beyond a burgh, but upon the more radica difference between a burgh and a district other than a burgh. The normal case of a "district other than a burgh" may, so far as the general assessment is concerned, be wholly landward. But the case of a special water supply district is in this, as in other respects, quite exceptional, and in my opinion such district is treated as a whole in section 134 whether it contains a burgh or not, and is to be assessed as a whole according to the rule laid down in section 135.

The portion of the canal within burgh will therefore be assessed according to its valuation, and not merely upon one-fourth thereof, and the first question will be answered accordingly.

The second question deals with a state of matters which has not yet arisen, and it would be premature to express any opinion on the subject.

LORD ADAM and LORD KINNEAR concurred.

The LORD PRESIDENT and LORD M'LAREN were absent.

The Court pronounced this interlocutor:—

"Answer the second alternative in the first question in the case in the affirmative: Find that the Special Water Supply Assessment imposed by the County Council on the portion of the company's canal situated within the burgh of Clydebank is leviable on the gross valuation thereof as appear in the valuation roll, and find it unnecessary to answer the second question in the case, and decern."

Counsel for the First Party—Jameson, K.C.—Gunn. Agent—A. S. Douglas, W.S.

Counsel for the Second Party—Dundas, K.C.—Deas. Agents—Hope, Todd, & Kirk, W.S.

Tuesday, July 9.

SECOND DIVISION.

[Sheriff-Substitute at Glasgow.

RITCHIE *v.* COWAN & KINGHORN.

Obligation — Constitution — Obligation or merely Honourable Understanding—Discharge—Discharge by Creditor with Understanding that Debtor to Pay Balance as soon as able to do so—Counter-Claim.

A, a creditor, granted a receipt to B, his debtor, in which he acknowledged receipt of a certain sum, "being 10s. per £ in full of my claim against the said B, it being, however, understood that the said B will pay the balance of 10s. per £ whenever he is able to do so."

In an action brought by B against A for payment of a sum which was due to him in respect of certain iron-broking transactions between them entered into subsequent to the date of the receipt—*held* that the terms of the receipt imported no legal obligation upon B to pay the balance of his debt, and that consequently A was not entitled to set off the sum due to B upon the transactions in question as against the unpaid balance of the debt discharged by the receipt.

This was an action at the instance of James Ritchie, iron and commission merchant, Glasgow, against William B. Cowan & Kinghorn, iron brokers, Glasgow, in which the pursuer craved decree for payment of £1229, 13s. 3d., being the balance which he alleged to be due to him in respect of certain transactions in buying and selling iron warrants which the defenders had carried out as his brokers.

The defenders admitted that they had had transactions with the pursuer, and did not dispute that upon the account sued on taken by itself the balance sued for was due, but they claimed to retain it against a sum which they alleged to be due to them by the pursuer.

With regard to this counter claim the defenders averred that in June 1899 the pursuer, who was then owing them the sum of £3306, 18s., finding himself unable to meet his obligations to the defenders and other brokers, entered into a private arrangement with them, whereby they agreed to accept a payment in cash and bills amounting *in cumulo* to 10s. per pound on their claims, with an obligation on the pursuer's part to pay the balance of 10s. per £ whenever he was able to do so. and that in consideration of that agreement they then refrained from taking proceedings against the pursuer. The obligation founded on was alleged to be contained in the following document:—"*7th June* 1899.—Received from Mr James Ritchie, 40 St Enoch Square, per Messrs Strang and Weir, writers, the sum of One thousand six hundred and fifty-three pounds nine shillings (£1229, 19s. 3d. in cash, and £423, 9s. in two bills for £211, 14s. 10d. and £211, 14s. 11d. payable on 31st July and 31st December respectively), being 10s. per £ in full of our claim against the said James Ritchie, amounting to £3306, 18s., it being, however, understood that the said James Ritchie will pay the balance of 10s. per £ whenever he is able to do so. — WM. B. COWAN AND KINGHORN."

The defenders further averred — "In March 1900, and after the cash and bills above mentioned had been paid, the pursuer induced the defenders to open again a new account on the agreement that any profits realised thereby were to be applied *primo loco* towards payment in full to defenders of the still unpaid balance of £1653, 8s. 11d. due to them," and that as the result of the subsequent transactions between them in pursuance of the said agreement the pursuer was still owing them a sum of £423, 15s. 8d. The pursuer denied that any such agreement had been made as was alleged by the defenders.

The pursuer pleaded—"(1) The defenders being due and resting-owing to the pursuer in the sum sued for, decree should be granted therefor with interest and expenses as craved. (2) The defences are irrelevant."

The defenders pleaded—"(1) The defenders not being due and resting-owing to the pursuer the sum sued for, or any sum, should be assoilzied with expenses."

