can read the correspondence which contains the terms of the contract without seeing that the tenant here did assume responsibility for what was the landlord's obligation.

The next question is whether the assessor has correctly translated that consideration into money. Upon that point I desire to observe that in the case yesterday (*M'Gibbon*, N.R.) and again in the present case, the duty does not seem to have been correctly apprehended of placing before the assessor the materials which are in the possession of the tenant or proprietor and which can only be furnished by either of them. I think the assessor is quite justified in the complaint which is contained in his contention as set out in the case, where he says—"The exact annual value of the obligations assumed by the tenant was in the circumstances quite impossible of ascertainment. No suggestions as to its ascertainment were laid before him by the appellant." And if the result of what the assessor has done is that the tenant in this case is charged with a higher percentage than the facts warrant, he has himself entirely to blame for that. Another year, if he is able to produce evidence sufficient to satisfy the assessor or the Valuation Committee that a smaller percentage should be struck, then he will have his opportunity of doing so. But I think that the assessor has made the best of it that he could this year by taking as his guide the rent in the sub-let, and that we ought to sustain the determination of the Committee.

LORD CULLEN concurred.

The Court were of opinion that the determination of the Valuation Committee was right.

Counsel for the Appellant — Constable, K.C. — Cooper. Agents — Macpherson & Mackay, W.S.

Counsel for the Respondent—Fraser, K.C. — Keith. Agents — Ross Smith & Dykes, S.S.C.

COURT OF SESSION.

Thursday, June 10.

FIRST DIVISION.

[Lord Anderson, Ordinary on the Bills.

INGLIS *v.* ROTHFIELD.

Process—Bill of Exchange—Summary Diligence—Money-lender—Promissory-note to Money-lender for Money-lending Transaction—Money-lenders Act 1900 (63 *and* 64 *Vict. cap.* 51), *sec.* 1 (1).

A promissory-note was granted to a money-lender for a money-lending transaction. The money-lender used summary diligence upon the note. *Held* that the note, being otherwise habile to warrant summary diligence, was not deprived of that character merely because, being granted to a money-lender for a money-lending transaction, the question of liability under it might be opened up under section 1 (1) of the Money-lenders Act 1900, and summary diligence *held competent.*

The Money-lenders Act 1900 (63 and 64 Vict. cap. 51) enacts—Section 1—"(1) Where proceedings are taken in any court by a money-lender for the recovery of any money lent after the commencement of this Act, or the enforcement of any agreement or security made or taken after the commencement of this Act in respect of money lent either before or after the commencement of this Act, and there is evidence which satisfies the court that the interest charged in respect of the sum actually lent is excessive, or that the amounts charged for expenses, inquiries, fines, bonus, premium, renewals, or any other charges are excessive, and that in either case the transaction is harsh and unconscionable, or is otherwise such that a court of equity would give relief, the court may re-open the transaction and take an account between the money-lender and the person sued, and may, notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, re-open any account already taken between them, and relieve the person sued from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of such principal, interest, and charges as the court, having regard to the risk and all the circumstances, may adjudge to be reasonable; and if any such excess has been paid, or allowed in account, by the debtor, may order the creditor to repay it; and may set aside either wholly or in part, or revise or alter, any security given or agreement made in respect of money lent by the money-lender. . . . (2) Any court in which proceedings might be taken for the recovery of money lent by a money-lender shall have and may, at the instance of the borrower or surety or other person liable, exercise the like powers as may be exercised under this section, where proceedings are taken for the recovery of money lent. . . ."

Quentin Godfrey Inglis, *complainer*, brought a note of suspension of a charge at the instance of Henry Rothfield, *respondent*, to make payment of £3000, with interest thereon at 5 per cent. per month, due upon a promissory-note granted by the complainer to the respondent dated 15th October 1919, and payable three months after date. The complainer stated that he was willing to find caution, but contended that he was entitled to have the note passed without caution or consignation.

The complainer *averred*—"(Stat. 1) . . . The respondent is a money-lender, and carries on business at 58 New Bond Street, London, W. (Stat. 2) The complainer and respondent have had several money-lending transactions. Prior to the transactions referred to in statement 5, for which the promissory-note now charged on was granted, the complainer has always met the demands of the respondent arising out of these transactions. (Stat. 3) The respondent was well aware of the financial position of the com-

