

satisfactory remedy. Few clients are in a position to know that they can take it or how to take it, because they know nothing about procedure and are so much in the hands of their agent; moreover, the case may involve large sums of money, and *quomodo constat* that the agent is good for the damages. Therefore there is, I think, reason for the discrimination which the Legislature certainly intended that the Court should have.

The original Act of Sederunt of 1870, which is now embodied in the Codifying Act under which we are now acting, proceeds by virtue of the authority conferred upon the Court by section 106 of the Court of Session Act 1868, and enacts as follows—"That the course of proceeding prescribed by the 71st section of the said statute shall be altered to the following extent and effect." The preamble is dropped in the Codifying A.S. If one turns to the 106th section one finds that it empowers the Court to make regulations for carrying into effect the purposes of the Act, viz., the Act of 1868, but also so far as may be expedient for altering the course of procedure prescribed by the Act. When I find that the Act of Sederunt with which we are concerned is an alteration of the original Act of Parliament, I think that it is open to question whether it is perfectly clear that it was intended that, having regard to the terms of the provision which was so altered, the clause with regard to reponing should be as drastically imperative as it is maintained that it is. I should not be justified in giving a decided opinion on the subject after what your Lordship has said as to the state of the authorities. But I go the length of saying this, that I do not think that the matter has received a deliberate consideration in all its bearings notwithstanding these authorities; that it ought on the first opportunity to be laid before either the two Divisions or the whole Court, not as a matter of private conference, but for discussion, as it is a matter in which the profession is concerned; and that if the result of such consideration is to determine that the Court have the power to make regulations by Acts of Sederunt which are as imperative on the Court in its judicial capacity as it is maintained this one is; and if it be the result of such consideration that the Act of Sederunt is intended to be imperative, it will become the duty of the Court to determine whether it ought not to be amended so as to provide for that discriminating discretion in the Court which is to be found in the original statutory enactment. In this matter there is, I think, involved the question both of the power and of the intention of the Court by Act of Sederunt to lay down regulations which shall be not merely directory but imperative. On this question the authorities are not, I humbly think, in a very satisfactory position.

LORD SKERRINGTON—I think it very clear that the appellant is not entitled to any indulgence from the Court, and accordingly I have not thought it necessary to form a definite opinion upon the larger questions with which your Lordships have dealt. I

may say, however, that my present impression is that the Act of Sederunt with which we are concerned is quite clear and unambiguous, and that it renders the present appeal incompetent. Further, as at present advised I see no reason to doubt that that Act of Sederunt was within the power of the Court to enact.

LORD MACKENZIE was not present.

The Court refused the motion and directed the Clerk of Court to retransmit the process as an abandoned remit.

Counsel for Pursuer and Appellant—J. A. Christie. Agents—St Clair Swanson & Manson, W.S.

Counsel for Defenders and Respondents—D. Jamieson. Agents—Whigham & Macleod, S.S.C.

Friday, January 15.

EXTRA DIVISION.

COWDENBEATH BURGH v. COWDENBEATH GAS COMPANY, LIMITED.

Police—Rates and Assessments—Water Supply—Basis of Assessment for Burgh Water Supply—Public Health (Scotland) Act 1867 (30 and 31 Vict. cap. 101), sec. 89 (6)—Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55), sec. 347 (2)—Burgh Sewerage, Drainage, and Water Supply (Scotland) Act 1901 (1 Edw. VII, cap. 24), secs. 1, 2, 3.

A special water supply district was formed in a county in 1869 under the Public Health (Scotland) Act 1867, sec. 89, funds being borrowed, the repayment of which did not terminate till 1919. It was in its entirety included in a police burgh formed in 1890. The works of a gas company supplying the district were situated within the area, and were in 1901 being assessed for the purposes of the burgh water assessment under the proviso of the Burgh Police (Scotland) Act 1892, sec. 347(2), on their full annual value. In 1901 the Burgh Sewerage, Drainage, and Water Supply (Scotland) Act was passed. It incorporated by reference section 347 (2) of the Burgh Police (Scotland) Act 1892. *Held.* that though in section 2 of the Act of 1901 the provisions of section 347 (2) of the Act of 1892 were incorporated by reference, the proviso of the latter section, under which the works (above ground) had been assessed at their full annual value, was superseded by section 3 of the Act of 1901, and accordingly that for the purposes of the burgh water assessment these works fell to be assessed only on one-fourth of their annual value.

