and that the directors had resolved that the company must go into liquidation. Even if the company was *ex post facto* proved to have been insolvent in the knowledge of the directors, this would not, in my opinion, avail to cut down the validity of the actings of the directors in relation to this petition, those facts being latent. The statement that the directors knew that the company must go into liquidation is a mere amplification of the principal averment, and does not add to its value. (2) It is averred that the petition to rectify the register was not truly presented in the interests of the company, but fraudulently in the interests of the directors themselves. Taken by itself this proposition does not vitiate the petition, for the shareholders proposed to be relieved were, on the admitted facts, entitled to this remedy if timeously applied for, and a sinister motive on the part of the directors in tendering to them the justice to which they were entitled could not prejudice their right to obtain it. Nor does this averment of fraud impart to the averment of insolvency any additional weight against the objections to its relevancy which I have already considered.

My opinion is therefore that we should adhere to the Lord Ordinary's interlocutor, with this variation, that we remit to his Lordship to direct that the names of Leonard H. West and William Duke be removed from the register of shareholders.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court remitted to the Lord Ordinary to direct that the names of West and Duke should be removed from the list of contributories, and with this variation adhered to the Lord Ordinary's interlocutor.

Counsel for the Liquidators—Asher, Q.C. —H. Johnston—C. S. Dickson. Agents—Morton, Smart, & Macdonald, W.S.

Counsel for the Respondents—D.-F. Balfour, Q.C.—Sym. Agents—Pringle, Dallas, & Company, W.S.

Thursday, March 17.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

LAWRIES *v.* LAWRIE'S TRUSTEES.

Trust—Powers of Trustees—Partnership—One of Three Trustees Partner in a Business forming part of the Trust-Estate—Trust Administration.

By trust-disposition and settlement in favour of his children a truster nominated three persons to be his trustees, with power to carry on any business in which he might be engaged at the time of his death, or to continue his interest in any business in which he might be a partner at his death. One of the three trustees was his brother, who for several years had managed two of his businesses, receiving in return half of the profits of one them. There was no writing instructing a partnership. The trustees after deliberation, and having taken legal advice, continued to carry on these businesses for some years under the same arrangement as to management and remuneration as before, with great benefit to the trust-estate.

In an action of count, reckoning, and payment at the instance of some of the beneficiaries against the trustees for the purpose of having the share of profits paid to the truster's brother replaced to the credit of the trust funds, it was *held*, after a proof—chiefly parole, and at which the principal witnesses were the trustees and their law-agent,—that the truster's brother was at the time of the truster's death a partner with him in the business from which he had drawn half the profits, and that the continued payment of these to him was not in the circumstances open to challenge.

Opinion per Lord Kyllachy, but *reserved* by the Judges of the Inner House, that even if the truster's brother were not held to have been a partner, the arrangement with him was in the circumstances a proper act of trust administration.

The late John Lawrie, wine and spirit merchant in Rothesay and Glasgow, died in May 1876, leaving a trust-disposition and settlement, dated 1870, in favour of his children, by which he appointed his brother James Wilson Lawrie, David Lawrie his brother's son, and James Birrell to be his trustees. Among the special powers conferred upon the trustees in carrying out the purposes of the settlement was a power to carry on for the estate, for such time as they might think proper, any business in which the testator might be engaged at his death, or to continue for such time as they may think proper, his interest in any business in which he might be a partner at his death.

At the time of his death the truster had a wine and spirit business in Bath Street, Glasgow, and another in Queen Street, Glasgow. He resided chiefly at Rothesay, and since 1868 both his Glasgow businesses had been managed by his brother James Wilson Lawrie, to whom, after a year of gratuitous management, he had annually paid half of the profits of the Queen Street business. There was no writing instructing a partnership, but there was no other partnership of which the truster was a member. The trustees accepted office, and after consultation with Dr David Murray, partner in the firm of Messrs Maclay, Murray, & Spens, writers, Glasgow, agreed, in the interest of the truster's children, to carry on the Glasgow businesses under the management as before of J. W. Lawrie, one of their number, who was to continue to receive half the profits of the business in Queen Street. This arrangement, which was throughout beneficial to the trust-

estate, continued until 1886, when the businesses were sold. At that date J. W. Lawrie claimed half the sum obtained for the goodwill of the Queen Street business, but upon the request of his son he abandoned that claim, and the whole proceeds were credited by the trustees to the trust-estate.

