appellant's own self-neglect. I gather from paragraph 11 that the arbitrator has taken that circumstance into account in awarding compensation of 10s. It was suggested that he could not competently do so, because compensation is awarded for injury by accident while in service, but if incapacity was due in part to the workman's own neglect I think the arbitrator was entitled to take that fact into consideration in fixing the compensation. Accordingly I suggested that there was here a double penalty, which will not do at all.

We are not told by the arbitrator why he has refused expenses. We must assume that he has stated all the material facts upon which he reached his conclusion. On the facts so stated I am of opinion that there are no materials to justify the arbitrator in exercising his discretion as he did, and that therefore the workman having been successful in the *lis* is entitled to his costs.

LORD HUNTER did not hear the case.

The Court pronounced this interlocutor—

"... Answer the question of law stated in the Case by finding that on the facts as stated the arbitrator was not entitled to find no expenses due to or by either party: Therefore sustain the appeal, reverse the determination of the Sheriff-Substitute as arbitrator on the matter of expenses, and remit to him to award expenses to the applicant and to proceed as accords; and decern. ..."

Counsel for the Appellant—Fenton, K.C. —Keith. Agents—Simpson & Marwick, W.S.

Counsel for the Respondents—Dean of Faculty (Sandeman, K.C.)—Kidd. Agents—W. & J. Burness, W.S.

Saturday, February 23.

SECOND DIVISION.

[Lord Constable, Ordinary.

DISTILLERS COMPANY, LIMITED *v.* COUNTY COUNCIL OF THE COUNTY OF FIFE.

Rates and Assessments — Domestic Water Rate — Extent of Liability — Subjects Entered as a Unum quid in the Valuation Roll—Only One Building Supplied with Water—Physical Discontiguity of Building — Entry in Valuation Roll as Basis for Assessment — Lands Valuation Act 1854 (17 *and* 18 *Vict. cap.* 91), *sec.* 41—*Kirkcaldy District Water Order Confirmation Act* 1913 (2 *and* 3 *Geo. V, cap. clxix.*), *sec.* 59.

A distillery company had obtained from a body of water trustees a supply of water for an excise office which they owned and which was used by them in connection with their distillery. The building which housed the excise office and which was let to and occupied by the Excise authorities was of small value, and was discontiguous from the other distillery buildings, which had a private water supply of their own. The County Council having taken over the duty of supplying water within the area where the distillery was situated, proceeded to assess the company in respect of the water used by the excise office, on the value of the distillery premises as a whole, these being entered in the valuation roll as a *unum quid*, maintaining that the entry in the roll was conclusive as to the unit of assessment. *Held* (*rev.* judgment of Lord Constable, Ordinary) that the entry in the roll though conclusive as to value was not conclusive as to liability for assessment, that the complainers were liable to assessment for water rate in respect of the excise office only, and reclaiming note *sustained.*

The Distillers Company, Limited, incorporated under the Companies Acts 1862 and 1867, and having their registered office at No. 12 Torphichen Street, Edinburgh, *complainers*, presented a note of suspension and interdict in which they craved the Court to suspend *simpliciter* a notice for payment of the sum of £1063, 19s. 6d., being assessments alleged to be due by them to the County Council of the county of Fife, constituted under the Local Government (Scotland) Act 1889, *respondents*, for the year from Whitsunday 1922 to Whitsunday 1923, in respect of a distillery belonging to and occupied by the complainers at Cameron Bridge in the parish of Markinch and county of Fife; and to interdict, prohibit, and discharge the respondents from executing any poinding or other diligence against and from selling the property of the complainers in respect of the said assessment.

The complainers pleaded, *inter alia* — "2. The respondents not being entitled in respect of the supply of water to the excise office to levy the domestic water rate on the distillery buildings and mills, the complainers are entitled to have the notice, pretended warrant, and whole proceedings suspended and interdict granted. 3. There being no pipe of the District Committee through which the District Committee are entitled to give a supply of water within 100 yards of the premises in question, the complainers are entitled to suspension and interdict as craved. 4. An undertaking having been given to the complainers that in the event of the domestic water rate being levied in respect of the water supply to the excise office it would be levied on the excise office alone, the respondents are barred from levying it on the whole distillery buildings."

The respondents, *inter alia*, pleaded — "2. The assessment complained of having been validly levied in accordance with the respondents' statutory powers and duties, the note should be refused. 3. The respondents being entitled and bound to assess the said distillery buildings and mills as a *unum quid* upon the annual value thereof as entered in the valuation roll, the note

should be refused. 4. *Separatim*—In respect that a pipe through which the District Committee are entitled to give a supply of water to the said distillery and mills passes within 100 yards of the entrance to or nearest part of the private close or place in which the said premises are situated, the respondents are entitled to levy the assessment complained of, and the note should be refused. 5. The complainers' averments in support of their fourth plea-in-law being irrelevant *et separatim* unfounded in fact, the said plea should be repelled."