Proof was allowed and led.

In addition to the parole evidence, to which it is unnecessary to refer, the pursuer produced two letters addressed by his law-agents to those of the defenders with reference to the terms of the receipt and discharge of 7th June 1899:—

"*Glasgow, 2nd June* 1889.—We have your letter of this date. We cannot accept the form of receipt proposed by you, nor will we do so. We must ask you to sign and send us the receipt which we submitted to you, and which is strictly in accordance with the arrangement we made under which we sent you cheque. What Mr Ritchie declines to do is to give you power to come upon him when *you* may see fit—the debt must be left one of honour on the part of Mr Ritchie." . . . —Yours truly,

"STRANG & WEIR."

"*Glasgow, 5th June* 1899.—"You must take it once for all that Mr Ritchie will not grant an obligation on which you can take action. Your draft letter is of this nature, and is not in the terms we arranged with you per telephone. We stated that we had no objections to Mr Ritchie granting you a letter that he will pay in full when he is in a position to do so, but that it must be an obligation of honour on his part. We are still willing to get such letter signed and delivered to you. We annex form.—Yours truly, . . . STRANG & WEIR."

There was also produced a letter addressed by the pursuer to the defenders, which was in the following terms:—"*Glasgow, 7th June* 1899.—Dear Sirs.—In respect that you have accepted 10s. per £ in full of your claim against me for £3306, 17s. 11d., I beg to assure you that I will pay up the deficiency as soon as I am able to do so.—Yours truly, JAMES RITCHIE." (Adopted as holograph.)

On 19th March 1901 the Sheriff-Substitute (BALFOUR) pronounced an interlocutor, whereby he found, *inter alia*, with reference to the document of 7th June 1899, that the pursuer was only bound to pay the remainder of the composition if he was able to do so, and that it had not been proved that the pursuer was able to pay the composition; found further, that the new agreement alleged by the defenders had not been proved; and that the defenders had no right to retain the balance sued for, and decerned against them therefor.

The defenders appealed to the Court of Session, and argued—The document of 7th June 1899 constituted a legal obligation enforceable against the pursuer to the full amount of his estate—*Fair* v. *Hunter*, November 5, 1861, 24 D. 1; *Christie's Trustees* v. *Muirhead*, February 1, 1870, 8 Macph. 461; *Broatch* v. *Dodds*, June 11, 1892, 19 R. 855. The question therefore was, whether it was proved that the pursuer was unable to pay? and, on the evidence, it was not. (2) In any view, the defenders were entitled to set off the sums due to the pursuer in respect of the agreement alleged and proved by them.

Argued for the pursuer and respondent—The document in question was a discharge in full of the defender's claim in consideration of the payment of a composition of 10s. per pound. The words founded on by the defenders imported no legal obligation upon the pursuer, but only a debt of honour. Further, it was clear from the correspondence regarding the terms of the discharge that the defenders accepted it on that understanding. It was, therefore, irrelevant to inquire whether the pursuer was able to pay, and the defenders were not entitled to retain the balance due to the pursuer. (2) The agreement alleged by the defenders was not proved.

At advising—

LORD JUSTICE-CLERK — Two questions fall to be determined in this case—first, what was the effect of the arrangement made by the parties when the receipt and discharge of 7th June 1899 was given; and second, whether that arrangement was altered by subsequent agreement.

With regard to the first question I have no doubt whatever. It is not necessary to go behind the document to which I have referred, which bears to be a receipt for 10s. in the pound in full payment of the defenders' claim against the pursuer. There can be no doubt that if the receipt had stopped there it would have afforded no ground for the defenders' claim, and therefore if that claim has any foundation it must be in the subsequent words—"it being understood that the said James Ritchie will pay the balance of 10s. per £ whenever he is able to do so." I am unable to hold that these words constitute any legal obligation enforceable against the pursuer. I think they amount to no more than this—"If you will discharge me in full, if ever I am in such circumstances that I am able to pay you the remainder, I will pay it to you." It was, in short, an honourable understanding, but it constituted no legal claim. If there were any ambiguity in the terms of the receipt—and I think there is none—the terms of the letters make the matter still clearer; for the pursuer's agents said repeatedly that these were the only terms that their client would agree to. [*His Lordship then dealt with the second question, and expressed the opinion that the alleged agreement had not been proved.*]

On the whole matter, although I do not altogether agree with the grounds of the Sheriff's judgment, I think he has reached a sound conclusion, and that the pursuer is entitled to decree.