In March 1891 the children of John Lawrie, eight in number, having all attained majority, the trustees began to consider how the trust might be brought to end, but in November 1891 the elder son, John Morton Lawrie, and four of his sisters, brought an action of count, reckoning, and payment against the trustees for the purpose of having the sums paid to J. W. Lawrie from the profits of the Queen Street business replaced.

The pursuers pleaded—"(2) The defenders not having been entitled to make payment to the said James Wilson Lawrie of any portion of the sums paid to him by them, the pursuers are entitled to declarator, count, reckoning, and payment as concluded for."

The defenders pleaded—"(3) The defender James Wilson Lawrie having a right to a half of the profits of the Queen Street business, the defenders were entitled to make payment of the same to him. (4) *Separatim*, The defenders were entitled to entrust the said James Wilson Lawrie with the management of the businesses, and to pay him half the profits of the Queen Street shop as remuneration. (5) The trust-estate not having suffered loss or damage through the actings of the defenders, they are entitled to be assoilzied from the conclusion for damages."

The Lord Ordinary (KYLLACHY) allowed a proof at which, *inter alios*, J. W. Lawrie (76) deponed—"About the end of October or beginning of November 1869, about the end of the first year after I had been taking charge, the businesses were improving, and my brother came up and stayed with me all night. Next morning we walked over to the shops and had a look over. He was pleased with the progress they were making, and said, 'James, you have had a good deal of trouble with the job, and I think it would be fair for me to give you half of the profit of the Queen Street business, and besides a share in the goodwill if it comes to be sold.' I accepted that arrangement and took up the business. He did not say what was to be the exact share of the goodwill, just a share, but I understood it to be a half. He did not say it was to be a half. I was not to have any interest in the Bath Street shop. I was to manage it as well. I did not ask for any remuneration—he volunteered it. From that time on I continued to manage both businesses until his death. . . . The position I stood in in reference to the Queen Street business was laid before the law-agent of the trust, and after considering matters there was a minute prepared to the effect that we should go on with the business. I continued to act in connection with them after my brother's death just in the same way as I had done during his life, down to the time when they were sold in 1886. . . . When the shops were sold I made a claim for a share of the goodwill of the Queen Street shop, which I considered I was entitled to. I claimed a half of the amount received for goodwill, and I held to that to the last. My view was that I was entitled to a half. I insisted upon my claim at first, but there was a scruple about it, and I said I would rather give them the benefit of it and take nothing, than have it considered that I was exorbitant." "*Cross.*—(Q) Did your brother speak to you several times about giving you payment for the work you were doing?—(A) Not to begin with, but after that it was understood. (Q) And the way in which you were to be paid was by your getting half the profits of the Queen Street shop?—(A) Yes, and a share of the goodwill, which I understood was one half. (Q) You were to be paid for your work by getting those two things?—(A) Yes. There was no one present at the meeting between me and my brother when that arrangement was made. I have no entry in any books about the arrangement."

Mr Alexander (48) deponed—"I am a writer in Rothesay. I was well acquainted with the deceased Mr John Lawrie. . . . He frequently consulted me on matters of business. He mentioned to me an arrangement that he had with his brother Mr James W. Lawrie as to the management of his Glasgow shops. . . . He said he had given him a half-share in the Queen Street shop. As far as I recollect, that was a phrase he used, and my recollection is helped by a letter which I wrote soon after his death. I did not say anything about goodwill; he entered into no particulars." "*Cross.*—I just remember the general terms of the conversation. (Q) In fact, anything he said to you might be quite consistent with Mr James Lawrie managing the business and getting half the profits as salary?—(A) No, there was nothing said about that; he distinctly led me to understand his brother was a partner to the extent of one-half in the business."

Dr David Murray deponed—"It was explained to me that the importance of carrying on the business was because the income otherwise would be short. There were a number of children, and it was stated that the family could not be maintained and educated without the assistance of the business, and the sole effort was to see whether or not the business could be carried on as before, to provide additional income for the benefit of the family. I put myself into communication with Mr Alexander, writer, Rothesay. . . . It was by one of the defenders that I was referred to Mr Alexander, and wrote to him. . . . After I received Mr Alexander's letter and had considered it and the other information I had got, and had made up my mind, I advised Mr David Lawrie, and through him, I understood, the trustees as a whole, that Mr James Lawrie was entitled to this share of the business, and that the trustees could carry on on the same footing as before. . . . The arrangement that had subsisted between Mr James Lawrie and

