quences, both are equally guilty, and even were the law otherwise I confess on the facts of this case, as they have come out in evidence, I see no ground upon which you could discriminate as regards these two prisoners. Now that is how the case stands. I have not detained you at length, because, as I indicated, very few of the important facts are in dispute. I have endeavoured as briefly and as clearly as I could to do my duty, by laying these facts before you and explaining the law applicable thereto, and it is now for you to do your duty, your duty to the prisoners at the bar, and your duty also to the laws of your country.

The jury returned a verdict of guilty, the prisoners were sentenced, and subsequently executed.

Counsel for H.M. Advocate—Wark, A.-D. —Albert Russel. Agent—John Prosser, W.S., Crown Agent.

Counsel for the Accused Fraser—Morton, K.C.—Gibson. Agent—Andrew Alston, Solicitor.

Counsel for the Accused Rollins—Crawford. Agent—Andrew Alston, Solicitor.

COURT OF SESSION.

Tuesday, May 25.

FIRST DIVISION.

COUNTY COUNCIL OF FIFE *v.* MAGISTRATES OF KIRKCALDY.

Burgh—Police—Rates and Assessments—Sheriff Court Buildings Used Intermittently for Other Purposes.

Sheriff court buildings were used as such and for justice of the peace criminal courts, which were admittedly uses for the administration of justice, and therefore not taxable. They were also used for justices of the peace licensing courts, and meetings of the local district committee of the county council in performance of their statutory duties. In 1916 the sheriff court met 104 times, the licensing court 16, and the district committee 22 times. No rent was charged for the two latter uses. In a special case it was contended that the county council, the owners of the court-house under statute, were liable to assessment for burgh rates as owners and occupiers in respect of the use of the sheriff court-house for the licensing courts and the meetings of the district committee. *Held* (1) that the licensing courts were one of the courts of the country, and the use of the buildings for those courts would not of itself render the county council liable to taxation, and (2) that the use of the buildings for the meetings of the district committee, as it did not in any way limit or interfere with the complete dedication of the buildings to the administration of justice, was not so substantial as to deprive the county council of its right of exemption from taxation.

The County Council of Fife, *first parties*, and the Provost, Magistrates, and Councillors of the Royal Burgh of Kirkcaldy, *second parties*, brought a Special Case for the determination of questions as to the liability of the first parties for owners and occupiers' rates in respect of the Sheriff Court Buildings, Kirkcaldy.

The Special Case set forth—"1. The County Council of the County of Fife, constituted under the Local Government (Scotland) Act 1889 (52 and 53 Vict. cap. 50), are charged with the statutory duty of providing court-house buildings for the county of Fife. The said County Council, formed in 1889, come in place of the commissioners of supply appointed under annual Acts of Supply dating from 1656, caps. 14 and 25, and under the Local Government (Scotland) Act 1889, section 11, sub-section 1, and section 42, are charged with a number of duties and functions formerly performed by the commissioners of supply, including the carrying out of statutes relating to the Sheriff Court-house as contained in the statutes 23 and 24 Vict. caps. 28 and 29 and 47 and 48 Vict. cap. 42.

"2. At a meeting of the first parties held on 17th October 1890 there was submitted a letter received from the Secretary for Scotland in terms of section 4 of the Sheriff Court-Houses (Scotland) Act 1860 (23 and 24 Vict. cap. 79) forwarding a representation signed by three county councillors, representing, as provided by section 3 of the said Act, that the court-house accommodation in Kirkcaldy for Kirkcaldy and district was inadequate, and requesting the Secretary for Scotland to make such investigation as might be thought necessary. At that meeting of the first parties it was found that the accommodation in Kirkcaldy for the Sheriff Court was inadequate, and it was resolved to proceed with the erection there of a court-house, and to represent to the Secretary for Scotland accordingly. Remit was made to the Finance and Property Committee of the first parties along with Major Oswald, then a member of the first parties, and four representatives from the second parties as a committee for this purpose. Plans were then obtained, and on 10th March 1891 the first parties resolved to acquire a site at South Fergus Place, Kirkcaldy, at a sum of £600, to approve plans which had been prepared, and to erect a court-house and relative accommodation at a cost of £5700. At a meeting of the first parties on 16th February 1892 it was resolved to remit to the County Councillors who should from time to time be members of the County Finance and Property Committee, along with Major Oswald and also three representatives from the second parties, the Town Clerk of Kirkcaldy, or such others as from time to time might be appointed by the second parties, and the Provost, Magistrates, and Council of Burntisland, as representatives of these burghs under the Sheriff Court-Houses (Scotland) Act 1860, as a special committee to accept estimates. The capital cost of the buildings was contributed

