and therefore the same considerations apply in both cases.

The duty of the Valuation Court is prescribed by section 6 of the Lands Valuation (Scotland) Act 1854—"In estimating the yearly value of lands and heritages under this Act, the same shall be taken to be the rent at which, one year with another, such lands and heritages might in their actual state be reasonably expected to let from year to year."

In taking the agreed figures as they appear in Appendix II the revenue for the year was £23,434, 7s. 3d.; the working charges, which under the authority of the *Glasgow* case have to be deducted, are also represented by an agreed figure of £12,847, 16s. 9d., leaving a net revenue of £10,586, 10s. 6d. From that has to be deducted the usual tenants' allowances, amounting to £1097, 16s. leaving £9488, 14s. 6d. as the net income derived from the rates after deduction of all necessary outlays. The question I put to Mr Constable was this—What other fund would there be available in the hands of a hypothetical tenant for the purpose of paying rent over and above the sum of £9488, 14s. 6d.? and I did not gather from his argument that anything could be added to that consistently with the powers contained in the assessing clauses in the statute.

Now if that is so, I am unable even apart from authority to see how a hypothetical tenant could be found who would offer a rent in excess of the net surplus of the revenue over the working charges. What the Assessor of Railways and Canals suggests in Appendix I is this, that there should be added to the amount of the revenue "interest on structural cost of works and pipes" as returned to the Assessor, viz, £355,498 at an average rate of 3·6 per cent., bringing out £12,797, 18s. 7d.

I think a conclusive answer against that being taken into consideration by a hypothetical tenant in estimating what rent he could afford to offer for the undertaking is this, that he would have no authority to pay that interest. The capital expenditure has been wiped off, and there is no legal assessing power to raise revenue equivalent to the amount of 3·6 per cent. and therefore he could not have the wherewithal to satisfy any demand for rent in excess of the net surplus as brought out in the manner I have indicated, of £9488, 14s. 6d.

Accordingly it seems to me that not only on authority but also on principle, as regards the figures that are put before me, the course that should be taken is the one that I have indicated.

A larger question was raised in the course of the argument, and it was said that what made all the difference was this, that if there is debt to be paid off, this results in the assessment being large, and if the debt has all been paid off, as has been the case here, then the assessment falls to a smaller figure. The circumstance that is founded upon here was certainly not absent from Lord Kinnear's mind, because he expressly refers to it. Objection has been taken to the fact that revenue raised for the purpose of paying debt should not be included in the *cumulo* valuation. But that attempt has failed in the past, and I find that in the schedule which has been furnished to me of the previous valuations of this undertaking it has gone as high as £20,792 in the year 1905-06, when the maximum was reached. It is said that there ought to be some method devised by which there should be a power to equalise over a period of years and that the amount of the valuation as appearing in the valuation roll should not depend upon whether there is debt or whether there is not.

That, it appears to me, in view of the decided cases and of the practice which has followed upon them, is a matter appropriate to be considered by the Legislature. I am unable to take the view that it is for me sitting in the Appeal Court here to endeavour to formulate a principle different from that enunciated by Lord Kinnear, which has been approved in subsequent cases, and which has been ever since acted upon by the Assessor of Railways and Canals himself.

And if it is said that there is a want of equity, I think that counsel for the Corporation was able to demonstrate that if the question be, as it is, what has the hypothetical tenant got to pay the rent out of, then there is no more than the sum of £9488 in the present case. He has not got the power of raising money to meet this interest on the structural cost.

Accordingly I propose to sustain the appeal and to allow the value to be entered for the year in question at the sum I stated at the beginning, viz., £9224, 12s. 5d.

His Lordship sustained the appeal and substituted £9224, 12s. 5d. for the figure proposed by the assessor.

Counsel for the Appellants—Chree, K.C. —Gentles. Agents—Gordon, Falconer, & Fairweather, W.S.

Counsel for the Assessor—Constable, K.C. —W. T. Watson. Agents—Ross Smith & Dykes, S.S.C.

Thursday, June 12.

FIRST DIVISION.

[Lord Anderson, Ordinary.

REID *v.* MACFARLANE.

Reparation — Seduction — Master and Servant — Connection Obtained through Ascendancy of Master.

In an action of damages for seduction the evidence was to the effect that the pursuer, a girl of about eighteen, was employed as a domestic servant by the defender; she was trained by the defender's wife, having been over four years in the defender's service, and was trusted by the defender and his wife. Two acts of connection were proved. On the first occasion the defender, in spite of the pursuer's struggles and while she was in a state of bewilderment, had connection with her; on the second occasion the defender came upon

the pursuer while she was asleep. *Held*, on a motion for a rule, that there was evidence upon which the jury were entitled to draw the inference that the defender effected his purpose in consequence of his having a dominating ascendancy over the pursuer as his servant, and the motion for a rule *refused*.

