the annuity of £1500 was charged? He had no right of fee, his sole right being derived from the settlement of his father Sir James (*primus*). Under it he was entitled to payment from the trustees of an annuity, increasing in amount with the corresponding diminution of heritable debts, from £4000 to £10,000 per annum. These were debts occasioned by the large purchases of land by the truster and his father. The condition attached to Sir James (*secundus*) being entitled to this annuity was that he should allow the trustees to collect the rents of the entailed estates of Luss to which he succeeded on his father's death. The annuity of £4000 it was declared by the settlement was not to be in addition to or over and above the rents of the entailed estates, but in lieu and place thereof. The direction to the trustees was to hold the fee of the unentailed portions of the estates for behoof of the heir who should succeed to Sir James (*secundus*) in the entailed portion thereof.

The question with which we are concerned in the present case arises upon the terms of the sixth purpose of the trust-disposition and settlement of Sir James (*primus*). It directs the trustees, if asked by the testator's son, "to grant and deliver such deed or deeds as may be necessary for securing over my lands and estates hereby conveyed or any part thereof," *i.e.*, the unentailed lands, an annuity not exceeding £1500 in favour of his son's widow, and a provision not exceeding, in the event of there being two children other than the heir succeeding to the said lands and estate, a sum of £20,000. Sir James (*primus*) died in 1873. His son succeeded him—Sir James (*secundus*). He requested his father's trustees to grant the deeds necessary to secure the provisions to his children, and an annuity to his wife. They did so.

Upon this narrative I think the conclusion follows that these incumbrances were not created by a disposition made by the deceased, nor were they created out of the interest of the deceased in the estate. His interest in the estate was that of an annuitant. The fact that he asked his father's trustees to grant the deeds in question is not, in my opinion, sufficient to bring them within the exception in section 7 (1) (*a*).

Queries 2 and 3 should, in my opinion, be answered in the negative, for the reasons stated in the contentions of the second party to the case. The first parties are not entitled under section 14 (1) to recover from the second party an amount equal to the proper rateable part of the estate duty paid by the first parties. The second party is not a person from whom a rateable part of the estate duty can be so recovered, and is therefore not bound under section 14 (3) by the accounts and valuations as settled between Sir Alan or his trustees and the Inland Revenue. The result of my opinion is that Sir Alan, when he fixed with the Inland Revenue under section 1 the principal value of the property which passed on the death of his predecessor Sir James (*secundus*), should have insisted on his right to deduct from the value of the property the amount of the provisions and annuity in terms of section 7 (1). He would, in my opinion, have successfully contested that they did not fall within the exception in section 7 1 (*a*). Taking this view, it is unnecessary to consider the separate point that was made in argument as to the effect of its being a "free" annuity that is provided to the widow.

This is all we have to decide in the present case, and in order to arrive at a conclusion it is not necessary to anticipate any questions that may arise between the Inland Revenue and the second and third parties.

LORD KINNEAR did not hear the case.

The Court answered the first question in the affirmative and the second and third in the negative.

Counsel for the First Parties—Johnston, K.C. — C. H. Brown. Agents — Macrae, Flett, & Rennie, W.S.

Counsel for the Second and Third Parties —Blackburn, K.C.—J. H. Millar. Agents J. S. & J. W. Fraser-Tytler, W.S.

HOUSE OF LORDS.

(VALUATION APPEAL.)

Friday, May 2.

(Before the Lord Chancellor (Haldane), Lord Atkinson, Lord Shaw, and Lord Moulton.)

HERBERT'S TRUSTEES *v.* INLAND REVENUE.

(In the Court of Session, April 18, 1912, 49 S.L.R. 699, and 1912 S.C. 948.)

Revenue — Duties — Land Values — Increment Value Duty — Valuation — Assessable Site Value—Minus Value—Finance (1909–10) *Act* 1910 (10 *Edw. VII, cap.* 8), *sec.* 25.

The Finance (1909–10) Act 1910 provides that in certain events duty shall be payable on the increment value of any land, and that such increment value shall be deemed to be the amount (if any) by which the site value of the land, at the time of the collection of the duty, exceeds the assessable site value of the land as ascertained originally in accordance with the general provisions of the Act as to valuation.

Held (*rev.* judgment of the Valuation Appeal Court) that the assessable site value of land within the meaning of the Act might be a minus quantity.

Expenses — House of Lords — Valuation Appeal—Revenue—Land Values Duties—Increment Value Duty—Finance (1909–10) *Act* 1910 (10 *Edw. VII, cap.* 8).

Circumstances in which, in an appeal at the instance of the Crown from the Valuation Appeal Court to the House of Lords arising out of the construction of the Finance (1909–10) Act 1910, in which the Crown were successful, their Lordships, in respect that the

point was an entirely novel one, made no order as to costs.

This case is reported *ante ut supra.*

The Inland Revenue, respondents in the Valuation Appeal Court, appealed.

At delivering judgment—

LORD CHANCELLOR—The question which comes before the House for determination is this appeal is one of an entirely novel character. It is whether, in making the valuation of the site value of land required to be made by the provisions of the Finance Act of 1910 for the purposes of the new land taxes which the Act imposes, the original assessable site value which has to be ascertained may be shown as a minus quantity. The argument for the Crown, which was appellant, is in substance that while it is admitted that the site value which is the subject of these taxes must always be a real element in the actual value of the land, the statutory calculations in which that real element appears may, with a view to the measurement of its subsequent increase, have to express it in an appropriate valuation account under the guise of a minus figure, just as might be the case in measuring with a centigrade thermometer the rise from a temperature below the freezing-point. It is therefore said that while this mode of measurement appears artificial, and may present the original site value under the form of a negative quantity, it is not really different from the procedure of a surveyor who measures the difference between quantities below and above a datum line arbitrarily selected for convenience in reckoning, and that it is a way occasioning no injustice of ascertaining a factor required for the measurement of the actual and positive value which is to be the subject of taxation.

By the respondents, on the other hand, it is contended that, reading the statute as a whole, it appears that what is called in it original assessable site value must always, if it exists at all, be shown as an actual and positive amount; and it was pointed out that in one case, at all events, the statute in terms directs a reduction to be made of 10 per cent. of the site value, a reduction which would be nugatory and impossible if that value could be shown as a minus amount.

In order to make clear the meaning of the question thus raised, I turn to the scheme of levying duties on land values enacted by the Finance Act of 1910. Part I of this Act, which contains this scheme, consists of forty-two sections. Of these sections the first twenty-four relate to the levy of duties, and the remainder to the machinery of valuation for the purpose of these duties and to other matters of a miscellaneous character. Part I commences by enacting a charge of duty on what it calls the increment value of land, defined by section 2 to be the amount (if any) by which the site value of the land on the occasion on which increment duty is to be collected exceeds the original site value. The value to be taxed must have accrued since the 30th of April 1909.

The next duty imposed by Part I is reversion duty, which is to be paid by the landlord on the value of the benefit accruing to him by the determination of a long lease. This value is to be the amount by which the total value, after deduction of so much as is attributable to works executed or expenditure made by him during the lease, exceeds the total value at the date of the lease.

The third duty imposed is undeveloped land duty at the rate of one halfpenny per annum for every twenty shillings of the capital amount of the site value of undeveloped land of certain kinds, with a special provision that the duty is not to be charged where the site value does not exceed £50 per acre.

The fourth of the group of duties imposed under Part I is the mineral rights duty, but this it is unnecessary to refer to for the purposes of the present case.

I now come to the sections which provide for the valuation required for the measurement of the values so to be taxed.