his brother, prior to the death, appeared to me to be a reasonable one so far as I could judge; from what I see in other arrangements, it appeared reasonable and one which seemed to me a very likely arrangement." "*Cross.*—(Q) On what footing did you understand at the time he was receiving the half of the proceeds?—(A) My view of the legal relationship at the time was this, that Mr James Lawrie had got a half interest in this business, and that the trustees could not dispose of that business without his consent, and could not let it drop without his consent, and that if they carried on they were bound to give him a half interest. (Q) Was the only reason for your coming to that conclusion, that you had been told that he had got from his brother half the profits of one of the businesses?—(A) And likewise that he had got the half interests, that is how it was put by Mr Alexander. (Q) What meaning did you attach to half interest?—(A) What I have said just now. (Q) That he was a partner to the extent of one half?—(A) It would come to that legally, but the word 'partner' was not used. . . . (Q) What do you mean by saying—he received part of these profits as a matter of right?—(A) That he was drawing them in virtue of this arrangement, which could not be defeated by the trustees. (Q) And which you thought amounted to partnership?—(A) Yes, that was my impression at the time. I drew up the minutes of the trustees. There is no mention in them of partnership, and no mention of goodwill until the minute of 26th March 1891. I do not think partnership was mentioned at the meeting of trustees."

Upon 11th December 1891 the Lord Ordinary pronounced the following interlocutor:—"Having considered the cause, Finds that the payment of profits to Mr J. W. Lawrie is not in the circumstances open to challenge: Repels the second plea-in-law for the pursuers, and decerns." . . .

"*Opinion.*—This is an action of accounting brought by beneficiaries against trustees, but the only question which I require to decide has reference to the profits of a certain public-house business in Glasgow, which profits were, after the truster's death and until the business was sold some years afterwards, divided between the trust estate and one of the trustees, the defender Mr J. W. Lawrie. The present pursuers are some of the children of the truster. They challenge the action of the trustees in dividing or permitting the division of the profits, alleging that the business belonged to the truster, and that it was illegal for the trustees to make any arrangement, whether with respect to its management or otherwise, which involved making or continuing payments out of the profits to one of their own number.

"The action belongs to a class where there is always more or less delicacy, and where it is necessary for the Court to be, on the one hand, jealous of any attempt to get behind the salutary rule that a trustee must not make a profit out of his trust, and, on the other hand, to take care that this rule is not applied in circumstances to which it is not properly applicable. In the present case the whole facts have now been ascertained by a proof, and the result has been to satisfy me that the action of the trustees was not inconsistent with the strictest principles of trust law.

"I do not think it necessary to recapitulate the facts, but I think the division of the profits complained of was legitimate upon two grounds, either of which would in my view have been sufficient.

"In the first place, I am satisfied upon the evidence that the defender J. W. Lawrie is speaking the truth when he states that during the truster's life, and shortly after he (the defender) took the oversight of the truster's two shops, it was agreed between them that he (the defender) should, in consideration of his doing so, have a joint interest in the profits and goodwill of one of the shops, viz., the shop now in question. The agreement was no doubt verbal, but it was natural and probable in itself. It was acted on for years, and up to the truster's death, and its terms are not only spoken to by Mr Lawrie himself, but also by Mr Alexander, the truster's agent in Rothesay, to whom the truster communicated the arrangement he had made with his brother. I saw no reason to doubt the evidence of either of those witnesses. They both impressed me as speaking the truth, and Mr Alexander, besides being a quite impartial witness, has this also in his favour, that on being applied to at the time of the truster's death he made to the agents of the truster by letter exactly the same statement as he made in the witness-box. It is not enough, I think, to detract from this direct and positive evidence that the precise share of the goodwill was not expressed, or that J. W. Lawrie, while insisting on his right to half of the business, waived at his son's request his claim to a half of the goodwill when sold. One is always disposed to be critical of explanations given *ex post facto* in such matters, but I am bound to say that on the whole I see no reason for distrusting this part of the defender's evidence.

"If this be so—that is to say, if Mr J. W. Lawrie had a joint interest in the business in question—there is of course an end of the case. So long as the business was carried on, and the trustees had power to carry it on, Mr J. W. Lawrie was entitled to one-half of the profits, and his co-trustees in continuing the arrangement which had been in force up to the truster's death made no concession and did nothing which they could help doing if they were to carry on the business at all.