by the first parties and the burghs in the said county subject to grant received from the Treasury. A sub-committee consisting of representatives of the first parties and four representatives of the second parties is appointed annually for the purpose of attending to the maintenance of the Sheriff Court buildings at Kirkcaldy and supervising the duties of the caretaker. The last meeting of that sub-committee was held on 25th July 1918. Representatives of the second parties attended that meeting. Representatives of the second parties were called to those meetings regularly and were called to the meeting in question. Matters such as expensive repairs, redecoration, keeper's salary, &c., are dealt with by the first parties through their Finance and Property Committee. Representatives of the second parties have not been called to meetings of the said Finance and Property Committee at which the Sheriff Courts were under consideration. The last meeting of the Finance and Property Committee dealing with the Sheriff Courts was held on 11th March 1919, when the question of decoration of the Sheriff Court buildings at Kirkcaldy was under consideration. The first parties annually at their statutory meeting on the third Tuesday of October levy assessments for the purpose, *inter alia*, of maintaining sheriff courts in the county. Representatives of the second parties have not in the past been called to those statutory meetings. There are no other meetings.

"3. In accordance with the said resolutions the said Sheriff Court buildings were duly erected, and they comprise the whole corner block at South Fergus Place, Kirkcaldy. These buildings were and still are used for (first) the Sheriff Courts of the Kirkcaldy District Division of Fife, and (second) Justices of the Peace Licensing Courts for the said Kirkcaldy Division, (third) meetings of Kirkcaldy District Committee of the Fife County Council, all for the performance of their statutory duties, and (fourth) Justice of the Peace Criminal Courts. During the war a room in the buildings was, when not required for the purposes of the business of the Sheriff Court, occasionally used for meetings of the Kirkcaldy District (Military Service) Tribunal and of the County (Military Service) Appeal Tribunal, and two rooms were, when not required for the said purposes, used by the Civil Liabilities Commissioner for Fife, all also for the performance of their respective statutory duties. A room was also occasionally used, when not required for the said purposes, by the Fife Food Control Committee for conferences in connection with its official business. The said meetings and conferences were almost without exception held in the Sheriff Court-room. Accommodation is provided within the buildings for the offices of the Depute Sheriff-Clerk for Kirkcaldy district and his staff. There is also a dwelling-house consisting of three rooms occupied by the caretaker of the buildings, who is a servant of the first parties and is not liable to them for rent in respect of his occupancy.

"4. Under section 14 of the Sheriff Court-Houses (Scotland) Act 1860 the County Council have power to make arrangements with respect to the use of the court-house or any part thereof with any persons or corporations desiring the use of same on such terms and conditions as may be agreed upon. In 1916 the number of meetings of the Sheriff Court was 104, of Justices of the Peace Licensing Court 16, and of the said District Committee 22 in the said buildings. These figures represent the average yearly number of meetings of the said Courts and Committee in the said buildings. No rent has ever been or is received from or stipulated to be paid by Kirkcaldy District Committee or from the said Justices of the Peace, nor was any rent received or stipulated to be paid in respect of the said meetings of Tribunal or in respect of the occupancy by the Civil Liabilities Commissioner, or in respect of the said Food Control Committee's conferences. Kirkcaldy District Committee pay a sum of £5 annually to the first parties towards the cost of lighting and cleaning the premises. If the first parties had not used the Sheriff Court buildings for their own various purposes as enumerated under heads second, third, and fourth in the preceding article, they would have required to pay a substantial rent to obtain the necessary accommodation elsewhere. . . . .