In approaching the controversy as to the meaning of these sections, I think it worth while to recall a principle which must always be borne in mind in construing Acts of Parliament, and particularly legislation of a novel kind. The duty of a court of law is simply to take the statute it has to construe as it stands, and to construe its words according to their natural significance. While reference may be made to the state of the law and the material facts and events with which it is apparent that Parliament was dealing, it is not admissible to speculate on the probable opinions and motives of those who framed the legislation excepting in so far as these appear from the language of the statute. That language must indeed be read as a whole. If the clearly expressed scheme of the Act requires it, particular expressions may have to be read in a sense which would not be the natural one if they could be taken by themselves. But subject to this, the words used must be given their natural meaning, unless to do so would lead to a result which is so absurd that it cannot be supposed, in the absence of expressions which are wholly unambiguous, to have been contemplated.

I will now consider the valuation sections. Section 26 directs a valuation to be made of all land in the United Kingdom as on the 30th of April 1909. It is to show separately the total value and the site value of the land, and the definition of these terms is to be found in section 25, which is of cardinal importance for the purposes of this appeal. That section defines four separate kinds of value—gross value, full site value, total value, and assessable site value. The object is, by means of valuation based on these definitions, and carried out in a fashion which is prescribed, to provide a standard by which assessable site value may be measured. Such a standard is necessary. For in the case of increment duty, section 2, to which I have already referred, defines the increment value on which the duty is to be levied as the difference between the site

value when the duty is to be collected and the original site value.

These two site values therefore appear as figures one of which is to be subtracted from the other, as terms the importance of which is that they bear a relation to each other which enables such a sum to be done. But on reference to the rest of section 25 it will be seen that while site value is regarded in the statute as signifying a real element in the value of land, it is an element which the statute separates from the rest of that value only notionally, and for the purposes of measurement. The method by which this is done is to begin by defining as gross value the estimated market value of the fee simple of the land as it stands if sold free from incumbrances, burdens, charges, or restrictions. The next step is to proceed to define the full site value, and this is declared to be the amount which remains after deducting from the gross value, estimated as above, the difference between that value and the amount which the fee simple might be expected to realise if the land were sold divested of all buildings, structures, trees, &c. What is here directed to be deducted is the difference made to the selling price of the land by the presence of the buildings, structures, and trees on it, the result affording a measure of the value of the bare site. The next step is to measure what is called the total value, and this is defined to be the gross value after deducting the amount by which the sale price would be diminished if the land were sold subject to all qualifications of the absolute title, in the matter of fixed charges, public rights, easements, and covenants entered into in the public interest. It will be observed from the definition section that the expression "fixed charges" includes feu duties and ground rents, but excludes mortgages and similar incumbrances. With the aid of these definitions the Act next proceeds to lay down how assessable site value is to be ascertained.

It is what remains of the total value after deducting the same amount as is to be deducted for the purpose of arriving at full site value from gross value. In the case of gross value and full site value the land is assumed to be sold with an absolutely clear title. In the case of total value that title is treated as subject to certain specified qualifications, but the land is assumed to be sold with all its buildings, structures, trees, &c., upon it. But before the figure for assessable site value can be reached there are other and additional items which, under the provisions of section 25 (4), may have to be deducted from the total value. These are such parts of the total value as may be attributable to works executed, expenditure of a capital nature for improving the land for building or business purposes, the appropriation for the use of the public of other land by the person interested, money spent on redemption of fixed charges, enfranchisement of copyholds, or obtaining release from restrictive agreements, and other items mentioned. Moreover, from the total value there is also to be deducted the amount which it would be necessary to spend in order to divest the land of the buildings, trees, and other things of which it is to be taken to be divested in order to arrive at the full site value.

It is obvious that the aggregate amount of these deductions may exceed the total value as the Act defines it. The value of the buildings and other structures and of the trees on the land may be great in proportion to the total value, and so may the amount of the expenditure which is directed to be allowed for. The result may easily be that the person making the calculation will have, after ascertaining this aggregate amount, to bring out the balance of assessable site value as a minus quantity. On this the language of section 25 appears to me to be imperative and quite clear, and to afford no room for uncertainty.

And when I look back to section 2, which deals with increment value, it seems to me that this conclusion leads to no difficulty. For the increment value directed to be taxed is, as I have already pointed out, simply the difference between present and past site value, and this difference is as real and easily measured when one of the quantities is minus as when both are plus. Julius Cæsar was born in 100 B.C. and died in 44 B.C. The period of his lifetime is not on that account less real, nor does the circumstance that it commenced before the Christian era, in a time the lapse of which is consequently reckoned by minus numbers, make the aggregate of years between then and the present time the less real. The temperatures below the freezing point which is indicated by zero on the centigrade thermometer, are shown as minus figures, but a rise in such temperatures is not the less actual because it is measured negatively.

And so in the case of increment duty, the duty in relation to which the valuation called in question in the controversy before us becomes of practical importance there is no difficulty. The growth in value which is marked out for taxation is not rendered the less real because of the method prescribed for its measurement. What the Act appears to contemplate is that the actual growth is to be taxed, and it lays down how the amount of this growth is to be expressed. If, as has been argued, it is wrong to enter a minus amount in the balance sheet which the valuer has to make out, the consequence must be that, notwithstanding that there has been an actual increase, measured by the difference between a minus figure and nothing, the starting point of this increase must be struck out and the original site value entered in all cases as nothing.

Such a result would lead to great injustice. Suppose two houses, side by side in a street where the site values were exactly the same originally, and had increased equally, and that in the case of one of them a lump sum price had been paid so that there was a small feu duty or none at all, while in that of the other the feu duty was substantial. The assessable site value might appear as a minus quantity in the latter case and as a positive quantity in the

other. This would make no difference in the estimation of increment duty as chargeable on a rise in site value which was actually equal in both cases. But if in the latter case the original site value were entered as nothing, the result would be that the increase in the site value of the second house would be made to appear as less than in the case of the first simply because there was a substantial feu duty. And yet there was really no difference between the two cases excepting in the mere form in which the price was paid for the site and the building upon it. The seller gets his lump sum price, or an equivalent feu duty in the second case, secured over both site and building. In either alternative his title is to a fixed sum and to nothing more. The buyer, on the other hand, gets his site and building and an exclusive title to any rise in the value of either.

It appears to me that the Act of Parliament is definite in its directions, and that its scheme is not ambiguous. It was pointed out by Mr Clyde in the able argument which he addressed to us on its construction that sub-section 5 of s. 3 does not, if read literally, harmonise with the interpretation I have put on the rest of part 1. For it directs that on the first occasion of the collection of increment value duty the increment value is to be deemed to be reduced by an amount equal to ten per cent. of the original site value, which must therefore have been contemplated by the draftsman as being a positive quantity. That is true if the words are read literally and without reference to the context. But an isolated expression of this kind cannot alter the plain scheme and principle of the whole of the valuation sections. And I think the subsection in question becomes harmonious and intelligible if original site value is read in this particular case as meaning, not the artificially expressed figure to which the last paragraph of the general definition in section 25 (4) refers, but original site value in the sense of what remains after deducting from the amount of the site value at the time of collection the amount which represents the increase since the original valuation of what at that time, however described in the valuer's balance sheet, must have been contemplated by those who framed the statute as, taken by itself, an actual and therefore positive element in the value of the entire property. A similar observation may be made about section 17 (1), which prescribes that undeveloped land duty is not to be charged in respect of any land where the site value of the land does not exceed fifty pounds per acre. From the nature of the case and the very definition of undeveloped land questions which may arise in the case of increment duty are excluded, and it was not necessary to provide for them.