The Public Health (Scotland) Act 1867 (30 and 31 Vict. cap. 101), sec. 89 (6), enacts—"It shall be lawful for the local authority to borrow for the purpose of constructing, purchasing, enlarging, or reconstructing such works as are herein authorised for

providing a supply of water for the use of the inhabitants of the district, or for the purpose of entering into and implementing any contract or arrangement with any person for such supply, and on the security of the after-mentioned special water assessments, where such exist, and of general assessments, or either of them, such sums of money, and at such times, as the local authority shall deem necessary for that purpose, and to assign the said special water assessments and general assessments or either of them in security of the money to be so borrowed; and the bonds to be granted on such borrowing and transferences or assignations and discharges thereof may be in or near to the forms contained in the schedule hereto annexed; and such bonds shall constitute a lien over the assessments thereby assigned, and shall entitle the creditors therein to recover the sums thereby due from the local authority out of the first and readiest of the said assessments; but no member or officer of the local authority shall be personally liable for the repayment of such money so borrowed, and all such obligations shall be deemed and taken to be granted on the sole security of the assessments thereby assigned, and the money so borrowed shall be repayable either in one sum or by instalments as may be arranged between the local authority and the lender, but so that the same shall be wholly repaid, together with the accruing interest, within thirty years from the date of the loan; but the amount of such loans, including interest, shall form a charge against the assessments of the years intervening between the date of such loans and the date of full repayment in equal proportions; and the money so borrowed as aforesaid shall be applied wholly in defraying the expense of purchasing, making, enlarging, and reconstructing such works, and to no other purpose whatsoever."

The Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55), sec. 347, enacts—"The annual value of the following lands or premises shall for the assessments under this Act (i.e. including public health general assessment) be held to be one-fourth of the annual value thereof entered in the said valuation roll, viz.—. . . (2) All the underground gas and water pipes, or underground works of any gas or water company or corporation. . . and where the commissioners shall have supplied or resolved to supply the burgh with water in terms of this Act the annual value of all quarries and manufactories within the burgh shall as regards the burgh general assessment, so far as is applicable to water, subject to the exception hereinafter provided, be held to be one-fourth of the annual value thereof entered in the valuation roll; . . . Provided always that where in any burgh such lands or premises as are in this section specified were prior to the passing of this Act liable to be assessed under any general or local Police Act, or under the Public Health Acts, or the Local Government (Scotland) Act 1889, on the annual value thereof, and moneys have been borrowed on the security

of the assessments so authorised or some of them, such lands or premises shall in the case of any such burgh where the assessments on the security of which such moneys have been borrowed have been imposed, be liable to be assessed on the annual value thereof and in the same manner as heretofore until such borrowed moneys have been repaid."

The Burgh Sewerage, Drainage, and Water Supply (Scotland) Act 1901 (1 Edw. VII, cap. 24), sec. 1, enacts—"Where sums of money have been borrowed or are owing by the town council or commissioners of a burgh under any Act for purposes of sewerage and drainage or water supply, the town council, as the authority under the Burgh Police (Scotland) Act 1892 (hereinafter referred to as the principal Act), as amended by the Town Councils (Scotland) Act 1900, shall provide the sums necessary for repaying the principal and paying the interest of such sums out of the assessments hereinafter mentioned, and the said sums shall constitute a charge on the said assessments, and the creditors shall have all the powers, rights, and remedies at the passing of this Act exercisable by a lender of money on the security of the assessments originally assigned to them, and the said assessments hereinafter mentioned shall be deemed to be assigned to such creditors in security of their debt."