The *facts* of the case sufficiently appear from the opinion of the Lord Ordinary (CONSTABLE), who on 15th August 1923 pronounced the following interlocutor:—"... Sustains the second plea-in-law for the respondents, refuses the note of suspension, and decerns."

Opinion.—"The complainers in this case are owners and occupiers of a distillery situated within the Kirkcaldy district of Fife in which water is supplied by the District Committee under special statutory powers, and the main question to be determined at this stage is whether the complainers are liable to a domestic water rate levied on the whole distillery as entered in the valuation roll in respect of a water supply which is only in fact given to a separate building forming part thereof.

"The circumstances in which the question arises are as follows:—In 1915 the complainers obtained from the Wemyss and District Water Trustees a water supply through a private pipe to an excise office situated in one of the distillery buildings. The distillery was outside the limits of compulsory supply of the trustees, and they supplied the water, which only amounted to about 10,000 gallons a year, at a meter rate of 9d. per 1000 gallons. This went on till 1922, when the District Committee, who in 1913 had obtained statutory powers to supply water within their area, intimated to the complainers by letter dated 15th May 1922 that they had arranged to take over the supply of water to the excise office, and that domestic water rate would be levied on the rental of the premises or the water would be charged by measure under the Act of 1913. As the water was supplied for domestic purposes, it seems doubtful whether the District Committee could charge by measure. At any rate, they did proceed to impose the domestic water rate, and in December 1922 issued an assessment notice to the complainers for £984, 18s. 8d., representing a rate of 3s. 2d. per £ in respect of ownership, and a rate of 3s. 2d. per £ in respect of occupation on an annual value of £2984. This resulted from the mode in which the complainers' property was entered in the valuation roll. While certain dwelling-houses were valued and entered separately, the distillery consisting of a group of buildings was valued and entered as a *unum quid* under the description of 'distillery and mills,' with the proprietors as occupiers. It appears that the excise office to which water was laid is in fact let to and occupied by the excise authorities. It forms part of a separate building, which includes also a timekeeper's office and a store. The value of the excise office is said to be £6, and that of the building about £21. These figures are not admitted, but it may be taken that the values are insignificant compared with the cumulo value of the distillery.

"The warrant under which the notice is said to be issued is section 59 of the respondents' Order (Kirkcaldy District Water Order Confirmation Act, 2 and 3 Geo. V, cap. clxix). The section provides that upon an estimate of the annual expenses of the undertaking being duly made up and revised the county council shall impose and levy an assessment to be called the domestic water rate upon all lands and heritages within the limits of supply at such rate in the pound as shall be sufficient to defray such expenses, 'provided that as regards all persons who shall be the owners or occupiers of any dwelling-houses, railway stations, or other buildings (other than tenements situated in a private close or place) they shall not be liable to be assessed in respect thereof for the domestic water rate unless such dwelling-houses, railway stations, or other buildings shall have been actually supplied with water under this Order, or unless some pipe of the District Committee or through which the District Committee is entitled to give a supply to such premises shall be laid down within 100 yards of the same.' In the case of tenements situated in a private place it is sufficient that the pipe has been laid down within 100 yards of the entrance or nearest part thereof. Another proviso relates to agricultural lands, which are not to be assessed unless some pipe of the District Committee is laid down within 100 yards of some dwelling-house or offices occupied as appurtenances thereof, and then only in respect of the annual value of such dwelling-house and offices. If the value of the dwelling-house and pertinents is not entered separately in the valuation roll from that of the remainder of the subjects of which it is a part, special provision is made for the apportionment to the dwelling-house and pertinents of their due proportion of the value of the entire subject. A third proviso declares that for the purposes of assessment the annual value of certain classes of subjects, including railways, water works, and mines, shall be taken at one-fourth of their annual value entered in the valuation roll.

"In these circumstances the complainers crave suspension of the notice of assessment as illegal and unwarranted in respect that (1) the subject, viz., the distillery and mills, are not buildings actually supplied with water within the meaning of section 59, and (2) there is no pipe of the District Committee within 100 yards thereof. They further plead (3) that the respondents are barred by their letter of 15th May 1922 from imposing such assessment. The parties are in dispute as to whether there is in fact a pipe laid within 100 yards of the property, and the argument before me was confined to the first and third questions, upon which both parties request a decision at this stage.

"With regard to the first and main ques-

tion, the complainers maintain that under section 59 of the Order the question whether buildings are assessable in respect of an actual supply of water is one of fact, that in fact the building actually supplied in the present case is physically discontiguous from the other buildings grouped in the valuation, and that upon a sound construction of the section this fact is conclusive. The respondents maintain that assessment is based upon the valuation roll, the entries in which are conclusive as to the units of assessment.