"10. The first parties up to the year 1915-16 paid local assessments on owners and occupiers in respect of the said buildings on the assumption that they were legally liable for them, but in September 1916 they were advised that the rates leviable by the second parties upon owners and occupiers of property cannot be legally charged against them.

"11. In respect of their ownership of the said Sheriff Court buildings the first parties were assessed by the second parties for the year 1916-17 for burgh rates on a rental of £279, the assessment amounting to £48, 4s. 11d. as the amount of owners and occupiers' proportion of rates. In the year 1917-18 the first parties were similarly assessed, the claim being £50, 3s. 1d.

"12. The said Sheriff Court buildings were entered in the valuation roll for the years 1916-17 and 1917-18 for the burgh of Kirkcaldy as follows:—

Description and Situation of Subjects.	Proprietor.	Tenant.	Occupier.	Inhabitant Occupier.	Yearly Annual Rent or Value.
Sheriff Court Buildings, Whyte's Causeway	County Council of Fife, *per* W. D. Patrick, Cupar	..	Proprietors	... ..	£270
House	Do.	..	Do.	Joseph Wilson, caretaker	£9 £9

"13. The Commissioners of His Majesty's Treasury have offered to make to the second parties a contribution in respect of occupiers' rates on a rental of £200. Such contribution by His Majesty's Treasury is made to local assessing authorities in lieu of occupiers' poor and school rates, and municipal assessments in respect of all property occupied by Government departments. No account is taken by the Treasury of the rates leviable upon owners. The second parties have not meantime accepted the offer."

The first parties *contended*—"(1) That the entry in the valuation roll shows accurately the description of the said buildings, and that the buildings are used in connection with the government of the country and the administration of justice. (2) That the said buildings are vested in the first parties for purposes required and created by Government for the administration of the government of the country and of justice. (3) That the Justices of the Kirkcaldy District of the County of Fife and the Kirkcaldy District Committee, who occasionally occupy a room in the said buildings, have no tenure, and occupy a room in the buildings only for the administration of the government of the country and of justice, and only when accommodation is available by reason of the room not being required at the time for the business of the Sheriff Court; and that the occupancy of the said Tribunals, Civil Liabilities Commissioner, and Food Control Committee was also for the administration of the government of the country and of justice, and was subject to the qualifications before mentioned. The first parties consequently contend that they are not liable for any local rates in respect of the said buildings, and in particular for the rates levied by the second parties."

The second parties contended—"(1) The buildings are substantially occupied for purposes other than the administration of justice, and as there is no exclusive Crown occupancy there can be no exemption from rating. (2) If there were exclusive Crown occupancy the exemption would only be from occupiers' rates. The Crown is not the owner, and the owner if sued could not put forward the defence of the impossibility of suing the Crown. (3) That the County Council are bound to credit separate accounts for the buildings with an adequate rent in respect of their occupation for all purposes other than holding Sheriff Courts."

The *questions of law* were—"1. Are the first parties liable for (*a*) owners' and/or (*b*) occupiers' rates sought to be imposed on them by the second parties in respect of the said buildings? (2) Are the first parties bound to credit separate accounts with an adequate rent in respect of their occupation of the buildings for purposes other than the holding of Sheriff Courts?"