Section 2—"In any burgh, or in any special or separate drainage district formed therein under any Act, the expense incurred either before or after the passing of this Act for sewerage and drainage or water supply, as the case may be, within the same or for the purposes thereof, and the sums necessary for repayment of any money borrowed therefor either before or after the passing of this Act, together with the interest thereof, shall be paid out of a sewer assessment or water assessment, as the case may be, which the town council of the burgh shall raise and levy on and within such burgh or (in the case of the sewer assessment) within such special or separate district, in the same manner and with the same remedies and modes of recovery and incidents as are provided for the public health general assessments therein.

"Provided that where a special or separate drainage district has been formed under the provisions of any Act, and drainage works have been executed and are maintained therein, the lands and heritages situated within such special or separate district shall not be liable to assessment for the expense of sewerage and drainage works in other parts of the burgh: Provided also that for shops the water assessment shall be chargeable only on one-fourth of the rental of the premises, unless in special circumstances the town council see cause to charge the ordinary rates, and in that case it shall be lawful for any person who may think himself aggrieved to apply to the sheriff in the manner provided in the principal Act.

"The sewer assessment and the water assessment together shall not in any burgh or special or separate drainage district ex-

ceed the rate of four shillings in the pound ; Provided that if the produce of a rate of four shillings in the pound in any burgh or special or separate drainage district shall not be sufficient to meet the expenditure (including the annual charge for interest and repayment of debt) *bona fide* incurred or contemplated within such burgh or special or separate district, it shall be lawful to increase such rate to such extent as may have been approved by the Local Government Board for Scotland.

“ Provided also that it shall not be lawful to impose any rate in respect of the expenditure within any special or separate drainage district upon any premises without such district.”

Section 3—“ All special or separate drainage districts that may have been formed in any burgh under any Public Health Act shall, subject to the provisions of this Act, be deemed to be drainage districts under the principal Act, and any special or separate water supply districts which have been so formed shall cease to exist as such and shall be united to the other parts of the burgh for the purposes of water supply, and all rights and liabilities connected therewith: Provided that nothing herein contained shall affect any special water supply district partly within a county and partly within a burgh, or the provisions relating thereto of section eighty-one of the Local Government (Scotland) Act of 1889, as amended by section forty-four of the Local Government (Scotland) Act 1894.”

Section 4 (3)—“ Section 347 of the principal Act (*i.e.* *The Burgh Police (Scotland) Act 1892*) shall be read as though for the words ‘ burgh general assessment so far as it is applicable to water ’ the words ‘ water assessment ’ were substituted.”

Section 7—“ The Acts specified in the Schedule to this Act are hereby repealed to the extent mentioned in the third column in so far as the same apply to burghs to which this Act applies from its commencement.”

Schedule—“ *Enactments repealed*—55 and 56 Vict. cap. 55, *Burgh Police (Scotland) Act 1892* . . . Section 347, the words ‘ in terms of this Act. ’ . . . ”

A Special Case for the opinion and judgment of the Court of Session was presented in the Extra Division for the Provost, Magistrates, and Councillors of the Burgh of Cowdenbeath, *first parties*, and the Cowdenbeath Gas Company, Limited, incorporated under the Companies Acts 1862 to 1890, *second parties*.

The Case, *inter alia*, stated—“ 2. The second parties were incorporated on 7th August 1891 for the purpose of supplying the burgh of Cowdenbeath (hereinafter referred to as the ‘ burgh ’) with oil and gas or other illuminant, of purchasing the then existing gas works with the plant, &c., and of extending and developing the same. . . .