"In order to test the latter proposition it is necessary to consider the general relation between valuation and assessment. The purpose of the Valuation Act of 1854, as its preamble bears (17 and 18 Vict. cap. 91), was to establish a uniform valuation of lands and heritages according to which public assessments leviable according to the real rent might be asessed and collected. The roll made up in accordance with the provisions of the original and amending Acts is for the purposes of assessment conclusive on the question of value according to which assessments must be levied. But otherwise it does not affect liability to assessment. Entry therein has no effect in imposing liability—*University of Glasgow*, 11 Macph. 982. A person correctly described therein as proprietor according to the directions of the Valuation Act may not be a proprietor within the meaning of the Assessment Act —*M'Laren* v. *Clyde Trustees* (6 Macph. (H.L.) 81)—and if an entry is erroneous otherwise than in respect of value the Court will entertain a suspension or interdict of proceedings for enforcing payment of an assessment—*Sharp* v. *Latheron Parochial Board*, 10 R. 1163; *Hope* v. *Corporation of Edinburgh*, 5 S.L.T. 195; *Abercrombie* v. *Badenoch*, 1909, 2 S.L.T. 114.

"In the present case there is nothing in the terms of the assessing statute which gives any special effect to the entries in the valuation roll. Section 62 of the Order of 1913 provides that the assessments authorised by the Order shall be deemed to be assessments under the Public Health Acts, and shall be imposed and levied in the same manner as those assessments. By section 135 of the Public Health Act 1897 (60 and 61 Vict. cap. 38) the assessment thereby authorised is to be levied and recovered in the same manner as the road maintenance assessment under the Roads and Bridges Act 1878 (41 and 42 Vict. cap. 51); and sections 52 and 82 of that Act provide that that assessment shall be levied on all lands and heritages within the district, one-half payable by owners and the other half by tenants or occupiers, and 'shall be imposed according to the valuation of the lands and heritages in the valuation roll in force for the year in which such assessment is imposed.'

"Passing to the units of valuation entered in the roll I think it is obvious that alike in regard to division between rating areas and distinctions between classes of subjects which are differently assessed, there must be some correspondence between the assessing statutes and the valuation roll. With regard to rating areas the Valuation Acts make careful provision for the separation of subjects situated in each county burgh and parish and special county and parish rating areas, and where these consist of subjects valued as a *unum quid* situated in more than one area provision is made for their disintegration and for the apportionment of the total value between the areas (17 and 18 Vict. cap. 91, section 20 *et seq.*, 30 and 31 Vict. cap. 80, section 6, 50 and 51 Vict. cap. 51, 57 and 58 Vict. cap. 58, section 45). With regard to the units of valuation within a rating area the only statutory provision is that the roll is to show the annual value of 'the whole lands and heritages respectively and separately' (1854 Act, section 1); but the classes of subjects to which the principle of aggregation or cumulo valuation is applicable are now comparatively well settled by practice and the decisions of the Valuation Court. Such practice and decisions are, however, based on considerations appropriate to valuation —whether one subject is properly a mere accessory of another, whether aggregation is necessary in consequence of the principle of valuation which is applicable, &c.—and may not necessarily fit the provisions of an assessing statute. There are various cases in which successful appeals have been made to the Valuation Court to alter units of valuation at the instance of persons whose motive was to alter the incidence of assessments. but these all involved principles of valuation (*Henderson*, 11 Macph. 985; *Bank of Scotland* v. *Assessor for Edinburgh*, 17 R. 839, 18 R. 936). The Valuation Court will only consider questions of valuation—*British Linen Bank* v. *Assessor for Aberdeen*, 8 F. 508. What then is the result if the terms of the assessing statute do not fit the unit of valuation adopted in the valuation roll? Clearly I think the assessment may be suspended. Suppose, for example, the assessor in this case, taking the view expressed by Lord Johnston in *Caledonian Railway Company* v. *County Council of Lanark*, 1916 2 S.L.T. 96, had not entered the value of each railway station separately but only the value of all the railway stations in the district *in cumulo*, and that water had been supplied to one station only, it could obviously not have been contended that the respondents were entitled to impose the domestic water rate on the aggregate value of all the stations. The assessment must be imposed according to the valuation in the valuation roll, but the subject of valuation in the valuation roll must fall within the reasonable interpretation of the subject assessed in the assessing statute. I cannot therefore accept the respondents' extreme proposition.