Argued for the first parties—The buildings in question were originally required and were built to serve Government purposes, viz., the administration of justice. There was no suggestion that their size exceeded what was required for that purpose, or that they were capable of being separated into different apartments, some of which were used for an alien purpose. The dominant use had remained throughout use for the administration of justice, and the sole question in the case was whether the subsidiary purposes for which the buildings were used were sufficient to eliminate the exemption from taxation. The use of the buildings for licensing courts was a use for the administration of justice, for the licensing courts were courts of the land; they took evidence on oath; counsel appeared; and there was an appeal from their decisions. The remaining uses were intermittent and were not productive of rent. The dominant purpose was not affected or displaced by such uses, but remained operative as the basis for exemption from taxation—*Coomber* v. *Justices of Berkshire*, 1882, 9 Q.B.D. 17, *per* Grove, L.J., at p. 27, 1883, 9 A.C. 61, *per* Lord Blackburn at p. 65 and p. 66—in which case there was intermittent use for county council and committee meetings. *Glasgow Courthouse Commissioners* v. *Glasgow Parish Council*, 1913 S.C. 194, 50 S.L.R. 97, applied in principle, but was distinguished on the facts. In *Surveyor of Taxes* v. *Smith*, 1901, 4 F. 31, 39 S.L.R. 20, there was a complete separation of tenements within the buildings, some being used for Government purposes and some being used exclusively for other purposes. In *Edinburgh Parish Council* v. *Magistrates of Edinburgh*, 1907 S.C. 1079, 44 S.L.R. 811, the predominant use was not for Government purposes; use for the administration of justice, &c., was merely a subsidiary use. In *Edinburgh Parish Council* v. *Schulze*, 1917 S.C. 679, 54 S.L.R. 577, the owner was a private individual; the occupier was the Crown, but occupation by the Crown had nothing to do with owner's rates. Section 14 of the Sheriff Court-Houses (Scotland) Act 1860 (23 and 24 Vict. cap. 79) indicated that a court-house still remained a court-house in spite of grants for use for other purposes. If an agreement under that section was productive of rent the exemption would still apply in its entirety (the rent might formerly have been credited to the Treasury under section 16, which was now repealed) or the exemption would be wholly withdrawn. Question 1 should be answered in the negative when it was unnecessary to answer question 2.

Argued for the second parties — Such exemption as was here in question was originally based on the principle that the Crown, not being mentioned in Taxing Acts, was exempt. That was applied to all sorts of corporations charged with the duty of administering public purposes. That extension culminated in the *Mersey Dock and Harbour Board* v. *Jones*, 1865, 3 Macph. (H.L.) 102, footnote. To let in the application of that principle there must be substantially exclusive use for police (in the narrow sense) purposes, or for the administration of justice. Mere exceptional or intermittent use for other purposes came under the rule *de minimis*. In *Smith's* case (*cit.*), *per* Lord President Kinross, at p. 33, and in *Parish Council of Edinburgh* v. *Magistrates of Edinburgh* (*cit.*), *per* Lord M'Laren at p. 1087 and p. 1089, that was the ratio of the decision. The payment of rent was irrelevant—*Schulze's* case (*cit.*). *Comber's* case (*cit.*) was distinguished; it raised questions of income tax, which could only be imposed if there was a rent, and there being no rent no tax could be imposed whatever the facts as to use were. In the present case alien uses were substantial. The licensing courts were not courts for the administration of justice or police; their functions were part of the ordinary county business. They were on the same footing as valuation courts, and neither had ever been held

exempt from taxation. But in any event, apart from the licensing courts and the justice of peace criminal courts, the use of the buildings for county purposes was enough of itself to destroy the exemption. If the first parties in administering the county had had to find premises for themselves, such premises would not have been exempt. The occupation and use of part of the court-house equally should not be exempt. The first question should be answered in the affirmative.

LORD MACKENZIE—The question raised in this Special Case is whether the County Council of Fife are liable for the owners and occupiers' rates sought to be imposed upon them by the Provost, Magistrates, and Town Council of the Royal Burgh of Kirkcaldy in respect of the Sheriff Court buildings in Kirkcaldy. The history of the buildings and the connection of the County Council with them are sufficiently set forth in the Special Case. The County Council, who are constituted under the Local Government Act 1889, are charged with the statutory duty of providing court-house buildings for the county of Fife. That duty was imposed upon them as coming in place of the old Commissioners of Supply appointed under the Annual Acts of Supply of earlier years. When the County Council came into being the question was raised as to the sufficiency of the accommodation at Kirkcaldy for the business of the Sheriff Court. A meeting was held at which the County Council came to the conclusion that the accommodation in Kirkcaldy for the Sheriff Court was inadequate, and it was resolved to proceed with the erection of a court-house. In accordance with that resolution, plans were obtained, a site was acquired, and a court-house was erected with relative accommodation at the cost of £5700, and in addition to that sum the site cost £600. The figure which appears in the valuation roll is £270 in respect of the Sheriff Court buildings, and £9 is entered as the value of the dwelling-house, which is occupied by a caretaker.