"But, in the second place, I am not prepared to reject the alternative argument also submitted by the defender. Supposing it to be held that the evidence is insufficient to prove the alleged joint-interest in the business, the fact still remains that J. W. Lawrie claimed that interest, and pressed his claim, and did so on at least reasonable grounds, and in entire good faith. What in these circumstances were the trustees to do? Were they bound to litigate the ques-

tion, sacrificing in the meantime the business, which if carried on at all, could only be carried on with Mr J. W. Lawrie's assistance? I should hesitate to affirm that proposition. But if not, what better could they have done in the interest of the trust than they did do? They placed the matter in the hands of their law agent, Dr Murray, than whom nobody stands higher in his profession, and he made inquiry and came to the conclusion that the claim was good, whereupon the trustees, acting on his advice, arranged with their co-trustee that both the truster's businesses should be carried on as formerly under his oversight, he receiving the same share of profits of the one business which he had received all along. It is admitted that in result this arrangement was greatly to the benefit of the trust, and provided an income on which the beneficiaries were brought up and educated, and I am not able to say that, although made with one of their own number, it was in the circumstances beyond the trustees' powers. If trustees compound or transact a claim made by one of their number, they must, I admit, either show that it was a good claim in law, or that being more or less doubtful, they made a settlement of which the Court can approve. But I am not prepared to say that the latter may not sometimes be as good a defence as the former."

The pursuers reclaimed, and argued—The evidence failed entirely to show that J. W. Lawrie was a partner with his brother when that brother died. There was no documentary evidence to that effect, and the only oral testimony was that of the law agent of the trustees and of the trustees themselves, which did not prove the fact of partnership, but only showed their belief as to the relation of the parties. There was no sharing of losses. That was quite insufficient to establish a partnership. The real relationship was that of a manager, remunerated by a share of the profits of one of the shops. That being so, the trustees had no right to make the payments to one of their number which they had made here, and they were accordingly bound to account. A trustee must not make profit out of the trust. He must not be *auctor in rem suam*—M'Laren on Trusts, i. 212, &c., and cases there cited; *Crosskill* v. *Bower*, 1863, 32 Beav. 86, M.R. Romilly, p. 98, foot; *Barrett* v. *Hartley*, 1866, L.R., 2 Eq. 789 and 796; *Mackie's Trustees* v. *Mackie, &c.*, January 15, 1875, 2 R. 312.

Argued for the respondents—(1) Looking to the whole evidence partnership had been proved. The right to share profits constituted *prima facie* a partnership—*Pooley* v. *Driver*, 1876, L.R., 5 Ch. Div. 458, M. R. Jessel, pp. 470, 474. The maxim that a trustee must not be *auctor in rem suam* was not impugned. J. W. Lawrie was a partner to the extent of half before he became trustee, and he had simply continued the partnership—the only partnership in which his brother was interested—by virtue of the clause in the trust-deed, authorising that to be done if found advisable. In *Mackie's* case it was attempted to increase the interest of a trustee. Here Lawrie had taken less than his legal rights. (2) Even if partnership had not been proved, the arrangement made for continuing J. W. Lawrie as manager with half the profits of one shop was most beneficial in the interests of the children, and was competently entered into by the trustees. Was the only course open to the trustees, although antagonistic to the interests of the trust, to wind up the business, or at least to make the claim and position of one of their number the subject of a lawsuit? The truster's children had reaped great benefit from the arrangement made, and could not now challenge it.

At advising—

LORD PRESIDENT—This is a difficult case, but I am of opinion that the Lord Ordinary's interlocutor should be adhered to, on the ground that at the death of John Lawrie the defender was his partner in the Queen Street business. That is the view which was acted on by persons of whom it is to be observed that if some were interested, all are believed by the Lord Ordinary to be honest men. Moreover, his Lordship, apart from any presumption arising from those actings, is satisfied by the testimony given before him on the main issue of fact. I should be slow to differ from a conclusion so arrived at, and I have come to be satisfied that it is correct.

The case of the pursuers consisted of an attempt to make out that the true position of Mr J. W. Lawrie was that of a manager, paid by a share in profits; and if this were so, he would have been disqualified from taking such remuneration for his services from the trust-estate while he acted as trustee. The evidence, however, does not seem to support the pursuers. When the truster died, Messrs Maclay, Murray, & Spens, who had prepared his settlement, and were acting for his trustees, applied to Mr Alexander, a writer in Rothesay, who had been on intimate terms with the deceased, to inform them of what he knew of the arrangement between the deceased and Mr J. W. Lawrie as to the Glasgow shops. Mr Alexander replied that the deceased had more than once mentioned the arrangement in general terms, and that he had given Mr J. W. Lawrie a half-interest in the Queen Street business. Mr Alexander is examined in this case; he is a witness of unquestioned credit and impartiality, and he says the deceased told him he had given his brother James a-half share of the Queen Street shop. In cross-examination, the pursuer's counsel put to Mr Alexander the theory of the arrangement which they now contend for, and he explicitly negatives it. "(Q) In fact anything he said to you might be quite consistent with Mr James Lawrie managing the business and getting half the profits as salary?—(A) No, there was nothing said about that; he distinctly led me to understand his brother was a partner to the extent of one-half in the business."