plainer. In particular, he knew that the complainer had sufficient means for his reasonable requirements, and that prior to the transaction now complained of he had inherited a considerable sum of money from his father, and had acquired a vested interest in his grandfather's estate. In point of fact complainer has an alimentary life interest of at least £1000. (Stat. 4) In July 1919, in the knowledge of the complainer's circumstances as above condescended on, the respondent wrote to the complainer and offered to advance him £2000. In that letter he enclosed a promissory-note for £3000 payable at the expiry of three months. The complainer signed and returned said promissory-note, and by return received from respondent a cheque for £2000, which was unsigned. The complainer at once wrote to the respondent returning this cheque and requested him to sign it. This the respondent did not do. He, however, gave £1000 in Bank of England notes to the complainer. On a further demand the respondent gave the complainer back bills representing an outstanding balance of £647 and cash for £353. (Stat. 5) When said promissory-note became payable in October 1919 the respondent offered to renew the same for an additional period of three months on payment of the sum of £1000. The complainer accepted this offer, made payment of said sum of £1000, and signed the promissory-note dated 15th October 1919. (Stat. 6) The actual cash thus received by the complainer in respect of the last-mentioned promissory-note was only £353. In addition to this sum falls to be added the sum of £647, being the balance of notes or bills due under former transactions as stated in statement 4. (Stat. 7) In the circumstances above condescended on the transactions of the respondent with the complainer have been harsh and unconscionable, and if opened up by the Court it will be found that the respondent has received from the complainer a sum largely in excess of the moneys lent to him, and which represents more than reasonable remuneration and interest on the said loans."

The complainer pleaded—"1. The transaction between the complainer and respondent being harsh and unconscionable, the Court should reopen the same and fix the sum, if any, payable by the complainer, in terms of the Money-lenders Act 1900. 2. The complainer having during his transactions with the respondent made payment to him of sums largely in excess of the sum borrowed, together with reasonable interest, suspension should be granted as craved."

On 17th February 1920 the Lord Ordinary on the Bills (BLACKBURN) granted an interim sist of execution without caution or consignation.

On 9th April 1920 the Lord Ordinary on the Bills (ANDERSON), on consignation or caution limited to the sum of £1750, passed the note and continued the interim sist of execution.

Opinion.—[*After dealing with a question which is not reported*]—"(2) The charger's counsel further maintained that the note should be refused in respect that the suspender's averments and pleas raised no question of law which affected the charger's diligence. I am of opinion that the suspender does raise a question of law which may affect the diligence which has been set in motion. The suspender's allegation in fact is, that the promissory-note was granted in connection with a transaction which was harsh and unconscionable, and his legal contention is that the provisions of the Money-lenders' Act have thereby been violated. It is a good ground of suspension of a charge on a bill to allege that the bill has been paid. The suspender's attack on the promissory-note is that, inasmuch as it vouches a money-lending transaction which was harsh and unconscionable it must be held to be discharged *pro tanto*. The averments and pleas of the suspender to the effect mentioned seem to me to justify the passing of the note.

"The only other question to be determined now is as to the conditions as to caution or consignation on which the sist of execution should be continued, and on this topic the suspender's counsel submitted an interesting and novel contention. This contention is not pleaded as yet as legal justification for the suspension, but it was urged as a ground for passing the note without caution or consignation. That contention was that summary diligence was incompetent on a bill granted in favour of a money-lender in connection with a money-lending transaction. The reasoning in support of this contention, as I understood it, was this—summary diligence is only authorised in respect of bills which are *ex facie* regular and valid, that is, in respect of bills which, *inter alia*, are for 'sums certain' in money. Bills granted to money-lenders are not for 'sums certain,' because they represent the result of transactions which may be attacked as being harsh and unconscionable. This reasoning, in my opinion, is fallacious. The bill on which summary diligence has been done is *ex facie* unimpeachable, and bears to be for the sum certain of £3000. I am not entitled at this stage to assume against the charger that this sum will be declared to be excessive and the bill therefore to be *pro tanto* discharged. The argument of the suspender introduces, as the test of the competency of summary diligence, the question of adequacy of consideration. This is an irrelevant consideration in reference to the question of the competency of summary diligence. It would not avail a suspender on this topic were he to aver that no consideration or value had been given for a bill. Summary diligence would nevertheless in such a case be quite competent.

"Such being my opinion as to this contention of the suspender, I propose to pass the note only on caution or consignation. I am satisfied that the money-lender made a substantial payment in cash to the suspender as part consideration for the granting of the promissory-note. I fix the sum of £1750 as that which must be consigned, or for which caution must be found.