“ 3. The burgh is situated in the parish of Beath and county of Fife. The burgh was, after sundry procedure before the Sheriff of Fife, formed as a police burgh on 21st November 1890 under the provisions of the General Police and Improvement (Scotland)

Act 1862. Prior thereto, and until the passing of the Local Government (Scotland) Act 1889, Cowdenbeath was administered by the parochial board of the parish of Beath as the local authority of that parish. In the course of their administration the parochial board in the month of October 1869 formed into a special water supply district a portion of the parish of Beath under the name of the Special Water Supply District of Cowdenbeath. This was done in virtue of the powers conferred upon the parochial board by the Public Health (Scotland) Act 1867, section 89. The Special Water Supply District thus formed came, after the passing of the Local Government Act of 1889, under the administration of the Dunfermline District Committee of the County Council of the county of Fife, and was entirely absorbed into the burgh in 1890. The Police Commissioners of the burgh then became the local authority for the purposes of the said Special Water Supply District. The second parties’ works above ground are situated within the boundaries of the said Special Water Supply District. The area of the burgh as formed in 1890 was larger than the area of the said Special Water Supply District. The burgh was subsequently extended, on 12th January 1911, after sundry procedure before the Sheriff of Fife and Kinross, so as to include a further area of the county, which further area still remains for purposes of water supply within the jurisdiction of the county.

“ 4. After the formation of the Special Water Supply District before referred to, the population of Cowdenbeath increased, and in the year 1887 the parochial board of the parish resolved to obtain powers to increase the supply of water to the district. Accordingly a Provisional Order under the Public Health (Scotland) Act 1867 was obtained authorising the construction of certain works. These powers are contained in the Cowdenbeath Water Supply Confirmation Act 1887. . . .

“ 8. To provide for the construction of the works authorised by the said Cowdenbeath Water Supply Confirmation Act of 1887, the parochial board of the parish of Beath borrowed under the powers conferred upon them by section 89 (6) of the Public Health (Scotland) Act 1867 the sum of £7000 on 26th March 1888 and the sum of £1000 on 8th November 1889. These loans are repayable in 30 years from the dates of the respective borrowings, and will not be fully repaid until 26th March 1918 and 8th November 1919 respectively. The liability for these loans was on the formation of the burgh in 1890 transferred to the first parties.

[The case here set forth the course of legislation, under which the practice of the first parties had been to assess the second parties for water at the full annual value of their property (above ground) appearing in the valuation roll from year to year, and on one-fourth of the annual value of all the underground gas pipes or underground works.]

“ 15. . . . Since the formation of the burgh on 21st November 1890 the burgh as then constituted has been treated as one area for

the purpose of water supply, and since said date the second parties have been assessed in respect of water supply as owners and occupiers of premises within the said burgh. There were and are no manufactories within the area of the burgh as formed on 21st November 1890 which were or are outwith the area of the said special water supply district. . . .

“17. The question which has arisen between the first and second parties is as to whether, in view of the course of legislation above set forth, the first parties are entitled to assess the second parties for water purposes on the full annual value of their works above ground or only on one-fourth thereof.”

The first parties *maintained*—“That the Cowdenbeath Special Water District having been formed in virtue of the Public Health (Scotland) Act 1867, and the money to defray the cost borrowed under the powers therein contained in section 89, subsection 6, of the said Act by the parochial authority of the parish of Beath, the assessment to meet the cost of the repayment of the loans with interest fell to be regulated by section 94 of said Act. That the provisions of the Public Health Amendment (Scotland) Act 1871 did not apply, and that accordingly at the date of the borrowings of the £7000 and £1000 before mentioned the then gas undertaking continued to be liable to assessment under the Public Health (Scotland) Act 1867. That on the formation of the burgh, after the passing of the Local Government (Scotland) Act 1889, assessment for water fell to be regulated at first in terms of that Act, and ultimately, in consequence of the series of repeals of the rating section of that and subsequent Acts, in terms of the Burgh Police (Scotland) Act 1892, section 347; that accordingly the second parties are assessable on the full value of their premises as appearing in the valuation roll and on one-fourth of the value of their underground works in terms of the proviso in said section and that until the loans obtained prior to the formation of the burgh have been paid off. That section 3 of the Burgh Sewerage, Drainage, and Water Supply (Scotland) Act 1901 applies only to drainage and water districts formed within a burgh under the Public Health Acts, and not to special water supply districts which existed in a county district prior to the erection of that particular area into a burgh.”