As soon as it is realised that the deductions which have to be made in order to state the account which the statute prescribes have to be made equally when ascertaining present site value and when ascertaining original site value for the purposes of increment duty, the obscurity disappears. That these deductions have to be made in both cases is plain from the concluding words of section 2 (2) which gives directions to that effect. Those who framed the Act have adopted a method of working out the account which appears artificial, but which when examined carefully turns out to be necessary if the injustice is to be avoided which a different procedure would bring about in such instances as that of the two adjacent houses to which I have referred. The true view appears to me to be that the intention is to levy the tax only on an actual increase of value, and that it is merely in order to measure this increase that an arithmetical method is used in which minus numbers may appear among other figures.

Having arrived at these conclusions as to the meaning of the valuation provisions of part 1, I now come to their bearing on the appeal before this House.

The appeal is brought against two interlocutors of the Judges of the Court of Session named for the purpose of hearing appeals under the Valuation of Lands (Scotland) Acts. By the first of these interlocutors the learned judges overruled the decision of a referee appointed under the Finance Act of 1910, by which decision the referee had entered the original assessable site value of certain property vested in the respondents as trustees of George Herbert deceased, and being Nos. 57 to 69 Westend Park Street in the City of Glasgow, as minus £545. The second of the interlocutors under appeal was consequential, and was a decree against the appellants for costs.

The referee decided that the original assessable site value was the minus sum I have mentioned, but he went on to say, in the case which he stated, that if it should be held by a court of law that such a minus value was illegal under the Finance Act 1910 he alternatively determined that the original assessable site value was nothing, and that in the event of his first alternative finding being upheld there were to be no expenses, while if the second alternative was upheld the respondents were entitled to expenses.

The only controverted question related to the site value, and as to this the referee found as follows:—

Gross (original) value	£4,828
Deductions from gross value :—	
Difference between gross value and value of the fee simple of the land divested of buildings, trees, &c.	4,320
Feu duty, ground annual or tack duty	1,053
Original full site value	508
Original total value	3,775

He went on in the case to state that it seemed to him that his duty under the Act was clear. By section 25 (4) the assessable site value meant he thought the total value after deducting the same amount as was to be deducted for the purpose of arriving at

full site value from gross value. Applying these figures, the result he reached was this:—

Original total value	£3,775
Deduct amount to be deducted for the purpose of arriving at full site value from gross value	4.320
Original assessable site value=minus	545

The Court of Session held that, reading the Act as a whole, an assessable value could not be a minus quantity, and on this ground they overruled the decision of the referee and gave judgment to the effect that the value in question must be entered as nothing. They seem to have been impressed with the idea that, upon the principle adopted by the referee, the owner of the site held it under burdens which prevented him from getting any benefit from it until it had appreciated to a positive quantity, and that until then the appreciation accrued for the benefit of the holder of the feu-duty or other fixed charge. The answer to this is that what will be taxed when increment duty is levied will be not the original site value but the increase in site value, an increase which must always accrue for the benefit of the fiar, and can never increase the amount of the feu-duty or other fixed charge. The fallacy in the judgment of the learned Judges appears to me to be that they took original site value, which is nothing but a formula for measuring a real element of increase in value, as intended to be by itself a definition of an assessable value. With all deference to the learned Judges, I think they have misconceived the machinery of the statute, and that the referee whose decision they disturbed was right in the conclusion he came to.

For these reasons, I move that the two interlocutors of the Court of Session be recalled, and that it be declared that the first or principal decision of the referee was right. I think that the respondents must pay the costs here and in the Court of Session, and that in accordance with the view of the referee there should be no costs of the proceedings before him.

LORD ATKINSON—This is in substance an appeal against an interlocutor, dated 18th April 1912, of the Lords of the Court of Session named for the purpose of hearing appeals under the Valuation of Lands (Scotland) Acts, on a case stated by way of appeal from a referee under section 42 of the Finance (1909-1910) Act 1910. It appears from the case that the referee had fixed the original assessable site value, as he styles it, of the proprietary estate and interest of the testamentary trustees of one George Herbert, deceased, in premises described as 57 to 69 Westend Park Street, Glasgow, at a minus quantity or sum, namely minus £545, or, in the alternative, if it should be held by a competent Court of Law that the original assessable site value cannot under the Act be legally fixed at a minus sum, he fixed it at nil. By the interlocutor appealed from it is, as I understand it, decided that it is illegal to fix this so-called original assessable site value at a minus sum, and that the alternative decision to fix it at cypher would under the circumstances of the case have been right. At pages 7 and 8 of the case the referee has set out in detail in figures the values in money necessary to be ascertained, and the deduction and calculations necessary to be made under the statute to arrive at the original site value of the land. These values are or must for the purposes of this appeal be taken to be accurate, and the deductions and calculations taken to have been properly made, so that the sole question for discussion is this—Is it lawful under the provisions of this Finance Act to fix the original assessable site value of land to which Part I of the Act applies at a minus sum?

Part I comprises 42 sections. Of these sections 1 to 12 inclusive deal with increment value duty; sections 13 to 15, both inclusive, with reversion duty; sections 16 to 19, both inclusive, with undeveloped land duty; and sections 20 to 24, both inclusive, with mineral rights duty. By sections 25 to 34, both inclusive, machinery is set up for the purpose of ascertaining and determining the amounts of these several descriptions of duties. Section 41 is a definition clause, and section 42 contains provisions adapting the statute to Scotland.

The definitions are matters of importance. In the former of these two sections the word "land" is defined negatively, *i.e.*, as not including any incorporeal hereditaments issuing or granted out of the land. In section 42 it is defined, as to Scotland, as not including amongst other things "any servitude, superiority, casualty, feu-duty or ground annual, or any incorporeal right." The expression "rentcharge" is defined in that section as including "feu-duty and ground annual." The expression "interest" in relation to land is defined as not including amongst other things any tiends, servitudes, or superiorities. The expression "owner" is defined as the fiar of the land except where the land is let on lease for a term of which more than 50 years are unexpired, when the lessee is to be deemed the owner. It also includes an institute or heir of entail in possession. The expression "free-holder" is defined to include a fiar, liferenter of land settled within the meaning of the Finance Act of 1894, and an institute or heir of entail in possession. The expression "fixed charge" is in section 41 defined to mean among other things a rentcharge, and as a rentcharge includes a feu-duty the latter is therefore a fixed charge. It is a fixed charge upon the land and everything upon it, invariable in amount, though, of course, if capitalised, as it must be under section 32, its capital value may vary according as it is well or ill secured, but the superior to whom the feu-duty is payable is not an owner of land within the meaning of the Act. He has not by virtue of his superiority even an "interest" in the land within the meaning of the Act. He pays no taxes on any increment in value such as this case has in contemplation, and has no concern

with the calculations by which the amount of that increment is determined.

Now the general policy of Part I of the statute (certainly as to all the subjects of property other than minerals), so far as revealed by its provisions, is in its main outline apparently this, to levy a heavy tax on the kind of increment in the value of land used or suitable to be used as a site or sites for buildings which is not attributable to the expenditure of capital by or on behalf of the owner for the purpose of improving the value of the land as building land, or for the purpose of any business, trade, or industry other than agriculture. The increment in value arising from an increased demand for building land due to an increase in wealth or numbers of the surrounding or adjacent population, to its progress in trade or manufacture, or to works carried out at the expense of the municipality within the limits of which the lands are situate, and suchlike things, the unearned increment, as it is popularly called, it is alone designed to tax. Purely agricultural land and some other classes of land are expressly exempted from liability. Special provisions are introduced dealing with undeveloped land duty and reversion duty, and certain conditions and qualifications are prescribed as to the application of this principle in particular instances, but the above are, I think, the chief features of the policy. With the merits or demerits of this policy this House in its judicial capacity is of course in no way concerned. Its task is to ascertain from the provisions of the statute itself what the policy is, and when ascertained to apply that policy so far as those provisions will permit. It was easy to select the *punctum temporis* from which the increment in value to be taxed should be taken to have commenced to accrue. This is done by section 26. It is the 30th of April 1909.