This is therefore plain and unambiguous evidence of a partnership, as distinguished from a managership with a salary of one-half of the profits.

The pursuers, however, have fastened upon certain expressions in the evidence of Mr James Lawrie, in giving his account of the interview at which the arrangement between him and his brother was made, as supporting their theory. Applying to one part of his deposition a rather strict construction, they say that he represents his brother as having agreed to give him one-half of the profits and a share of the proceeds of the goodwill when sold. It is pretty plain that if what was given was a half share of profits and a share of the goodwill, the pursuers' case would be most arduous; for on that state of facts Mr James Lawrie could hardly have escaped liability to third parties as a partner. But if Mr James Lawrie's evidence be read as a whole (and he is 76 years of age) it is plain enough that in the passage in which they occur, the words "if it comes to be sold" are not meant to qualify the words "besides a share in the goodwill," but rather point to the event in which his share in the goodwill would sound in money.. Indeed, the pursuers themselves have helped to clear his meaning by their cross-examination, for when they asked him, "And the way you were to be paid was by your getting half the profits of the Queen Street shop?" he replied "Yes, and a share of the goodwill, which I understand was one-half."

Such is the direct evidence of the agreement between the brothers. Mr James Lawrie and his son David Lawrie seem to have acted frankly and above board in placing the facts before Mr Murray, the experienced and able adviser of the deceased and of his trustees; he made independent inquiry, as already stated, and Mr James Lawrie's position as a partner was recognised till the business was sold, the trustees having elected to exercise the powers expressly conferred by the truster to continue for such time as they might think proper, his interest in any business in which he might be a partner at his death. He was a partner in none if not in this; and this provision has, in the result, proved admirably advantageous to the truster's children, some of whom are now challenging the actings of the trustees in this regard. The pursuers have made several points on the actings of the parties in the administration of the trust as bearing against the existence of a partnership. Only two of these require notice—(1) that the trust-estate bore certain losses in the Queen Street business, and that Mr James Lawrie did not bear his share; (2) that he did not claim any part of the proceeds of the goodwill when it was sold. The same explanation answers both points. An arrangement was come to by which Mr James Lawrie waived his claim to a share of the goodwill, and the estate bore the loss. As the loss was only £57 and the goodwill even for inventory purposes was valued at some £200, it is not surprising that the point about the losses was not put in cross-examination to Mr James Lawrie.

My opinion is that James Lawrie was a partner of his brother in the Queen Street business; and this entitles the defenders to the judgment which the Lord Ordinary has pronounced.

It is right to add that I do not adopt the alternative ground of judgment stated by the Lord Ordinary. His Lordship speaks of the trustees compounding or transacting or making a settlement. In fact, the defenders did none of these things. What they did was, they simply admitted the claim on the footing that it was well founded. I think that the claim was well founded, and therefore that they were right. I am not called on therefore to decide whether three trustees, father, son, and son-in-law, could in law defend their admission of a claim by the father on any ground short of this. Still less is it necessary to do more than express a reservation of my opinion as to the conditions under which the compromise of such claim by trustees so situated could be successfully defended.

LORD ADAM—I concur.

LORD M'LAREN—I am of the same opinion. I would just wish to call attention to this fact, that under the deed of trust there was a power to the trustees to carry on any business in which the truster might be engaged, either alone or in partnership. Therefore if at the time of his death it was found that there was a subsisting partnership between him and his brother, the trustees were not under any disability in consequence of the ordinary rules of trust administration from continuing to leave the truster's money in its then state of investment. But no doubt this was technically a partnership-at-will, because there was no written contract, and therefore strictly speaking it came to an end at the truster's death. But then it came to an end under the condition that—if we are to accept the evidence as to the terms of partnership—the brother would have been entitled to have the business sold and the goodwill divided. Now, in these circumstances it appears to me to be quite consistent with sound principles of trust administration that with a power to continue the business the trustees should enter into a renewal of the partnership arrangement which had subsisted, taking care to give no increase of interest to the partner who was one of their own number. There are many cases in the books in which the question of the propriety of trustees entering into partnership with one of their own number has been discussed; but I know of no case where it has been held objectionable to continue the partnership arrangement where there was a power given to the trustees to invest money in trade, and no greater interest given to the deceased's partners than they had before. If it had been proposed to give a larger share as a consideration for the additional trouble in the management of the business,

that would have raised a very different question, and one which probably we would not have been able to decide in the same way as we have done the present case. I agree with your Lordship's analysis of the evidence. I think the evidence leaves no doubt that this was a proper partnership, and not an arrangement which is no doubt quite legal but rather unusual especially in businesses of a small class, that of appointing a manager with a salary proportioned to his share of the profits.