Chrissy Reid, *pursuer*, brought an action against John Macfarlane, *defender*, concluding for £500 damages for seduction.

The *facts* of the case appear from the following narrative which is taken from the opinion of Lord Mackenzie:—"The history of the case is that the pursuer at the age of fourteen entered the employment of the defender at Whitsunday 1913 as a domestic servant. She continued in service with him and his wife down to December 1917. The defender admits 'that the pursuer was trusted by the defender and his wife. She was trained by the defender's wife and was a good servant.' That shows the relations which subsisted between this girl and her master down to October 1917. The pursuer avers in condescendence 5 that on 25th October 1917 the defender had connection with her after using certain familiarities towards her. Her averment is that she 'struggled to get free from the defender's embraces, but instead of releasing her the defender rose from his chair, placed the pursuer in it, and while she was in a state of complete bewilderment and before she was able to protest effectively he had connection with her.' And then she says that he endeavoured to comfort her—she being in a state of agitation and anxiety—'by the assurance that what he had done would do the pursuer no harm.' The next occasion on which there was an act of connection was three nights afterwards, when the defender entered the pursuer's room whilst she was asleep, and when, she alleges, she 'was scarcely conscious of the defender's motives or actions until it was too late effectually to prevent him having connection, and she was again completely taken by surprise.' As the result of these acts of connection the pursuer gave birth to a female child on 28th July 1918."

The pursuer *pleaded*—"1. The defender having seduced the pursuer as condescended on is liable in reparation to her therefor."

The case was tried before Lord Anderson and a jury.

On 22nd May 1919 the jury found for the pursuer and assessed the damages at £350.

The defender moved for a rule upon the pursuer to show cause why a new trial should not be allowed, and argued—There was evidence before the jury upon which they were entitled to hold that the defender had had connection with the pursuer, but that connection had not been obtained by way of seduction. It was essential to seduction that something of the nature of fraudulent misrepresentation must be made to cause the woman to surrender herself; short of that there must be a relation of real ascendancy between the seducer and the person seduced—*Gray* v. *Miller*, 1901, 39 S.L.R. 256; *Brown* v. *Harvey*, 1907 S.C. 588, 44 S.L.R. 400; *Murray* v. *Fraser*, 1916 S.C. 623, 53 S.L.R. 467. In the present case there was no evidence of fraud or of real ascendancy.

LORD MACKENZIE—This case has been presented to us on the footing that even on the assumption there was connection as averred, there is no legal evidence from which the jury were entitled to infer that the defender had seduced the pursuer. I am unable to take that view, and am of opinion that there was evidence upon which the jury were entitled to find that the circumstances under which the defender had connection with the pursuer amounted to seduction in law. . . . . .

Now it is no doubt true, as has been pointed out by Lord President Dunedin in *Cathcart* v. *Brown*, 7 F. 951, 42 S.L.R. 718, that the word "seduced" must be construed in the legal and not in the popular sense. But it is settled that seduction may be effected by the aid of such dominating influence as that of a master over his servant, and if in the present case the pursuer did not give her consent it was legitimate for the jury to draw the inference that the reason why the master effected his purpose was because he and his servant did not meet on equal terms.

It was represented to us in argument that dominating ascendancy must be proved as a matter of fact. I cannot assent to that view. I think that a jury having before them the pursuer and the defender, and the whole history of their relations, are entitled to draw the inference that the master effected his purpose in consequence of his having a dominating ascendancy over his servant.

In condescendence 12 the pursuer avers—"The defender in having connection with the pursuer seduced her. In consequence of her position in the house partly as a young innocent servant, and partly as the object of special favour and solicitude on the part of the defender, who treated her as a child, he won her complete trust and confidence. Her feelings towards him on that account, and in respect of his age relatively to hers, were those of a daughter, and she had no thought of being on guard against any attack on her chastity by him. He had acquired a complete ascendancy over her from the said relationship. He took advantage of her unguarded innocence, and by taking her by surprise and using his said ascendancy he succeeded in having connection with her and thus seduced her." Now that sets out what, I think, from the whole facts as stated to us was the view that the jury were legitimately entitled to take.

The defender went into the box and apparently denied the whole story. The jury plainly did not believe him, and they were entitled to take the view stated by the pursuer in her evidence, that she was not a consenting party, and accordingly they were in my opinion justified upon the evidence in coming to the conclusion that not only the paternity but also the seduction had been proved.