LORD YOUNG—The pursuer sues the defenders for £1200 as due to him by them, and it is admitted that they are bound to pay that sum unless they can establish that he owes them a larger sum which they are entitled to set off. There is therefore no occasion to inquire into the validity of the pursuer's claim. The question is, whether the defenders have established a claim which they are entitled to set off. Their claim depends upon the construction and legal import of the receipt to which reference has been made. The debt to which

the receipt refers is £3306, 18s., and the receipt bears to be a receipt for £1653, 9d., "being 10s. per £ in full of our claim against the said James Ritchie." But that is followed by these words—"It being, however, understood that the said James Ritchie will pay the balance of 10s. per £ whenever he is able to do so." It is maintained by the defenders that this addition changed the document from being a receipt in full payment of the debt into a receipt to account, with an obligation on the part of the pursuer to pay the rest as soon as he was able. I am unable to put that construction on the document. I think it imports nothing more than an honourable understanding that the pursuer would pay if and when he was in a position to do so. The other view is, that it is a receipt as regards half the debt, and a document of debt as regards the other half in the event of the pursuer becoming a wealthy man. That is certainly a novelty. One has heard of an honourable debtor paying his debts in full after he has come to have money to enable him to pay, but the idea of a legal obligation which may be sued on in the event of the granter coming to be possessed of funds is in my opinion ridiculous. Consider the result of sustaining such an obligation. The holder of it would be entitled to harass his debtor with a succession of actions. He might fail to prove in the first action that the debtor was able to pay, and he might fail again in the second action, but he might succeed in the third. He would be entitled in each action to call upon the debtor for a statement of his affairs, and if it appeared that the debtor was then unable to pay the action would be dismissed, it being, as I have said, open to the creditor to bring another action whenever he thought he had a better chance of success. I agree in the result at which the Sheriff-Substitute has arrived, but I certainly do not proceed on the ground that it has not been proved that the pursuer is able to pay the balance of 10s. in the pound. I think that there should have been no allowance of proof in this case, and that the pursuer is entitled to decree for the amount of the debt admittedly due to him, and that the defence of set-off founded on the words in the receipt to which I have referred should be repelled.

LORD TRAYNER—I am of the same opinion. The defenders seek to retain a sum of £1229 which is undoubtedly the property of the pursuer, on the ground that he is under obligation to them in a larger sum. On 7th June 1899 the pursuer was indebted to the defenders in the sum of £3300 odds. He was unable then to pay more than a composition upon the debt of 10s. per pound but the defenders agreed to take that composition, and for that to discharge their claim. Upon that point the receipt is quite explicit. It bears that the defenders had received 10s. per pound in full of their claim, so that the pursuer's debt to the defenders was discharged and extinguished on 7th June 1899. But it is for part of that debt that the defenders now claim to retain the money of the pursuer which is in their hands. I do not understand the ground on which they maintain a right to retain that money in extinction *pro tanto* of a debt which was discharged in full in 1899. The defenders' case would not be stateable but for the addition to the receipt on which they found, and which runs thus—"It being, however, understood that the said James Ritchie will pay the balance of 10s. per £ whenever he is able to do so." The pursuer's letter (of even date with the receipt) practically repeats this, for after stating that the defenders accepted 10s. per pound in full of their claim, it goes on—"I beg to assure you that I will pay up the deficiency as soon as I am able to do so." The defenders say that this is an obligation on the part of the pursuer to pay what they now claim, enforceable against him at law. I do not think that is an honest contention, because certainly when the receipt and letter were written it was known to both parties that it was not intended to be a legal obligation enforceable at the will of the defenders. The defenders had striven to get the receipt worded as an acceptance of 10s. per pound as an instalment of the pursuer's debt. That was refused, and then they were told explicitly—"You must take it once for all that Mr Ritchie will not grant an obligation on which you can take action;" and further, "that it must be an obligation of honour on his part." In view of these letters I think it is not an honest contention that the receipt imposed or was intended to impose such an obligation on the pursuer as the defenders now maintain. It is clear that the defenders knew the contrary.

Looking to the terms of the receipt itself, it does not in my opinion import an enforceable obligation. It is merely the expression of an honourable intention on the part of the pursuer that when he is in a position to pay the remainder of his debt he will pay it. The defenders may appeal to the pursuer's sense of honour when he is able to pay, but they cannot get any decree to enforce such an appeal from a court of law.

[*His Lordship then dealt with the second question, and expressed the opinion that the alleged agreement had not been proved.*]

LORD YOUNG—I ought to have added that I agree with the Sheriff-Substitute in rejecting the defenders' allegation of a subsequent agreement.

LORD MONCREIFF was absent.