There is no suggestion in the case, nor was it suggested in argument, that the buildings which were so erected were in any way inappropriate or too large for the necessary purposes of the Sheriff Court at Kirkcaldy. The position is that the annual value represents the capital cost which was incurred in order to provide what was necessary solely for the provision of a Sheriff Court-house. The case proceeds to state that the buildings were and still are used for (*first*) the Sheriff Courts for the Kirkcaldy District Division of Fife, and (*second*) Justices of the Peace Licensing Courts for the said Kirkcaldy Division, (*third*) meetings of Kirkcaldy District Committee of the Fife County Council, all for the performance of their statutory duties, and (*fourth*) Justices of the Peace Criminal Courts. There is then a statement in regard to certain uses made of the buildings for what I may call transitory war purposes, which do not appear to me to affect the question which is raised in the present case.

It is common ground that buildings used in connection with the government of the country and the administration of justice are not liable to assessment, and it is common ground that if the buildings in question here were used solely for the purposes of the Sheriff Court and the purposes of the Justices of the Peace Criminal Court, the exemption would apply in favour of the Fife County Council. But it is maintained that inasmuch as the buildings are used for the purposes of the Justices of the Peace Licensing Court and for the meeting of the Kirkcaldy District Committee of the Fife County Council, the County Council are for that reason deprived of their right to claim exemption.

I may dismiss the argument founded upon the use of the buildings by the Justices of the Peace Licensing Court in a single word by saying that according to the law and practice of Scotland the Justices of the Peace sitting in a licensing court are to be considered as one of the courts of the country. The Acts of Parliament describe their court as a court, there is provision for an appeal court, and they are bound to discharge their duties in a judicial manner; and accordingly the occasions on which the Justices of the Peace use the buildings for a licensing court do not seem to me to deprive the County Council of any right that they may have.

It is set out in the statement of facts in the case that in 1916 the number of meetings of the Sheriff Court was 104, of Justices of the Peace Licensing Court 16, and of the District Committee 22 in the said buildings. I construe paragraph 3 of the case as meaning that the meetings were held in the Sheriff Court room, and we were informed from the Bar that that really is what happened.

The question therefore is this, Is the building, which structurally has been dedicated to the purposes of the Sheriff Court, to be held liable to taxation in consequence of the District Committee meeting on 22 different occasions in the Sheriff Court? There is no statement in the case as to the footing upon which the District Committee held their meetings in the court-house. It is not said that they have any right to do so. It is certain that there is no charge or pecuniary benefit derived from their doing so. As I read the case it means no more than this, that the District Committee get the use of the Sheriff Court as a convenience or a privilege, not as matter of right.

With reference to some of the cases in which the word "exclusively" is made use of, I think it may very well be said as regards the present case that those charged with the administration of justice are entitled in that capacity to exclude all others from the use of this building. There is no doubt provision in the Sheriff Court-Houses Act 1860, section 14, that the Commissioners of Supply may make agreements for the use of the court-house for other purposes, but there is no record here of any such agreement having been entered into.

The case therefore stands thus—that the only necessary purpose for which the build-

ings were constructed being the purpose of the administration of justice, is that to be displaced by the current and intermittent use on these twenty-two days in the year for the purposes of what is county business? It was not contended of course that buildings which are occupied for the purposes of county business can claim exemption, and that, I think, is the explanation to be given of such cases as that of the *Edinburgh Parish Council*, 1907 S.C. 1079, 44 S.L.R. 811, where it was found that there was a variety of duties to be discharged and that the premises were capable of being severed so as to provide accommodation in some parts for administration and in other parts for what properly would fall under the description of "the government of the country."