The difficulty was to fix the particular value which was to be taken to have increased, by the comparison of which with some other value the amount of the increment could be measured. Whether these two values be fictitious or actual, positive and real, or not, is wholly immaterial, provided only that a comparison between them can be made, and that this comparison, if made, will supply a true measure of the amount of the increment.

By two of the machinery sections, namely, sections 26 and 27, the Commissioners named in the Act are required, as soon as may be after its passing, to cause a valuation to be made of all the land in the United Kingdom, showing its estimated total value and site value respectively as on the 30th of April 1909.

They are also required to serve upon the owner of every piece of land with which they deal a copy of their valuation of that land. It is called a provisional valuation because the owner may object to it. Machinery is set up for determining the validity of his objection, and if need be amending the valuation according to the result. If no objection be made, or if made be overruled, or if allowed and the valuation be amended accordingly, the values mentioned in this valuation, as it was originally framed or as amended as the case may be, are to be the original total value and the original site value of the land for the purpose of the Act.

Some rather fanciful estimates have to be made and elaborate calculations resorted to to fix, in conformity with the policy and provisions of the Act, this original site value—this datum line, as it were, from which the increment in value is to be measured.

Section 1 is the taxing section. It imposes a duty on the increment value of land at the rate of 20 per cent., and treats that value as accruing after the 30th day of April 1909. It also specifies the occasions upon which the duty is to be collected. Section 2 shows what is the nature of the increment to be taxed, indicates how it is to be measured, its amount ascertained, and the occasions on which the duty is to be collected. By sub-section 1 of this latter section it is provided that the increment value on anyone of these occasions shall be deemed to be the amount, if any, by which the site value on that occasion exceeds the original site value. As far as this function of the site value is concerned it does not matter, it would appear to me, in the slightest whether the fixed starting-point is indicated by a plus sum or symbol or by a minus sum or symbol, because the difference between minus £500 and minus £100 is £400, just as truly as the difference between plus £100 and plus £500 is £400. For instance, if the original site value be taken as minus £500, that is £500 less than nothing, and the site value at the time when the duty falls to be deducted be taken at minus £100, that is £100 less than nothing, there would still be as truly an increment of £400 in the value of the land as if the original site value had been fixed at plus £100 and the site value at the time the duty fell to be collected had been found to be plus £500. The increment in both cases would be precisely the same, and should be taxed in the one case as in the other.

Again, if the decision appealed from were right and if, although the methods for ascertaining the original site value prescribed by the statute should bring out a minus sum, £500, its value should be fixed at cypher, the result would be that though the value of the property increased by £1000, the site value at the date of collection of the duty would only be plus £500. The true increment would not be taken as its undoubted amount £1000, but only at half that amount £500, since it would only exceed cypher by that sum. Sub-section (1) of section 2 prescribes the mode and method by which the site value is to be ascertained upon the occasion when the duty falls to be collected. The words occurring at the end of sub-head (*d*) of that sub-section take one forward to the 25th section, as they provide that from the values mentioned in sub-heads (*a*), (*b*), (*c*), and (*d*) deductions are to be made like to those to be made under the general provisions

of the Act as to valuation for the purpose of arriving at the site value of land from the total value. These general provisions are contained in this 25th section. They must necessarily be applied by the Commissioners for the first time when these officials proceed under sections 26 and 27 to fix the original site value, and they must be again applied when the occasional site value has to be ascertained, namely, when the duty falls to be collected. The deductions thus authorised—indeed made imperative—are so many and so considerable that they must often produce, as they have produced in this case, a minus result; but as they are to be made at both ends of the scale as it were, the upper and the lower, in ascertaining the two site values the original and the occasional, the comparison between the amounts of the two over-reduced values will still furnish a true test and measure of the actual increment.

Now section 25 provides in effect (1) that the gross value of land means its market value if sold as it stands free from incumbrances; (2) that the full site value is the difference between this market price and the sum which the land would fetch in open market if sold divested of all buildings and other structures upon it—timber, fruit trees, &c.—but subject to incumbrances.

Then total value (sub-section 3) means this gross value after certain deductions have been made from it. These deductions are of a peculiar nature. In the present case the only one of the things enumerated in sub-section 3 which affect the land with which the case is conversant is the fixed charge, the feu-duty. The capitalised value of this duty has been found to be £1053.

The gross value of the premises has been estimated to be £4828. The deduction from which of this sum of £1053 leaves the sum of £3775 as the total value. Further deductions have, however, to be made under sub-section 4 from this total value to obtain what is unhappily styled "the assessable site value of the land." This is a most misleading expression. It suggests the idea that site value itself is assessed with a duty—is taxed. Site value is neither assessed nor taxed. That is plain from section 1. What is taxed is the increment in the site value starting from the original site value, and in my view it is clear that the "assessable site value" mentioned in section 25 is, and must be, the same thing as "the original site value" mentioned in section 2, sub-section 1.

In the present case the only additional deduction to be made from the total value is that mentioned in sub-head (*a*) of this sub-section. It is formidable in amount. On referring to sub-section 2 of this section it will be found to be the market value of the fee of the land if sold divested of all buildings, timber, &c., but subject to incumbrances. That has been fixed at £4320, which, if deducted from the total value of £3775, leaves, of course, a minus balance of £545. This looks no doubt an absurd result, but if it be applied to a supposititious case, such as the figures in this case will enable one to deal with, as part of the machinery for measuring the amount of the increment to be taxed, it will I think be found to work out satisfactorily. Suppose, for instance, the owners in the present case had spent £1000 on improving the buildings on their land, and by reason of that expenditure and that alone had raised the market value of the premises if sold free from incumbrance by £1000, and had in fact sold the premises so improved for £5828; on the transfer of the property an occasion would arise for the collection of the increment value duty. The site value of the land should then be taken to be the purchase money less the deductions authorised by section 25 (sub-section 3 and sub-section 4, sub-head (*a*)). But these deductions would not then be confined to the capitalised value of the feu-duty and the sum of £4320. If these alone were deducted it would show an increment in site value of £455, whereas *ex hypothesi* there has been no such increase. Another deduction would have to be made, that mentioned in sub-section 4 (*b*) of section 25, namely, that part of the total value proved to be attributable to the owners' expenditure of £1000 in rebuilding. This would presumably be £1000. When that also is deducted from the total value it leaves the site value determined for the occasion at minus £545, the same as the original site value. This is quite as it should be, since *ex hypothesi* there was no increase in the site value.

The figures do not enable one to take a case where the gross value of the land as it stands is increased from causes other than capital expenditure, since the market value of the denuded land under such circumstances has not been found.

Gross value, total value, full site value, are no doubt all real things, actual positive values. It does not necessarily follow I think that occasional site value must always be a real thing, an actual positive value. Circumstances might conceivably occur in the locality between the time the original site value was fixed and the time when the occasional value had to be fixed which would cause a great diminution in the value of the land, both in the state in which it stood and as a building site. The occasional value would then be less than the original site value, and in such a case the former would properly and necessarily be indicated by a minus sum or quantity if the original site value was itself indicated by 0.

With all respect to the learned Lords who have pronounced the interlocutors appealed from, it would appear to me that they have not steadily kept in view what is the true function of this original site value when ascertained, the particular purpose which it serves in Part I. of this statute. The main, if not the only, purpose which it serves is, as I have said, merely to fix the datum line from which the taxable increment in the value of the particular piece

of land shall be measured on the occasion when the duty on that increment falls to be collected.