The second parties *maintained*—“That until 15th May 1902, when the Burgh Sewerage, Drainage, and Water Supply (Scotland) Act 1901 came into operation, the second parties should have been assessed as owners and occupiers of premises within the special water supply district in respect of water supplied within that district. That by the provisions of the Burgh Sewerage, Drainage, and Water Supply (Scotland) Act 1901 the original special water supply district formed of Cowdenbeath under the Public Health (Scotland) Act 1867 has been abolished, and that for water purposes the whole burgh falls to be treated as one administrative unit liable to a uniform water assessment to meet the cost of, and the

repayment of debt connected with, the present and any past system of water supply. That the proviso to section 347 of the Burgh Police (Scotland) Act 1892 has become inoperative and been in effect repealed so far as it concerns any water assessment leviable from the second parties by the first parties in consequence of the said provisions of the Burgh Sewerage, Drainage, and Water Supply (Scotland) Act 1901, and that accordingly under the main provisions of section 347 of the Act of 1892 the water assessment should be levied only upon one-fourth of the annual value of their over-ground works above ground, the same being a manufactory within the burgh.”

The *questions of law* were—“1. Are the first parties entitled to assess the second parties for water purposes on the full annual value of their undertaking above ground and on one-fourth of the annual value of their underground pipes, until the loans contracted in 1888-9 are repaid? 2. Are the first parties entitled to assess the second parties for water purposes only on one-fourth of the whole annual value of their undertaking both above and below ground?”

The following statutes were either quoted in the Special Case or referred to by counsel in the course of their argument—The Public Health (Scotland) Act 1867 (30 and 31 Vict. cap. 101), secs. 5, 89 (6), 94; the Public Health (Scotland) Amendment Act 1871 (34 and 35 Vict. cap. 38), sec. 1; the Local Government (Scotland) Act 1889 (52 and 53 Vict. cap. 50), secs. 11, 17, 81 (3); the Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55), secs. 257, 267, 340, 347 (2), 359; the Public Health (Scotland) Act 1897 (60 and 61 Vict. cap. 38), secs. 134, 136, 196, and First Schedule; the Burgh Sewerage, Drainage, and Water Supply (Scotland) Act 1901 (1 Edw. VII, cap. 24), secs. 1, 2, 3, 4 (3), 7.

At advising—

LORD CULLEN—The first parties to this Special Case are the Provost, Magistrates, and Council of the Burgh of Cowdenbeath. The second parties are the Cowdenbeath Gas Company, Limited. The question raised is whether in levying the burgh water assessment the first parties are entitled to assess the works of the second parties so far as above ground on their annual value as entered in the valuation roll or only on one-fourth of that value.

The second parties' said works are situated within an area (now included in the burgh) which was in 1869 formed by the Parochial Board of the Parish of Beath as a special water supply district under the Public Health (Scotland) Act 1867. The said area was then part of the general area of the county of Fife, the burgh of Cowdenbeath not having been constituted until November 1890.

In 1888 and 1889 respectively the Beath Parochial Board borrowed the sums of £7000 and £1000 to meet the expenses of the works connected with the said special water supply district, in virtue of the powers conferred on them by section 89 (6) of the Act of 1867. These loans have not yet been repaid.

I do not think it necessary to recite the

whole course of legislation set forth in the case. At the time of the passing of the Burgh Sewerage, Drainage, and Water Supply (Scotland) Act 1901 the said special water supply district continued to exist, and the mode of assessing manufactories within it was regulated by the provisions contained in section 347 of the Burgh Police (Scotland) Act 1892. According to that section, in its leading provisions, manufactories fall to be assessed on one-fourth of their value as appearing in the valuation roll. There is, however, a proviso to the section in the following terms:— . . . *quotes, v. sup.* . . .