We have nothing in the present case such as there was in the case of the *Glasgow Court-house Commissioners* (1913 S.C. 194, 50 S.L.R. 97), where certain portions of the buildings were let, and for which rents were paid in respect of these separable portions of the buildings. It appears from the case that down to 1915-16 the County Council did pay assessments—owners and occupiers' assessments—in respect of these buildings on the assumption that they were legally liable for them. I rather apprehend that it was in consequence of the decision of the case of the *Glasgow Court-house Commissioners* that they were made alive to what their rights were, because it was held in that case that the statutory body of Commissioners created for the purpose of holding the buildings, which were used for certain public purposes—Justiciary, Sheriff, and Police Courts—were exempt from assessments, both owners and occupiers', with the exception of the parts of the buildings which were capable of being severed and were severed and separately let.

That case emphasised the general principle which was laid down by the House of Lords in the case of *Coomber* v. *Justices of Berks* (9 Ap. Cas. 61), and, as Lord Dunedin says, in view of that authority it is useless to go into the reasons by which the result was reached.

The present case is different from the kind of case founded on by the second parties, of which I think the *Surveyor of Taxes* v. *Smith* (4 F. 31, 39 S.L.R. 20) was an instance, where it quite clearly appeared that the primary purpose for which the buildings were erected was for county business, and the fact that the owners were allowed to use them for certain other purposes connected with the administration of justice did not entitle them to be exempt from rates.

Accordingly in my opinion the first question should be answered in the negative. If the first question be answered in the negative it appears to me quite unnecessary to answer the second question.

LORD SKERRINGTON—The first parties, the County Council, are the owners and occupiers of the premises in question, and we have to decide whether any facts are set forth in the Special Case which preclude them from pleading that they are exempt from taxation in respect of this property, seeing that it forms part of the judicial establishment of the kingdom and is owned and occupied for the purposes of the administration of justice. I have been unable to discover any such facts. The Sheriff Court-house of Kirkcaldy was erected by the County Council in pursuance of a statutory duty imposed upon them by the Sheriff Court-Houses Act of 1860, the cost being provided by the county, by the burgh situated therein, and by the Treasury in terms of the Act, and since its erection it has been maintained partly by the Treasury and partly by assessment upon the county and the burghs situated therein, in terms of the said Act as altered by the Amendment Act of 1884. In pursuance of section 13 of the Act of 1860 and of the Local Government (Scotland) Act 1889 the property is vested in the County Council, and the County Council has the control and superintendence thereof. The second parties, the Town Council of the Royal Burgh of Kirkcaldy, maintain that the County Council is liable for owners and occupiers' rates in respect of the court-house, because it was used not merely as a Sheriff Court-house (on 104 occasions in the year in question), but also for the meetings of the District Licensing Court (on 16 occasions), and of the Kirkcaldy District Committee of the Fife County Council (on 22 occasions). I see no substance in the suggestion that a licensing court is not a court of justice. Meetings of a district committee as the local authority for sanitary and other business fall within a different category. If any part of the premises had been let to the District Committee so as to give it the exclusive right to occupy that part, the owners and tenants could not have maintained that the portion so leased was used for the administration of justice. Again, there might have been a question if the County Council had made an agreement with the District Committee in pursuance of section 14 of the Act of 1860 conferring upon the latter body a legal right to use the Sheriff Court premises when the same were not required for the use of the Sheriff Court. In point of fact, however, the Special Case discloses nothing which in any way limits or interferes with the complete dedication of the premises to the purposes of the administration of justice. The fact that the County Council derives an incidental advantage from its position as custodier of the buildings, which enables it to allow the District Committee to hold its meetings in the Sheriff Court-house during the pleasure of the County Council does not alter the real character of the buildings and the object for which they are maintained from public funds, imperial and local.

LORD CULLEN—The use of the building as a Sheriff Court-house is the sole use for which the building was erected and for which it necessarily exists. The right of use is an overriding one which extends to every lawful day of the year so far as the state of judicial business requires. There is no lease or agreement or arrangement, so

far as the case shows, which to any extent excludes or abridges the right to so use the court-house. The meetings which are founded on by the second parties appear to me to be matter of casual privilege and nothing more. In these circumstances I think the questions should be answered as your Lordships propose.