The fact that it is indicated by a minus sum or quantity cannot I think be held to prevent its serving that purpose, any more than it could be held that the increasing temperature of water from the freezing point upwards could not be measured by a Fahrenheit thermometer because the freezing point of water is in that instrument fixed at 32 degrees above zero.

In my opinion the comparison between the original site value and the occasional site value, where both are fixed in conformity with the statute, will furnish in this and every other case a true measure of the amount of the increment value which is to be taxed, and I cannot find anything whatever in the statute to justify the fixing of the original site value at any figure different from that arrived at by following the methods expressly prescribed in the statute.

Mr Clyde in his most able and ingenious argument on behalf of the respondent relied much on the provision of section 3, sub-section 5, to show that the original site value could not be a minus sum or quantity, inasmuch as that sub-section directs that on the first occasion on which the so-called occasional value is to be fixed 10 per cent. of the original site value is to be deducted, and 10 per cent. of a minus quantity could not be deducted, or if deducted would result in an increase of the occasional value. Well, though this last result would not follow from a deduction of 10 per cent. off nothing if the original value was fixed at nil, as it has been by the interlocutors appealed from, still the provisions of the sub-section, I think, do indicate that the framers of the statute did not contemplate that the original site value should ever be reduced to a 0 or to a minus quantity; or it may be that the words original site value have been used in some sense different from that which they bear in section 2, sub-section 1; or lastly, I suppose, that they have crept into the sub-section by mistake. He suggested, as I understood, that the words "full site value" should be substituted for "original site value."

Speaking for myself, I may say that I do not as at present advised see my way to a satisfactory solution of the difficulty he has raised.

The House is not required, however, to construe section 3, sub-section 5, on the present occasion. It is therefore unnecessary on this appeal to express any decided opinion as to its meaning. Upon the only question we have to decide, namely, whether it is legal to fix the original site value at a minus sum or quantity. I have formed a very definite opinion in the affirmative. I think it is lawful so to do, and if the provisions of the Act are to be carried out it is necessary to so do. And I am further of opinion, for the reasons already given, that this will in no way prevent the site value serving efficiently and justly the purpose it was designed by the Act to serve. I therefore think the decision appealed from was wrong and should be reversed; that the original site value should be fixed at minus £545; and this appeal be allowed, with costs.

LORD SHAW—This appeal to your Lordships' House is regarded as of importance because it is said to affect not only a principle upon which the entries with regard to land values are to be made by the officers charged with that duty under the Finance Act 1910, but also on account of the large number of values throughout the kingdom which the principle affects.

Importance in various passages of the judgments of the Court below is rightly attached to the objects of the statute. One of the chief of these is that to be achieved under section 26. By that section—(1) it is provided that "the Commissioners shall, as soon as may be after the passing of this Act, cause a valuation to be made of all land in the United Kingdom, showing separately the total value and the site value respectively of the land." I exclude the reference to agricultural land with which this case is not concerned; but the section goes on to provide that each piece of land under separate occupation shall be separately valued. And the estimate of value is to be made as on the 30th April 1909.

To all intents and purposes this is a statutory requirement for the formation of a Domesday Book, and the object cannot be accomplished unless all land in the United Kingdom is included in that book. The two items which must appear with regard to every piece of land under separate occupation are the total value and the site value respectively of the land.

With regard to each and all of these terms, the statute explains, and, in my opinion, clearly and sufficiently explains, their meaning. I think it right to say so, and, looking to the complexity of the subject, and having in mind the pressing conditions under which modern legislation is accomplished, to say so emphatically. Its drafting in subsequent cases will, no doubt, have to be as minutely analysed as it has been in the present; but upon the only point which your lordships have to determine I do not myself see how language could have made it clearer.

That point is—What is site value? Mr Binnie, a skilled valuer, having reached his results by conforming simply to the provisions of the Act, is able to make his calculations with brevity and entire clearness. And he makes these two remarks. He says —"My duty under the Act is clear and unambiguous," and in a later portion of the stated case he says—"I do not see how, having regard to the directions in section 25, it is possible to arrive at any other conclusion." I think that Mr Binnie—addressing himself, as he manifestly did, to no other task than that of conforming to what the statute has laid down—was justified in both of these observations. The statute in no way confused him; his figures and calculations appear on half a sheet of paper. I think this result arose because the terms

of the statute as well as of his duty were so plain.

Having in view accordingly this main object of the statute, namely, the formation of a Domesday Book, or a valuation of all land in the United Kingdom, showing separately the total value and site value of each separately occupied portion of it, I ask myself what, according to the Act, is the meaning of these terms? In the first place as to the meaning given to "land." Land has been already defined by the Interpretation Act of 1889. And by section 42 it is further declared that land does not include superiority, casualty, feu-duty, or ground annual. Nor does "interest" in relation to land include superiorities.

There was a considerable discussion and exposition at your Lordships' Bar of the system of landed rights in Scotland. With regard to these I will only observe that the policy of this statute, as well as its provisions, appear to me to be fairly clear. It is no doubt true that the right of a superior, the *dominium directum*, is in law an estate in land under the feudal system just as much as under that system is the right of the vassal whose estate in land is denominated the *dominium utile*. But the situation of parties must also be viewed from the standpoint of business, of possession, and of finance. One would not unnaturally expect that this last, and not the other, is the standpoint of the Act.

So viewed (and casualties and occasional payments being for the sake of simplicity discarded) the superior is the recipient from the vassal of a feu-duty. The vassal is the person holding the land by a permanent and substantially indefeasible tenure. And howsoever property may improve in value, the increment in that value is secured by the vassal alone. The rights of the superior are financially nothing more nor less than the right to draw a fixed sum secured upon the land from the vassal. Within the range of finance and actual management that is how the matter stands. In the region of feudal conveyancing it is true that the right of the superior, being a right in the land itself, can in certain circumstances be amplified or made effective, so far as practical result goes, by the remedy called an irritancy *ob non solutum canonem*, that is to say, the entire subject can be made to revert to the superior if the vassal is two years in arrear with his feu-duty.

I have purposely made these observations in the most general form because I desire broadly to state that I do not think a Finance Act in the United Kingdom ought to be, unless that be logically compelled, diverted from its plain financial object and meaning by considerations which do not touch general finance but affect merely the feudal conveyancing of the land in Scotland. So far—as I have already mentioned—so far as finance is concerned, the true owner who will get the benefit of any rise in the value, and who is in that sense the beneficial owner interested in the taxation upon land value, and also in the increment thereof, is the vassal, the owner of the *dominium utile*. And so far as the superior is concerned he is placed by the statute exactly as what in the region of finance he is, namely, a person having a right to a fixed payment subject to no increment by change in economic or market conditions. Accordingly he and the bondholder or mortgagee are quoad finance upon the same footing. The superior drawing his feu is treated like a mortgagee drawing his interest. He takes a fixed sum per annum. No doubt in one case, as in the other, were that fixed sum not paid certain drastic remedies and consequences might follow; and no doubt in the one case, as in the other, if the gross value of the subject goes up the feu-duty or the loan becomes better secured; but so far as the land is concerned the beneficial owner is the vassal, and the land dealt with by the Act is the vassal's land.