The rule contained in this proviso was in practice assumed, and in the argument submitted to us was assumed, to have applied to the above-ground works belonging to the second parties prior to the passing of the said Act of 1901; and for some years subsequent to the passing of that Act until the present question was raised the said above-ground works were assessed for water supply of the burgh on their full annual value as appearing in the valuation roll. The question now raised for decision is whether this mode of assessment is in accordance with the provisions of the 1901 Act, or whether, on the contrary, the said subjects should be assessed for said water supply on one-fourth of their annual value.

Sections 1 and 2 of the Act of 1901 provide as follows:—“ . . . [*quotes, v. sup.*] . . . ”

It will be observed, on the terms of section 2 above quoted, that in burghs such as Cowdenbeath, to which the Act of 1901 applies, the scheme of assessment for water supply brings in by reference section 347 of the Act of 1892. Under the leading provisions of that section the above-ground works of the second parties would as a manufactory admittedly be assessable on one-fourth of their annual value. If, however, the rule of valuation in the proviso applies, they would be assessable on their full annual value. The first parties maintain that according to the intendment of the Act of 1901 the said proviso applies. The second parties maintain that the proviso does not apply, and that according to the true intendment of the Act of 1901 their above-ground works are assessable on one-fourth of their annual value. They found this contention more particularly on the 3rd section of the Act. That section is in the following terms:—“ . . . [*quotes, v. sup.*] . . . ”

On the terms of this section I may notice, in the first place, an argument for the first parties to the effect that the section only applies to the case of a special water supply district where the area of the district was at the period of its formation already included within a burgh, and therefore does not apply in the present case, seeing that the special water supply district here in question was at the period of its formation in 1869 part of the county. I think that this argument proceeds on a too narrow construction of the words used in section 3, and am of opinion that section 3 does apply to the said special water supply district formed in 1869.

On this footing the special water supply

district of 1869 ceased to exist as such after the passing of the Act of 1901, and the area within it was by the Act united with the remainder of the burgh of Cowdenbeath “for the purposes of water supply and all rights and liabilities connected therewith.”

Notwithstanding this statutory fusion of the area of the abolished special water supply district of 1869 with the rest of the burgh, the first parties contend that by the Act of 1901, as applied to manufactories within burgh, it was intended that the proviso in section 347 of the 1892 Act should continue to operate in the levying of the general burgh water assessment under the Act, so that manufactories situated within the geographical area of the abolished special water supply district of 1869 should continue to be assessed on their full annual value until the loans obtained in 1888 and 1889 were repaid, while other manufactories in the burgh situated outwith said area should be assessed only on one-fourth of their annual value. They point to the fact that section 2 of the 1901 Act invokes section 347 of the 1892 Act without any expressed qualification excluding the operation of the proviso. The answer made by the second parties is that the terms of the 1901 Act, and particularly those of section 3 thereof, impliedly exclude the operation of the proviso. I am of opinion that the contention of the second parties is right.

Under section 3 of the 1901 Act the special water supply district of 1869 ceased to exist as such after the passing of that Act. It was thereby united with the rest of the burgh “for the purposes of water supply and all rights and liabilities connected therewith.” Thereafter the premises within it were subjected to a new and different species of assessment. They were no longer to be assessed only for water supply within the area of the abolished special water supply district, but were to be assessed for the general water supply of the burgh. Correspondingly, burghal premises outwith the area of the abolished special water supply district were to be assessed for, *inter alia*, water supply within that area. That is to say, the whole premises within the burgh were rendered assessable for the water supply of the whole burgh.

The assessments on the special water supply district of 1869, which formed the original security for the loans obtained by the Beath Parochial Board in 1888 and 1889, thus ceased to be leviable after the passing of the Act of 1901. That Act, however, dealt with the case of such loans. It provided, by section 1, that the lenders should have as security the general water assessments thereby authorised to be levied on the whole burgh by way of substitution for the special assessments formerly leviable on the limited area of the special water supply district originally assigned as security. The first parties contend that this substitution is consistent with a differential system of rating manufactories within the burgh—that is to say, is consistent with the retention of the rule of rating manufactories within the area of the abolished special water supply district on

