to pay occupiers' assessment which would by law be imposed on a person occupying the small dwelling-house throughout the year from Whitsunday to Whitsunday shall be imposed on any such occupier or successive occupiers during the year, whether their names appear in the valuation roll or not, to such extent or in such shares as shall be proportionate to the period or periods of their respective occupancies of the small dwelling-house; (2) subject as hereinafter provided, the owner of a small dwelling-house shall be responsible for all assessments liability to pay which is imposed on the occupier thereof, and the same shall not be recovered or recoverable by the assessing authority from the occupier, but shall be recovered by the assessing authority from such owner in the same manner as provided for under existing Acts with respect to the recovery of assessments from owners." And then there is a clause allowing a demand note to be issued against the owner for these occupiers' taxes. And then (3)—I do not read the whole of this, for it is long and I gloss it—it is provided that if, where the owner has paid these assessments, he does not receive any rent for either the whole year or any part of the year to which the assessment applies, he shall be entitled to get back from the assessing authority the portion of what he has paid effeiring to the occupiers' assessment for what I may call the unoccupied period.

Acting upon what they conceived to be their right and duty under this section, the first parties, the Parish Council, finding these two gentlemen, who are the second

parties, upon the valuation roll as proprietors of two small dwelling-houses, requested them to pay the occupiers' assessment. In both cases there was no occupier in existence at the date at which the valuation roll was made up, and accordingly no occupier appears in the valuation roll. The second parties object to the demand, and we had a very ingenious argument from Mr Clyde, which really all went upon this—"The only liability which is imposed on the owner to pay the occupiers' assessment is the liability under section 7 (2)." That is true. Then Mr Clyde said—"It is not said that the owner is to pay, but that he is to be responsible for all assessments liability to pay which is imposed on the occupier thereof." He argued—"That refers you to the old law, and inasmuch as under the old law no occupier would have been liable to pay unless his name appeared in the valuation roll, and as in this case no occupier's name appears in the roll, there can accordingly be no derivative liability imposed upon the owner."

I think that is ingenious but unsound. It is quite true, as Mr Clyde said, that the primary object of this Act was to deal with short lets — to make it impossible for landlords to insist beforehand that tenants should come under an obligation for a term, and he said that really the rating provisions were merely corollary to that, and were not intended to alter the law at all. To a certain extent that is true, but there are many instances where, although the primary object of an Act of Parliament is to do one thing, it manages in its course to do something else; moreover, this is entitled the House Letting *and Rating* (Scotland) Act 1911. In other words, I quite agree that this Act only took up rating because of the alteration it was making as to letting; but still, having taken up rating, it dealt with it, and if the words are plain, I do not think we have any right to refuse a meaning to those plain words simply because they involve an alteration in rating law.

Now the reason why I think Mr Clyde's argument is unsound is this—the first subsection which I read does two things. In the first clause it says that "the occupier of a small dwelling-house shall in no case be liable to pay occupiers' assessment therefor in respect of any period prior to the commencement or subsequent to the termination of his occupancy"—that is to say, it puts an end to the hardship of making the man who was occupier at the date at which the valuation roll is made up, and who, perhaps, went away within the next month, liable for the occupier's assessments for the whole year. But then the sub-section goes on—"But any liability to pay occupiers' assessment which would by law be imposed on a person occupying the small dwelling-house throughout the year from Whitsunday to Whitsunday"—that means a full year's liability—"shall be imposed on any such occupier." A full year's liability, therefore, shall be imposed on any such occupier. Now "such occupier" means either the first occupier or—afterwards it goes on to say—"successive occupiers during the year, whether their names appear in the valuation roll or not."

I think that is fatal to Mr Clyde's argument. It seems to me that, having taken away the hardship that there was upon the man who was there at the date at which the valuation roll was made up and who went away afterwards, the Legislature then said, *per contra*, "We will declare that a full year's liability is to rest upon all occupiers, whether they appear in the valuation roll or not, but only according to the proportion of their particular times of occupation." I think, therefore, that imposed liability upon an occupier even although he is not upon the valuation roll.

Well, if that is so, the words of the second sub-section, "liability to pay which is imposed on the occupier thereof," mean liability imposed not only by the old law (without which, of course, you could not proceed at all, because the actual assessing power is under the old law and under the old law alone), but also liability imposed by the old law *plus* this particular provision under the first sub-section which I have just read. The result of that is—and I must admit that to my mind it is very clear and plain—that the authorities here are quite right in asking for the whole of the occupiers' rates from these two gentlemen.

I would also observe (although this is a mere remark) that although Mr Clyde very naturally and very properly argued on the provisions as to assessment in the Poor Law Act, the Act of 1911 applies not only to Poor Law assessments but to all assessments, and an argument founded on the particular phraseology of the Poor Law Act might not be applicable to other assessments levied under other Acts which were expressed in different terms.