This, which would seem the natural and reasonable view to take of a financial statute, is entirely confirmed by its various terms. Under what clause, for instance, does feu-duty come? By section 25 (3) there is a reference to fixed charges, What are these? By section 41 the expression "fixed charge" means "any rentcharge." That term is also defined by the statute. In the application of the Act to Scotland by section 42 "the expression 'rentcharge' includes feu-duty." Feu-duty accordingly is treated like any other fixed charge. In particular, because all feu-duty is drawn by a superior, and because a superior has an estate in the land itself under the feudal system—all this is wiped away in a financial statute. The vassal is the owner, and one of the fixed charges he pays is his feu-duty. It is only in view of a protracted argument in your Lordships' House that I have ventured to state these things, which are rescued from confusion and made so plain by the text of the statute itself. Having thus ascertained what the term "land" is, and disentangled it for the purposes of the Act from the superior's rights, the next thing, under section 26, is that all land must appear in the valuation. Therefore all land under contract of feu must there appear, and the land which there appears is the vassal's right, and the vassal's alone, the superior's right having fallen into the category of what financially it truly is, a fixed charge upon the vassal's land.

The second term applicable to the making of the Domesday Book under section 26 is that, while all land is to appear, the valuation is to show separately the total value and the site value. What then is total value? That is made clear by section 25 (3) —"The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to any fixed charges." By sub-section (1) the gross value is explained to mean the open market value of the whole subject with all the buildings, &c., upon it, and free from incumbrances. So that to get the total value you have simply to deduct from the gross or market value the amount of the

fixed charges. So far as total value is concerned that is a very simple calculation. If the gross market value was £5000, and the fixed charges (in this case the feu-duty when capitalised) were £1500, the balance would be "the total value," namely, £3500. This separate entry in the Doomesday Book is the result of a simple calculation.

The next statutory entry in the valuation is the site value. How is that to be arrived at? In the previous section, site value (I dismiss the reference to the parenthesis, which does not apply to the present occasion) "shall be deemed to be a reference to the assessable site value." Under section 25 (4) "The assessable site value of land means the total value after deducting (*a*) the same amount as is to be deducted for the purpose of arriving at full site value from gross value." Various other deductions are to be made from total value, but they do not occur in the present case and need not be referred to. Now, gross value was the unencumbered market value of the whole subject, including the buildings, &c. The full site value of land means (25 (2)) the market value of the whole subject if divested of the buildings, &c. It may be called divested site value. In the case given, if the gross value were £5000, and the buildings were worth £4000, the full site or divested site value would be £1000.

I revert accordingly to What is the assessable site value? It is to be the total value after deducting the buildings, &c. Now the total value was £3500. Accordingly the assessable site value means that £3500 after deducting the buildings, and these were £4000. The result is demonstrably certain that there is produced a minus value of £500. As Mr Binnie says, if you proceed by the directions of section 25 it is not "possible to arrive at any other conclusion."

But I desire to state that, if the data prescribed by the statute for the calculation be employed, this minus value which is thus reached is exactly what would be reached, not in hundreds, but in thousands and tens of thousands of cases in Scotland. The system of feuing land is much prized, providing as it does perpetuity and security of tenure, and giving the beneficiary increment to the vassal who erects the buildings or makes the improvements. But in the feu charter it is, by the commonest words of style, a matter of express prescription that the vassal must make the superior also secure in the feu-duty by erecting and maintaining upon the lands buildings of sufficient value to afford a cover for that security. Land may be worth, in its agricultural condition, from £1 to £3 per acre, but on account of its local situation and advantages it may be feued for building purposes at from £10 to £30 or from £100 to £300 per acre. The buildings in such cases are often tenements erected upon the old Scotch system, with regard to which there is a convenient and familiar code of law. They are of several storeys in height, and they are owned, it may be each storey, or even part of each storey, by a separate proprietor. Upon an acre of ground there thus grows up a group of proprietors, among whom the feu-duty is split up under arrangements which need not be here entered upon. Where buildings of the kind described have been erected their value is large. But, upon the other hand, the heavy feu-duties when capitalised and loaded upon the market value of the whole subject very greatly reduce that, and so the "total value" (arrived at after this deduction) becomes relatively small in the very cases in which the value of the buildings becomes relatively high. In such cases the buildings and improvements far exceed in value the market value of a subject so heavily burdened with feu-duty. The case dealt with by Mr Binnie shows figures which must be much within the mark in common experience; but, to use the round numbers I previously employed, the gross value of the whole subject burdened with the feu-duty is the total value under the statute, and is the figure of £3500. The buildings and improvements are £4000, and the minus figure is demonstrably £500.

I repeat these things because of this, that unless this figure be so arrived at, and the statute with regard to these calculations be loyally and strictly followed, one of the main objects of the statute under section 26 will be largely defeated. As I have mentioned, in thousands of cases of urban land in Scotland the value of the buildings by themselves exceeds the value of the subject if loaded with a large feu-duty, and it would be to sterilise the action of the officials under the statute in making a valuation of all land if these instances had to be excluded. The land of Scotland would not be wholly valued and numberless separate occupancies would disappear. It appears to me not difficult to affirm that such a result could never have been intended by the Legislature.

With much respect to the learned Judges of the Court below, I attach no importance whatsoever to the plan of setting down those instances in all cases with a value of *nil*. "*Nil*" is not in accordance with the arithmetical deductions which are expressly prescribed by the statute. It is a defiance of the statute. It is arrived at only after the mind has conceived the notion that there must be a positive value to start with, and that the Legislature must have intended that. Once that notion is arrived at, of course, where no positive value, but only a minus value appears, the statute cannot work unless the device is adopted of putting the figure 0. But this figure 0 is a figure of despair, indicating that no positive value can be found. It might have to be set down if the statute anywhere prescribed with regard to the valuation as a whole or in its details that the value should be positive. But after anxious consideration I do not find that the statute does anything of the sort.

It would indeed be rather extraordinary if it did, because it would be making unworkable the very figures and calculations which it expressly prescribes; and secondly, it would be a writing out of the

valuation for all purposes of true and effective comparison of values at one date with values at another — the practical datum or standard line, the foundation from which all subsequent variations in the value of the property could be measured.

This last consideration is important, for another main object of the statute is the imposition of an increment value duty; and a construction which would upset or remove the very foundation upon which increment could be truly reckoned does not accord with reason. And, moreover, such a construction might, in those numberless cases to which I have referred, postpone the ascertainment of any increment whatsoever until decades or centuries had passed and such an enormous rise had taken place in value as to make that value, even though loaded with a heavy feu-duty, exceed that of the buildings and improvements upon the land. Not until that time would what is called "positive value" be reached, and not until that time could any figure actually representing the truth appear upon the valuation or become the measure for future increment.

The statute does not look at the matter in that light, for not only has it prescribed that the valuation shall be of all the land in Scotland, but it has stated that this valuation shall be as at the 30th April 1909.

I incline with reference to the view which has been presented, and which is alluded to in the judgments of the Valuation Court, that the operation of deduction of the two specified figures may result in a minus value mathematically, but that such a result is repugnant to reality—I incline to say that in my humble opinion the repugnancy is in the other direction. I will venture to give the illustration which I presented to the Bar at the discussion. Assume that in ten years' time the gross market value has increased by £1000, the buildings and feu-duty remaining as before. The buildings are still £4000. The total value has come up to the figure of £4500. And so with regard to the assessable site value, the undoubted increase of £1000—an increase which in the circumstances is unquestionably due to the appreciation of the land—is plainly accounted for by the former minus value of £500 being now transmuted into a plus value of the same figure. To say that you would be entitled, notwithstanding the undoubted increment of £1000, to reduce that increment to £500, is simply to defend what was truly a fiction of entering the original assessable value at nil instead of what it truly was, namely, minus £500. So far from mathematics having led the calculator away from actuality, it has entirely squared with the truth and history of the increment.