The Court pronounced this interlocutor—

"Recal the interlocutor of the Sheriff-Substitute dated 19th March 1900: Find that prior to March 1900 the pursuer, who is a commission agent, had sundry dealings in iron with the defenders, who are iron brokers, and ultimately the account closed with a debit balance against the pursuer of £3306, 18s: Find that at the same time the pursuer was owing two other iron brokers, Charles Campbell and W. A. Leith & Company,

the respective balances of £352, 1s. 8d. and £640, 16s. 3d.: Find that these brokers met together and arranged to take from the pursuer a composition of 10s. per pound on their debts, and on 7th June 1899 they granted to the pursuer receipts and discharges for the composition which bore to be 'in full of our claim against the said James Ritchie amounting to £3306, 18s' (which was the amount of the defenders' debt), 'it being, however, understood that the said James Ritchie will pay the balance of 10s. per £ whenever he is able to do so:' Find that in March 1900 the pursuer opened a new account with the defenders and commenced further transactions with them in iron, all as shown in the account annexed to the petition, and ending with a balance due to the pursuer of £1229, 13s. 3d: Find that when the pursuer claimed payment of this balance from the defenders they declined to pay it, and maintained their right to retain it against their claim of 10s. per pound on the foresaid debt formerly contracted by the pursuer: Find in law that the said debt of £3306, 18s. due by the pursuer to the defenders was discharged by the receipt and discharge granted by the defenders on 7th June 1899, and that no new obligation to make payment of the balance of said sum of £3306, 18s. which remained unpaid was undertaken by the pursuer by said receipt and discharge, or by his letter to the defenders of 7th June 1899: Find that the defenders have failed to prove that said new account opened by the pursuer in March 1900 was opened on the footing that any profits realised thereby should be applied *primo loco* towards payment in full to the defenders of the unpaid balance of said sum of £3306, 18s.: Find in law that the defenders have no right to retain the sum sued for, and that they are bound to pay it over to the pursuer: Therefore decern against the defenders in terms of the prayer of the petition," &c.

Counsel for the Pursuer and Respondent Dundas, K.C.—D. Anderson. Agent—James Russell, S.S.C.

Counsel for the Defenders and Appellants—Jameson, K.C.—Guy. Agent—John Dobbie, S.S.C.

Wednesday, July 10.

SECOND DIVISION.

[Sheriff Court at Glasgow.

M'MANUS *v.* ARMOUR.

Reparation — Negligence — Landlord and Tenant—Known Danger—Hole in Floor of Wash-House.

In an action of damages brought by a tenant against her landlord for personal injuries alleged to be due to the defective condition of the property occupied by her, the pursuer averred that she had occupied the house since May 1898; that she, in common with the other tenants of the defender's tenement, had the use of a wash-house attached thereto; that on 16th August 1900, while she was cleaning up the wash-house after using it, her foot caught in a hole in the floor, which was in a very dilapidated condition and much in want of repair, and that she fell and injured her foot; that the defender and his mother had been repeatedly warned of the dangerous state of the floor, and that the defender's mother had informed the pursuer before the accident occurred that the factors of the property had been instructed to put the floor in a safe and proper state of repair, but that neither the defender nor his factor had the said wash-house floor put into repair, although this had been done after the accident.

Held (*diss.* Lord Young) that the action was irrelevant.

Webster v. *Brown*, May 12, 1892, 19 R. 765, *followed.*

In September 1900 Catherine Martin or M'Manus, residing at 49 Main Street, Bridgeton, Glasgow, raised an action in the Sheriff Court at Glasgow in which she craved decree for £50 as damages against William Armour.

The pursuer averred as follows—"(Cond. 1) The pursuer is a widow, and has resided at Number 49 Main Street aforesaid from 28th May 1898, and is tenant of a dwelling-house there till 28th May next 1901. (Cond. 2) . . . Defender is the proprietor of pursuer's said house at 49 Main Street aforesaid. (Cond. 3) The pursuer, as tenant aforesaid, had the use of the wash-house—being part of defender's property—at 49 Main Street aforesaid. The said wash-house is common to all the defender's tenants of his said property, of whom pursuer is one. (Cond. 4) On or about the 16th day of August last (1900) the pursuer had the use of said wash-house, and while in the act of cleaning up same (after her washing was over) for the next occupant, her right foot was caught in an opening or hole in the floor of said wash-house—which floor was in a very dilapidated condition and much in want of repair. The floor was, at the time of the accident, formed of a layer of bricks set in mortar, and the opening or hole in it, in which pursuer's said foot was caught, was caused by a brick and a-half having been removed therefrom, leaving a large opening or hole in the floor of it. Pursuer's said foot having stuck in said opening or hole, and as she could not momentarily extricate it, she fell to the floor, thus placing the whole weight of her body on the foot so caught, and wrenching and seriously injuring and crushing it before she could get it extricated. . . . (Cond. 6) The defender and his mother were repeatedly warned of the dangerous state of the said wash-house floor, and defender's said mother informed pursuer, before said accident occurred, that the