In these circumstances I am of opinion that the motion for a rule should be refused.

LORD SKERRINGTON—It was admitted by counsel that there was evidence which entitled the jury to come to the conclusion that sexual intercourse had taken place on the occasions in question between the pursuer and her master, the defender. The defender placed himself in a position of disadvantage with the jury because he denied that fundamental fact, and the jury disbelieved him. As the jury believed the pursuer and disbelieved the defender, I think that they were entitled to take the view that the sexual intercourse had been brought about substantially in the way and manner deponed to by the pursuer—I mean, that she was not a willing participant in this act of immorality. That view was, I think, corroborated by the girl's admitted previous good character and behaviour in that household and by the fact of her youth and innocence.

If the jury came to the conclusion that this previously good girl allowed sexual intercourse to take place between herself and her master, they were entitled to ask themselves how that happened. And if they were satisfied that it came about because the master was the aggressor, they were, in my view, entitled to draw the inference that the act of sexual intercourse would not have been permitted by this girl if the aggressor had been a stranger, but that she did permit it because he was her protector in that household. He was the master of the household, he was entitled, generally speaking, to do as he liked in the house, and the girl was at a disadvantage when resisting his wishes.

To make out seduction in the legal sense it must be established that the parties did not meet on equal terms, and that the woman was unfairly treated by the defender. What has to be negatived is the *prima facie* view that where a man and a woman commit an act of immorality both are free and willing consenters. That view must be displaced by the pursuer, and the burden of proof at the beginning undoubtedly lies on her. On the evidence in this case I fail to see why a reasonable jury might not draw the inference that that burden of proof had been satisfactorily discharged.

LORD CULLEN—I agree. I think if the jury took the view that the girl surrendered herself unwillingly, they were entitled in the circumstances to draw the inference that the master did use his influence over her to obtain connection.

LORD ANDERSON — I entirely agree. I desire to add that I am quite satisfied with the jury's verdict, and am of opinion that the pursuer proved her case.

The LORD PRESIDENT was absent.

The Court refused the motion for a rule.

Counsel for the Pursuer—Macphail, K.C. —A. M. Stuart. Agents—Menzies, Bruce Low, & Thomson, W.S.

Counsel for the Defender—Watt, K.C.—Burnet. Agents—Mackay & Hay, W.S.

Saturday, June 14.

FIRST DIVISION.

SMITH AND SLOAN, PETITIONERS.

Election Law — Corrupt and Illegal Practices—Authorised Excuse—Ignorance of Statutory Provisions—Corrupt and Illegal Practices Prevention Act 1883 (46 *and* 47 *Vict. cap.* 51), *sec.* 34.

A miners' agent who was a candidate at a parliamentary election, being unable to obtain the services of a law agent, appointed a checkweighman as his election agent. Both of them were ignorant of their duties under the Corrupt and Illegal Practices Prevention Act 1883. The candidate failed within the statutory period to make the declaration with regard to election expenses, and the agent failed to lodge accounts properly detailed and accompanied by vouchers, and to send in the statutory declaration with the accounts. An abstract of the accounts after the pattern of those published by returning officers was timeously lodged, and the vouchers though not lodged had been obtained and were in order. Neither party had any interest to conceal any expenditure, and on discovering that they had failed to comply with the statute they anxiously endeavoured to rectify their omissions. They presented a petition for an order allowing an authorised excuse. No answers to the petition were lodged but the returning officer appeared by counsel.

The Court, on condition that the proper accounts and the declarations were lodged within ten days, *granted* the prayer of the petition, finding the returning officer entitled to his expenses up to the date when proof was ordered and to a watching fee thereafter.

Observations per Lord Guthrie on the circumstances to be taken into consideration in such applications.

The Corrupt and Illegal Practices Prevention Act 1883 (46 and 47 Vict. cap. 51) enacts —Section 33—"(1) Within thirty-five days after the day on which the candidates returned at an election are declared elected, the election agent of every candidate at that election shall transmit to the returning officer a true return (in this Act referred to as a return respecting election expenses) in the form set forth in the Second Schedule to this Act or to the like effect, containing as respects that candidate—(*a*) a statement of all payments made by the election agent, together with all the bills and receipts (which bills and receipts are in this Act included in the expression 'return respecting election expenses'); (*b*) a statement of the amount of personal expenses, if any, paid by the candidate; (*c*) a statement of the sums paid to the returning officer for his charges, or if the amount is in dispute, of the sum claimed and the amount disputed; (*d*) a statement of all other disputed claims of which the election agent is aware; (*e*) a