One element derived from the statute was introduced to show that the calculations made according to the rule set up in section 25 were impossible. The reference was to section 3 (5), which provides that "for the purpose of the collection of duty on the increment value of any land under this section the increment value shall be deemed to be reduced on the first occasion for the collection of increment value duty by an amount equal to 10 per cent. of the original site value of the land." The argument was that with a minus value assessable site value could never thus be credited with its 10 per cent. of allowance. The argument is illegitimate, because by section 25 that very sub-section (namely, (5) of section 3), which is for the purpose of the collection of duty on the increment value, is excluded from the definition of site value. By section 25 it is provided that "any reference in this Act to site value (other than the reference to the site value of land on an occasion when increment duty is to be collected) shall be deemed to be a reference to the assessable site value of the land." The parenthetical reference is precisely to the occasion on which increment duty is to be collected, and that is the occasion set forth in section 3 (5), which is specifically "for the purpose of the collection of duty." It is accordingly, I think, pretty clear that it is not legitimate to treat the reference to the allowance of 10 per cent. deduction under section 3 (5) as a reference to assessable site value at all. It is a reference to a site value different from the assessable site value, and called for the purposes of that sub-section the original site value.

The argument was developed, however, by this, that it was stated that an actual duty was to be imposed by the statute on undeveloped land. This is true, and the duty is laid down by section 16, but section 17 clears all difficulty as to positive and negative values or plus and minus quantities out of the way, because by its first sub-section it prescribes — "Undeveloped land duty shall not be charged in respect of any land where the site value of the land does not exceed £50 per acre." That is to say that when land duty is imposed as such it is upon a site value which is positive, namely, upon land worth £50 per acre and over; but when the statute is treating the problem and fact of increment it is in the position of laying down, to begin with, the mode of settling a datum line from which in future years and on future occasions the increment shall be reckoned. There is no necessity whatever to make that datum line positive, any more than there would be for declaring—to use the illustration familiar in the discussion—that the actual fact of a rise of temperature should be differently dealt with or declared not to have occurred because the points of rise were both below zero on a Fahrenheit thermometer. The illustrations might be multiplied. The datum line for a railway system, for harbour works, for a mine, may differ (in the last-mentioned case the datum may be taken from the pithead or from the bottom of the mine), and may differ greatly, but the rise upwards is quite real and quite calculable in any of the cases mentioned, and any exclusion because of the location of the datum line and certain contours

being below it would not be natural but highly artificial. Or in the region of history — some Roman historians date events *ab urbe condita,* others *ab anno Domini.* But although the latter were to be set up as the correct datum, it would be strange to deny the flight of time from the founding of Rome till the year of our Lord.

For these reasons, I do not entertain doubt that Mr Binnie's valuation, and its entry of a minus value of £545, were properly arrived at and were correct. I do not find the statute anywhere to prescribe, with regard to the making of this valuation, that the datum from which increment is reckoned is to be positive. If it were —the materials for the calculation being what they are — the result would be to render void to all intents and purposes large portions of the Doomesday Book, or rather to describe the entries as *nil,* which is not a statement but a misstatement of the truth. The Act of Parliament, if accepted according to the rules which it itself sets down, may so far as we have seen, and so far as applicable to the question argued before this House, be very easily worked, its rules being so clear, and the completeness of the valuation be unchecked.

I humbly agree to the course proposed from the Woolsack.

LORD MOULTON—The only point raised in this case relates to the proper mode of performing the duty imposed upon the Commissioners under the Finance (1909-10) Act, 1910, by section 26 of the Act, namely the compilation of "the valuation to be made of all land in the United Kingdom, showing separately the total value and the site value respectively of the land." It is clear from the provisions of the Act that by "site value" as here used "assessable site value" is to be understood. The point in issue is as to what is the site value, *i.e.* the assessable site value, of the land to which the case relates. There is no controversy as to the facts. The value of the land and buildings, the value of the bare site, and the amount of the charges thereon, are all agreed. The sole issue is as to what is the "site value" of the land to be deduced from those facts.

Neither "total value" nor "site value" is a term of art. They are appellations coined for the purpose of the Act, and they bear the meanings which are statutorily given to them by section 25 of the Act and no other. It follows, therefore, that although the dispute between the parties is in form a dispute as to the duties of the Commissioners under section 26, it depends entirely upon the interpretation to be given to the definitions to be found in section 25, and our decision must therefore turn on our interpretation of that section.

Section 25 is the first of a fasciculus of clauses headed "Valuation for purposes of duties on land values." It substantially consists of four definitions, viz., definitions of (1) gross value of land, (2) full site value of land, (3) total value of land, and (4) assessable site value of land.

There is no difficulty in apprehending the meaning of "gross value of land" as there defined. It is described as meaning—"The amount which the fee simple of the land if sold at the time in the open market by a willing seller in its then condition free from incumbrances and from any burden charge or restriction (other than rates or taxes), might be expected to realise."

It corresponds, therefore, to the full value of the land unencumbered. It is needless to say that the buildings on the land and all that goes with the land are here included in the term "land."

The "full site value of land" is equally easy to comprehend. It is the full market value of the cleared site. But the language of the statute, though leading to this result, does so in a very peculiar way. It defines the full site value of land as the amount which remains after deducting from the gross value of land the difference, if any, between that value and what I may shortly term the value of the unencumbered cleared site. The result of such a deduction is to give the value of the unencumbered clear site. I do not think that it is obvious for what reason the draftsman chose to express the definition in so peculiar a fashion. It may be that he wished to familiarise the mind with a figure representing the difference between the gross value of the land and the full site value, *i.e.* a figure representing the amount which that which has been put upon the land, such as buildings, &c., has added to the full site value.

The "total value of land" also offers no difficulties. It is the value of the land subject to the actual fixed charges upon it and to public rights of way, easements, &c. It may broadly be defined as the full value of the encumbered land, and represents most closely the then value of the actual property which the owner of the land possesses in it. Here again the draftsman has adopted a circuitous mode of effecting his purpose. He defines the "total value of land" as the gross value after deducting the amount by which the gross value would be diminished if the land was sold subject to its charges, easements, &c. This of course leads mathematically to the same result as if it were defined as the full market value of the land taken as subject to the charges, easements, &c.

It is with regard to the "assessable site value of land"—the fourth and last of the terms defined in the section—that the present difficulty arises. It is defined as meaning the total value of the land after making certain deductions which are set out in the section. For present purposes it will suffice to consider the first and principal deduction alone. This deduction is to be—"the same amount as is to be deducted for the purpose of arriving at full site value from gross value."

Bearing in mind that the "total value of land" is the "gross value" after deducting the capital value of the actual charges upon it, and of the restrictions and easements, &c., which affect it (which I may shortly express by saying that it is the

"gross value" after deducting the burden of the incumbrances), it follows that the "assessable site value of the land" is obtained by deducting the burden of the incumbrances from the value of the site. It is obvious to anyone acquainted with the customs which prevail in different parts of the country, as to creating burdens on land on which buildings already exist or are about to be erected, that it will often happen that the burden of the incumbrances will exceed the value of the site. Nothing is more common than to create charges upon land upon which there are buildings of a permanent character, or upon which the erection of such buildings is secured by covenant. In such cases the charges so created may well be greater than the site value of the land, and the result of the deduction prescribed in the section will be to obtain a minus quantity. This is so in the present case, and the commissioners in making out the valuation have felt themselves bound to register as the assessable site value of the land in question the minus value thus arrived at. The respondents contend that it is impossible to conceive of a value that is less than nothing, and that therefore the Commissioners ought to have inserted "Nil" as the assessable site value of the land in question.