The LORD PRESIDENT (CLYDE), who had acted as counsel in the case, did not sit at the hearing, and was not present at advising.

The Court answered the first question of law in the negative.

Counsel for the First Parties—Moncrieff, K.C.—Scott. Agents — Wallace & Begg, W.S.

Counsel for the Second Parties—Fraser, K.C. — T. Graham Robertson. Agents — Gulland & Stuart, S.S.C.

HOUSE OF LORDS.

Monday, June 28.

(Before Viscount Haldane, Viscount Finlay, Viscount Cave, Lord Dunedin and Lord Shaw.)

MUNRO AND OTHERS *v.* ROTHFIELD.

(In the Court of Session, December 3, 1919, 57 S.L.R. 165.)

Bankruptcy—Contract—Illegal Preference —Pactum Illicitum—Void and Voidable.

A debtor arranged with a particular creditor for payment of his debt in certain instalments if a general scheme to which the particular creditor would be a party were carried through; that arrangement conferred a privilege on the particular creditor over the other creditors to the proposed general scheme; the general scheme was agreed to; the particular creditor obtained in absence a decree on his debt acting on his particular agreement; the creditors of the general scheme suspended. *Held* (*aff.* judgment of First Division) that the general scheme was only voidable not void, the arrangement with the particular creditor void as fraudulent, or superseded.

This case is reported *ante ut supra.*

The defender Rothfield appealed to the House of Lords.

At the conclusion of the arguments—

VISCOUNT HALDANE — The difficulty which confronts the appellant in this case is that he proves either too much or too little. Too much if the principle on which he is founding his argument is the wide and sweeping one lying at the very foundations of the jurisprudence of Scotland, as he asserts, because that principle forces this House as a court of justice to take notice not only of the illegality of what has been called the general agreement, but also the illegality of his special agreement and the decree *in absentia* he obtained upon it, and of the charge he obtained following on that decree *in absentia;* these all fall to the ground if that general principle is the one which applies. But I do not think that we are concerned with the general principle, for as soon as you look at the facts in the case the point turns out to be of a nature much narrower.

The debtor got into financial difficulties in the year 1918. A little earlier, on the 9th of October 1917, he had given a bill in favour of the appellant for £250. On the 20th of February of the next year, 1918, the debtor had presented a petition for sequestration. Then on the 18th of March 1918 he was already considering an arrangement with his most important creditors, and apparently was approached by the appellant, and he entered into the special agreement with the appellant which we have had read, and which refers to what had apparently been verbal negotiations; and the substance of his special agreement which, as I have said, was dated the 28th of March 1918, was this —that in the event of the proposed general arrangement with the important creditors, including Mr Rothfield the appellant, being concluded, he (the debtor) undertook "to arrange that Mr Rothfield's claim be taken over by instalments at three, four, and six months from the last date of signature in said agreement," and bound himself accordingly. The effect of that was to give Mr Rothfield not only the benefit of the prospective general agreement, but an advantage over the other creditors under that agreement.

Now the next material thing that happened was that on the 5th of May in the same year 1918 the general agreement of which I have spoken was come to. It was entered into between the debtor himself and a number of his important creditors, including Mr Rothfield and a Mr Munro, an accountant, who was a sort of trustee for the creditors; and the effect of it was this, that the debtor undertook to make over, not only his general assets but his income specially, and to pay out of his income a sum of not less than £300 a-year. That amount was to be paid at intervals, and the trustee, Munro, was to divide proportionately among the creditors specified until their debts, which were set out in a schedule, were paid. That was the general agreement.

Now the next thing that happened was that on the 14th of September in the same year Mr Rothfield took proceedings to enforce his special agreement, and under that he got a decree *in absentia* for the sum of £70 odd, suing upon this special agreement, and on the 18th of October the decree was complete.

The next thing that happened was that the present action out of which this appeal arises was commenced on the 26th December. That was an action for suspension of Mr Rothfield's decree, and the charge following on it, and it was begun by the debtor himself, and Mr Bruce as the assignee of certain of the creditors, and Munro the trustee under the general agreement, as representing the creditors gener-