There is one other question that is asked. By sub-section (6) of the same section of the statute it is provided that "every assessing authority shall, in respect of the occupancy of small dwelling-houses, allow to owners from all occupiers' assessments levied on and recovered from them in place of the occupiers (less any repayments in pursuance of a claim under this section)," that is, the claim for repayment that I have already read to your Lordships where the subject is not actually occupied during the whole year—"a deduction to cover cost of collection" on a certain scale—in Glasgow £2, 10s. per centum, and elsewhere a percentage fixed by the Sheriff.

The proprietors here say—If you are entitled to take from us the whole of the occupiers' assessment in a case where it is very likely that the tenement is not going to be occupied during the whole year, we are entitled now to make a 2½ per cent. deduction. The assessing authority says—No; what you are to get back is 2½ per cent., not on the full sum but on the full sum less the repayment in pursuance of a claim under this section; therefore we cannot settle that with you now, and can give you no deduction at all until the

end of the year comes and we see how much you are going to get back from us. Accordingly we are asked the question in the Special Case whether the second parties — that is, the proprietors — are "entitled to deduct from the assessments recoverable from them the allowance of 2½ per cent. in terms of section 7, sub-section (6), of the said Act at the time of payment; or does such allowance fall to be deducted after the net amount of assessments received from the second parties has been ascertained at the close of the financial year?"

I am of opinion that both parties are equally wrong. They both want a little more than they are entitled to. I think it is perfectly clear what the equity of the matter is, and that the equity of the matter is quite in accordance with the statute. I think, if the assessing authorities ask, as they did here, from the proprietor the whole of the occupiers' assessment, that he is entitled at that time to keep back 2½ per cent.; but then at the end of the year when the proprietor goes to the authorities and says—"Now then, give me back a portion of my assessment, because during such and such a period of the year my tenement has not been occupied, then I think instead of giving him back absolutely the whole of that portion the authorities are entitled to make a deduction which reduces the 2½ per cent. originally retained to the proper figure. That does justice to both, and does not allow either to get the better of the other by keeping somebody else's money in their own pocket.

Consequently the first question will be answered in the affirmative, the second question is superseded, and the third question is not answered by either the affirmative or the negative, but by a declaration in terms of what I have said.

The LORD PRESIDENT stated that LORD JOHNSTON and LORD CULLEN concurred.

LORD KINNEAR and LORD MACKENZIE did not hear the case.

The Court pronounced this interlocutor—

"Answer the first question of law in the case in the affirmative: Find it unnecessary to answer the second question: Find in answer to the third question of law that the second parties are entitled at the time of payment to deduct the allowance of 2½ per cent. from the total assessment then demanded from them, but that if subsequently they claim repayment of any such assessment in terms of sub-section 3 of section 7 of the House Letting and Rating Act, they must allow them as a counter deduction 2½ per cent. on the sum so claimed to be repaid, and decern."

Counsel for First Parties—Murray, K.C. —Hon. W. Watson. Agents—Mackenzie, Innes, & Logan, W.S.

Counsel for Second Parties—Clyde, K.C. —J. Hossell Henderson. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Wednesday, November 27.

FIRST DIVISION.

[Sheriff Court at Glasgow.

ELLIS *v.* FAIRFIELD SHIPBUILDING AND ENGINEERING COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 2 (1) (*a*) *and* (*b*)—*Notice of Accident—Want of Notice—Delay in Making Claim —"Mistake or other Reasonable Cause."*

A workman alleged that he was injured by accident on 1st June 1911. From that date down to 5th August 1911 he suffered pain in his neck and shoulder which he attributed to the alleged accident. He then consulted a doctor, who diagnosed his disease as, and treated him for, muscular rheumatism. In that state of opinion he gave no notice of the accident and made no claim against his employers. On 11th November 1911 he left his employment and was thereafter treated by a doctor for a severe strain of the neck up to 3rd December 1911, when he consulted another doctor, who informed him that his head was partially dislocated from the spine, and recommended his removal to the infirmary as being in a dangerous condition. On 30th January 1912 he formally claimed compensation.

Held that the delay in giving notice and making a claim was due to "mistake . . . . or other reasonable cause" within the meaning of section 2 (1) of the Workmen's Compensation Act, and so was not a bar to the maintenance of proceedings for compensation.

Rankine v. *Alloa Coal Company, Limited*, February 16, 1904, 6 F. 375, 41 S.L.R. 306, and *Egerton* v. *Moore*, [1912] 2 K.B. 308, *commented upon.*

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 2 (1) (*a*) *and* (*b*)—*Procedure—Preliminary Defence—Proof.*

Observed that it is the duty of an arbiter to dispose of the case as a whole, and not to allow separate proof on preliminary defences.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), section 2, enacts—"(1) Proceedings . . . . shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury . . . . Provided always that (*a*) the want of . . . . such notice shall not be a bar to the maintenance of such proceedings if it is found . . . . that the employer is not . . . . prejudiced in his defence by the want . . . . or that such want . . . . was occasioned by mistake . . . . or other