So far as *a priori* considerations are concerned, I cannot follow the contentions of the respondents on this point. The "assessable site value" is something which is defined by the section, and does not pretend to correspond to anything known outside the statute. In order to see whether there is any absurdity in this being a negative quantity, it is justifiable, and even necessary, to look to the way in which the "assessable site value" so arrived at is to be used for the purpose of assessment of taxes. When this is done it will be found that the principal assessment based upon it is that of the increment value duty, and that the amount of this duty does not depend upon the actual amount of the assessable site value but upon its variations. For such a purpose there is no incongruity in the assessable site value being a negative quantity, because a negative quantity is capable of positive variations just as much as is a positive quantity. The thermomenter may rise a certain number of degrees in the Arctic regions though the temperature from which it starts is a minus one. A change from 60 degrees below zero to 20 degrees below zero is a positive rise of 40 degrees. Therefore the purpose for which the assessable site values is to be used, and for which it is necessary that a record of that value should be preserved, does not in any way indicate that it should be a positive rather than a negative quantity.

But when we look more closely into this purpose it will be seen that it is most essential that the actual result of the deduction should be recorded, whether that be positive or negative. For it is evident that the meaning and aim of the "increment value duty" is to tax any increase in the value of the site which is not due to the expenditure of money on the land itself but to surrounding circumstances, such as, for example, the development of neighbouring lands for town purposes. This will be deducible from the assessable site value provided that the actual result of the deduction directed by the statute be recorded, but it will not be deducible therefrom if negative values are not to be recorded. Take, for instance, the figures of the present case. The total value of the land is, £3,775. The difference between the gross value of the land and the full site value of the land is £4,320. This latter figure must be deducted from the former in order to obtain the assessable site value of the land, and the result is minus £545. Now assume that from extraneous causes the full site value is increased by an amount, say £500, the burdens, &c., remaining the same. The assessable site value will then be minus £45 and the increment value duty will be proportionate to this rise in this assessable site value, *i.e.*, to £500. But if the contention of the respondents be correct the assessable site value in both cases would be nil. There would therefore be no change in the assessable site value of the land and no increment duty would be chargeable although there has been a rise of £500 in the value of the site.

The absurd inequalities which such an interpretation of the section would introduce is best shown by the illustration which was given by one of your Lordships in the course of the argument. Suppose that there are two precisely similar houses on adjoining plots of equal value in all respects —say two adjoining houses in a row of uniform houses — and suppose that the full site value in each case is £500. The owner of one creates a charge upon it of the capital value of £1000. The owner of the other leaves it uncharged. Suppose that the developement of the neighbourhood increases the site value in each case by a sum of £300. Each of the owners has had his wealth increased thereby to the same amount, *i.e.* £300, yet according to the contention of the respondents the one would have to pay a proportion of this increment to the state and the other would pay nothing.

I am of opinion, therefore, that both the language of section 25 of the Act and the purpose of the valuation as shown by section 2 of the Act require that the true result of the deduction should be inserted in the valuation, whether that result be a plus or a minus quantity.

Against this conclusion two arguments have been put forward by counsel for the respondents, based upon other parts of the Act. In the first place, it is pointed out that assessable site value is used for the calculation of undeveloped land duty as well as increment value duty, and that in the case of undeveloped land duty the duty depends on the actual assessable site value and not on its variations. This would no doubt be an argument of weight were it not that there is

a special provision in section 17 that undeveloped land duty shall not be charged in respect of any land where the site value of the land does not exceed £50 per acre. Its incidence, therefore, is confined to cases in which the assessable site value is not only a positive quantity but is actually greater than £50 per acre. No difficulty therefore arises in this case, nor does it throw any light upon the matter in issue.

The second argument appears at first sight to be a more formidable one. In sub-section 5 of section 3 it is provided that for the purposes of the collection of duty on the increment value of any land the increment value shall be deemed to be reduced on the first occasion for the collection of increment value duty by an amount equal to 10 per cent. of the original site value of the land, and on any subsequent occasion by an amount equal to 10 per cent. of the site value on the last preceding occasion for the collection of increment value duty. Now it is pointed out that the Act provides that any reference in it to "site value" is to be deemed to be a reference to "assessable site value," and it is urged therefore that this provision is irreconcilable with the idea that "assessable site value" can be a negative quantity, because to reduce a sum by 10 per cent. of a negative quantity would be to increase and not to diminish it.

The true answer to this argument is in my opinion to be found in the very provision as to the meaning of a reference to "site value" in the Act which is relied on for the purposes of this argument. It reads as follows—"Any reference in this Act to site value (other than the reference to the site value of land on an occasion on which increment duty is to be collected) shall be deemed to be a reference to the assessable site value of the land as ascertained in accordance with this section."

In my opinion the words in brackets refer to section 3, sub-section 5, and were inserted with the special object of obviating the difficulty which it is suggested is caused by its language. It follows from those words that in section 3, sub-section 5, the phrase "site value" must not be understood as meaning "assessable site value," but as meaning actual or as it is called in the Act "full site value." This is always a positive quantity, and the difficulty therefore vanishes.

I am of opinion, therefore, that the Commissioners were right in inserting a minus quantity in the valuation as the assessable site value of the land, and that this appeal should therefore be allowed.

Counsel for the respondents, in respect that the case was a test one raising an entirely novel point on the construction of a new statute, and that respondents were merely present to support the unanimous judgment of three Judges in the Court below, asked their Lordships not to give expenses against the respondents.

Counsel for the appellants, while submitting the matter to their Lordships' direction, pointed out that the original assessment of the Commissioners, confirmed by the Referee, was in accordance with the decision of their Lordships, and that respondents had appealed against that decision to the Valuation Appeal Court and there obtained expenses against the Crown.

LORD CHANCELLOR — Under the very special circumstances of this case their Lordships propose to make no order as to costs—that is to say, the parties will bear their costs here and in the Court of Session and before the Referee. That is only done because the question is an entirely novel one, and because, in order to give it the fullest consideration, the hearing has been somewhat extended.

Their Lordships reversed the interlocutors appealed against, restored the decision of the referee in its first alternative, and ordered that there be no costs in their Lordships' House or in the Court below or before the referee.

Counsel for the Appellants — Attorney General (Sir Rufus Isaacs, K.C.)—Solicitor-General (Sir John Simon, K.C.)—J. A. T. Robertson — W. Finlay. Agents — Hugh Bertram Cox — Sir Philip J. Hamilton Grierson, Edinburgh, Solicitors.

Counsel for the Respondents — Clyde, K.C. — Ryde, K.C. — HON. Wm. Watson. Agents—Cameron, Kemm, & Company—Connell & Campbell, S.S.C., Edinburgh.

COURT OF TEINDS.

Friday, February 21.

(Before the Lord President, Lord Johnston, Lord Mackenzie, Lord Ormidale, and Lord Hunter).

ANDERSON AND OTHERS *v.* MINISTER OF RUTHERGLEN.

Church—Manse—Transportation of Manse—Sale of Old Manse—Question Whether Old Manse Situated on Glebe—Presumption Against Old Manse being on Glebe—Right of Heritors to Sell Site of Old Manse.

In an application by heritors for transportation of a manse and for authority to sell the old manse and the site on which it stood and to apply the proceeds thereof towards the expense of providing a new manse, the minister objected to the proposed sale on the ground that the site of the old manse formed part of the glebe lands.

Held, in the absence of proof to the contrary, that it must be presumed that the old manse was built on manse ground and not on glebe ground, and that the heritors were entitled to sell the site.

This was a petition by James Anderson and others, who were duly authorised to represent the heritors of the parish of Rutherglen, for authority (1) to transport the manse, offices, and garden from the present site to a new site; (2) to sell the site of the old manse, offices, and garden;