their full annual value (which prevailed while the special water supply district assessment was leviable), while the Act of 1901 includes in the security of the lenders the assessments leviable on subjects outwith said district assessable under the leading rule of section 347 of the Act of 1892. I do not think that this view is in accordance with the intendment of the Act of 1901. In abolishing the special water supply district, and in declaring that the area of it should be united with the rest of the burgh for the purposes of water supply and all rights and liabilities connected therewith, and in substituting, to lenders, the security of the general water assessments within the whole burgh in place of the security of the abolished special water supply district assessment originally assigned to them, I think that the intendment of the Act was that the area of the special water supply district should be completely fused with the rest of the burgh so that the rule of assessment for the water supply of the burgh should be the same throughout the burgh without distinction as to whether assessable premises were situated within the area of the abolished special water supply district or outwith that area.

I am, accordingly, of opinion that the first question in this case should be answered in the negative, and the second in the affirmative.

LORD MACKENZIE—In my opinion the first parties are entitled to assess the second parties for water purposes only on one-fourth of the whole annual value of their undertaking both above and below ground. The argument submitted on behalf of the first parties to the contrary of this view depends for its success upon their being able to make out that the proviso attached to section 347 (2) of the Burgh Police Act 1892 has been kept alive notwithstanding the terms of the Burgh Sewerage, Drainage, and Water Supply (Scotland) Act 1901. If, as the second parties maintain, the proviso applied to a state of matters which no longer exists, then it is spent, and the classification contained in the substantive part of section 347 (2) entitles the gas company as a "manufactory" to be assessed on one-fourth only of the annual value in the valuation roll. I have come to the conclusion that the contention of the second parties is sound. The proviso was appropriate so long as the special water supply district was maintained as a separate area for purposes of assessment. The purpose, however, of the Burgh Sewerage Act of 1901 was to unify the different areas and put an end to differential rating. It is not possible consistently with the attainment of this object to levy the same assessments as those on the security of which the money borrowed was raised. The terms of section 3 of the 1901 Act show that the special water supply district is merged in the larger area of the burgh. It is this larger area which by section 1 is substituted as the debtor for the balance of the loan. What at first sight seemed to create a difficulty, viz., that the

creditor's security might thereby be impaired, upon examination is seen not really to create an obstacle. It is no doubt true that the assessable rental of the portion of the burgh outside the special water supply district may not be of sufficient amount to balance the diminution of assessable rental within that district if the amount upon which the manufactories situated therein are to be assessed is reduced to one-fourth. The creditor's security is not, however, necessarily impaired, because what he looks to is not the amount of the rental on which the assessment is to be imposed, but the amount produced by the assessment when imposed. The assessments from and after the passing of the 1901 Act are, as provided by section 2, to be imposed on the whole burgh. Giving the gas company the benefit of the classification in section 347 (2) of the Burgh Police Act 1892 may result in a higher rate per £ being imposed, but it does not necessarily involve any depreciation in the creditor's security.

It is now the Town Council who under section 1 have to find the money to repay the money borrowed. Under section 3 the special water supply district shall cease to exist as such, and "shall be united to the other parts of the burgh for the purposes of water supply, and all rights and liabilities connected therewith." The liability having thus been cut down, the security cannot remain the same as before, though it may be as good. The proviso in section 347 (2) is therefore, in my opinion, no longer applicable.

It only remains to notice an argument upon the words in section 3, "so formed." It would defeat the object of the Act to construe these as meaning that the section cannot apply because the special water district was formed before the burgh was. The meaning must be that the section applies where a district has been formed and where it is within burgh.

The second alternative question should, in my view, be answered in the affirmative.

LORD DUNDAS concurred.

The Court answered the first question of law in the negative, and the second in the affirmative.

Counsel for the First Parties—Murray, K.C.—D. P. Fleming. Agents—Wallace & Begg, W.S.

Counsel for the Second Parties—Macmillan, K.C.—R. M. Mitchell. Agents—J. Miller Thomson & Company, W.S.