The complainer reclaimed, and argued—To warrant summary diligence a bill must be unconditional or absolute, or for payment of a sum certain in money, but where a bill was granted to a money-lender as here the bill was exposed to the risk of being cut down in virtue of the provisions of the Money-lenders Act 1900 (63 and 64 Vict. cap. 51), section 1 (1) and (2). It was exactly in the same position as if it had borne on its face the words "subject to the conditions of" that Act. Consequently a bill granted to a money-lender for a money-lending debt could never support summary diligence. The Bills of Exchange Act 1882 (45 and 46 Vict. cap. 61), section 98, left the law of summary diligence unaffected. Under section 100 parole evidence was competent to prove certain facts relating to a bill, but owing to section 98 the bill would nevertheless warrant summary diligence. If there had been a provision similar to section 98 of the Act of 1882 in the Act of 1900 summary diligence would have been competent, but without such a provision the moment it was alleged that the bill was granted to a money-lender for a loan then the right to exact payment became not absolute but subject to examination by the Court. If not, the object of the Money-lenders Act (*cit. sup.*) would not be achieved. If, in England, the debt was a money-lending debt, summary judgment, the English equivalent of summary diligence, was not granted—*Wells* v. *Alloti*, [1904] 2 K.B. 842. In any event caution should be restricted to the sum which the respondent was actually out of pocket. *Renwick* v. *Stamford, Spalding, and Boston Banking Company, Limited*, 1891, 19 R. 163, 29 S.L.R. 144, was referred to.

Counsel for the respondent were not called on.

LORD PRESIDENT (CLYDE) — This is a reclaiming note against the interlocutor of the Lord Ordinary on the Bills passing a note of suspension of a charge which proceeded on an extract registered protest upon a promissory-note granted by the suspender in favour of the respondent, a money-lender. The note is passed on consignation or caution limited to £1750.

The argument presented to us is one which if well founded would dispose of the suspension, and is really an argument going to the merits of the case. It is to the effect that whereas the Money-lenders Act enables a debtor, when proceedings are taken by a money-lender to enforce a bill or promissory-note granted in his favour, on proof of certain facts, to have the transaction opened up, therefore a bill which is in fact granted to or held by a money-lender cannot be used as the foundation of summary diligence, because though it bears to be an unconditional obligation to pay a sum certain, the provisions of the Money-lenders Act expose it to restriction or qualification if steps are taken to enforce it and if certain facts are proved. That argument leads to very startling results. In the case of all bills the obligation to pay is subject to any defence which is competent at common law or by statute, but that does not make it any the less an unconditional obligation to pay a sum certain in money. If the reclaimer's argument were sound any bond in favour of a money-lender would be deprived of its legal character, because it is possible that if proceedings are taken to enforce it the liability under it may be examinable, and may be restricted or even negatived. It is, I think, impossible to give effect to that argument. [*His Lordship then dealt with the amount of caution.*]

LORD MACKENZIE, LORD SKERRINGTON, and LORD CULLEN concurred.

The Court altered the Lord Ordinary's interlocutor by substituting the sum of £1000 for the sum of £1750 occurring therein, and with that alteration adhered.

Counsel for the Complainer—Moncrieff, K.C.—J. Stevenson. Agent—James Gibson, S.S.C.

Counsel for the Respondent—Fraser, K.C. —Paton. Agents — Clark & Macdonald, S.S.C.

COURT OF TEINDS.

Friday, June 11.

TRUSTEES OF CHURCH AND PARISH OF BLYTHSWOOD AND OTHERS, PETITIONERS.

Church — Annexation — Union of Two Quoad Sacra Parishes.

A petition was brought by the trustees, not *ex officiis*, acting under the respective deeds of constitution of two *quoad sacra* churches, with consent of (1) the Procurator of the Church for the General Assembly and the *ex officiis* trustees; (2) the moderator and clerk of the presbytery to which the churches belonged, for the presbytery; and (3) the moderators and session-clerks respectively of the two kirk-sessions of the churches in question for the kirk-sessions, craving the union of the two *quoad sacra* parishes. The Court *granted* the prayer of the petition.

The Act 1707, cap. 9, gives to the Court power to judge, cognosce, and determine in all affairs and causes whatsomever which by the laws and Acts of Parliament of the Kingdom of Scotland were formerly referred to and did pertain and belong to the jurisdiction and cognisance of the Commissions formerly appointed for Plantation of Kirks and Valuation of Teinds, and in particular power "to disjoin too large paroshes, to erect and build new churches, to annex and dismember churches as they shall think fit, conforme to the rules laid down and powers granted by the 19th Act of the Parliament of 1633, the 23rd and 30th Acts of the Parliament of 1690, and the 24th Act of the Parliament of 1693 in sua far as the same stands unrepealed."

Alexander Whitelaw and another, trustees other than those *ex officiis* of the *quoad sacra* church and parish of Blythswood, Glasgow, acting under the deed of constitu-