LORD KINNEAR — I concur with your Lordship, and also with Lord M'Laren, and have nothing to add.

The Court adhered.

Counsel for Pursuers and Reclaimers—D.-F. Balfour, Q.C. — Dundas — Christie. Agents—Simpson & Marwick, W.S.

Counsel for Defenders and Respondents—Asher, Q.C.—Jameson—Wallace. Agents—J. & J. Ross, W.S.

Thursday, March 17.

SECOND DIVISION.

MACDONALD (CLERK OF THE COMMISSIONERS OF THE BURGH OF GOVAN) *v.* MICKEL AND OTHERS.

Burgh — Police — Assessment—Sewer Rate —Sinking Fund—General Police and Improvement (Scotland) Act 1862 (25 *and* 26 *Vict. c.* 101), *secs.* 196 *and* 384.

The General Police and Improvement (Scotland) Act 1862 provides, section 196, that the police commissioners of a burgh are entitled to "borrow for the purpose of making, enlarging, re-constructing. and maintaining sewers," on the security of the sewer rates, "such sums of money as the commissioners shall deem necessary for that purpose, and to assign the . . . rates in security of the money so to be borrowed," and declares that the provisions of the Act with regard to the borrowing of money and granting of bonds in security shall apply to money borrowed for purposes falling under this section.

Section 384—"It shall be lawful for the commissioners to borrow and take up for any of the purposes of this Act other than the construction, alteration, or maintenance of sewers as hereinbefore provided," any sums of money thought necessary. The commissioners are authorised "to assess all owners, or occupiers of premises within the burgh, respectively liable in the several assessments under this Act, in such additional assessments beyond the sums necessary for such respective purposes as will produce a fund equal to five per centum per annum upon the sum or sums so borrowed respectively, and also to the annual interest of such borrowed sum or sums, which sum of five per centum per annum the commissioners shall annually appropriate, set apart, and invest . . . as a sinking fund applicable and to be applied by the commissioners from time to time to the repayment of the monies borrowed until the respective debts shall be extinguished."

The commissioners of a police burgh raised a sum of money upon the security of the special sewer rate of a separate drainage district, for the purpose of constructing sewers. The sewers were constructed, and the commissioners believing themselves authorised by section 384 of the General Police Act 1862, imposed an assessment upon the separate drainage district, which in their opinion was sufficient not only to pay the interest upon the borrowed money, but also to form a sinking fund for repayment of the capital within twenty years. Certain ratepayers objected to assessment, on the ground that it was *ultra vires* of the commissioners. *Held* that the assessment was legal, because either (1) section 384 of the statute applied to the matter of borrowing money for making sewers, and the commissioners had acted within the provisions of the statute; or (2) if it did not, section 196 imposed no directions as to the manner of borrowing, or the time within which the money was to be repaid; that therefore the action of the commissioners was not forbidden by the Act, and as an act of administration was within their powers.

Burgh—Police—Assessment—Sewer Rate—Deduction—General Police and Improvement (Scotland) Act 1862 (25 *and* 26 *Vict. c.* 101), *sec.* 100.

The General Police and Improvement (Scotland) Act 1862, section 96, provides "that when police commissioners resolve to make a new sewer, they may charge the owners of all the lands or premises liable to contribute to the rates for making the same with special sewer rates over and above any other assessment or rates to which such persons may be liable." Section 100 provides—"Where in the judgment of the commissioners any premises were sufficiently drained before the making of such new sewer, the owners thereof shall be entitled to have such deduction made from the special sewer rates to which they would otherwise be liable in respect of the making of such new sewer, having regard to the cost of making such new sewer and to the value and efficiency of such old sewer." . . .

The police commissioners of a burgh borrowed money on the security of the sewer rates for the construction of a new sewer within the drainage district, and in order to pay the interest on the sum borrowed and the capital within twenty years, the commissioners imposed an assessment of one shilling