"On the other hand, I am equally unable to accept the complainers' proposition that the physical discontiguity of the building actually supplied in the present case is sufficient to exclude the assessment provision from the rest of the buildings included in the unit of valuation. To take an obvious illustration, railway station buildings are always physically separated by the railway

line, but if the buildings on one side only of a particular station had been supplied with water, it could not be reasonably contended that the value of the whole station was not assessable because only a part thereof was supplied. To take another illustration, industrial works generally consist of power house, works, offices, and stores, which sometimes are and sometimes are not situated beneath the same roof. It would create intolerable complication, and would in my opinion be unreasonable, to hold that where the buildings were discontiguous, each one must, for the purpose of assessment under section 59, be separately entered in the valuation roll. If their physical discontiguity alone is not sufficient to exclude the rest of the buildings, the question is, where can the line be drawn short of the grouping which follows naturally from the use and occupation of the buildings?

"Before answering this question it may be useful to consider whether any light is thrown on the meaning of this portion of section 59 by the mode in which water legislation has developed, or by the context in the section itself. The early general rating provision in the Waterworks Clauses Act of 1847 (10 and 11 Vict. cap. 47) was based upon use of the water. Section 68 provides that the water rates should be payable 'according to the annual value of the tenements supplied,' any dispute as to the value being determined by two justices. Then followed the Public Health Acts, which authorised the formation of special water districts and the imposition of a special water assessment on all lands and heritages within the district (60 and 61 Vict. cap. 38, sections 131, 134, 137). This provision bore hardly on owners and occupiers of subjects which made little use of the water, and accordingly special legislation developed which provided for two separate assessments—a public water rate of very limited amount leviable generally, and a domestic rate with total or partial exemptions for certain classes of property. Of this section 59 is an example. Starting with a general imposition the section in result practically restricts liability for the full amount to buildings. But then with regard to buildings it reverts to the old idea of assessment based on use or possibility of immediate use. Only buildings are assessable which are *de facto* supplied with water or within a certain distance from which pipes have been laid.

"In its wording the part of section 59 under consideration is very similar to section 68 of the Waterworks Clauses Act. What then was the construction put on section 68? In *Grand Junction Waterworks Company* v. *Davies*, [1897] 2 Q.B. 209, where the subjects consisted of a dwelling-house with outhouses and garden including about one-half acre, the justices held that the tenement supplied must be fixed by deducting such portion of the ground as might be separately let. This decision was reversed by a Divisional Court, Hawkins, J., observing that section 68 contemplated a 'valuation of the existing tenement as the owner and occupier up to the present time have chosen to enjoy it.' The principle applied is the same as that which has been applied by the Valuation Appeal Court in this country to determine what is the appropriate unit of valuation in subjects like the present.

"Again, if attention is directed to the context of section 59, it will be seen that in the case of agricultural subjects careful provision is made for the disintegration of the valuation-roll entry and apportionment of the total value between land and dwelling-house. The absence of any such provision with regard to 'dwelling-houses, railway stations, and other buildings' seems to indicate that in their case the valuation-roll entry was considered to be enough.

"In my opinion there is a presumption that an aggregation of buildings occupied for a certain purpose which has been deliberately adopted as an appropriate unit for valuation is likewise an appropriate unit for a water assessment based upon supply to buildings. It is well settled on obvious grounds that a distillery with its accessory buildings should be valued and entered on the roll as a *unum quid*—*North British Distillers' Company* v. *Assessor for Edinburgh*, 17 R. 845. And I can find nothing in the wording of section 59 of the respondents' Order which is sufficient to rebut the presumption that it should also be treated as a *unum quid* for the purpose of water supply. On the contrary, I think that the history and wording of section 59 both strengthen the presumption. The fact that a very small supply is taken to one part of the distillery is an accident which creates an apparent hardship, but in my opinion that accidental circumstance cannot affect the result. The incidence of assessments of this kind is full of apparent hardships.

"A point which so far as I noted was not specially pressed in argument but which has given me some difficulty, is that the complainers were not tenants or occupiers of the excise office at all. This fact might have had some force with the Valuation Court, because in their practice disintegration of subjects which would otherwise be treated as a *unum quid* is usually allowed where part of them is separately let. But in this case the let was for the purposes of the distillery. In any case, no disintegration of the subjects having been applied for, I do not think that the admitted fact of the tenancy would warrant me in finding that the water was not supplied to the distillery which has been assessed.

"On the general question accordingly my opinion is with the respondents.

"The complainers' plea that the respondents are barred from imposing the assessment is based on the following averment in statement 5:—'By letter dated 15th May 1922 the said District Committee notified the complainers that they had arranged with the Wemyss and District Trustees to take over the supply of water to the excise office as from that date, and that in future they would settle with the said trustees for the water supplied to the said premises so long as they continued to be supplied from that source, and that the domestic water

rate would be levied on the rental of the premises or the water would be charged for at the rates from time to time chargeable within the area of supply under the said Order of 1913. By the said letter an undertaking was given to the complainers that if the domestic water rate was levied in respect of the said water supply it would be levied on the excise office alone. At all events the complainers were induced to believe and did believe from the terms of the said letter that the premises to be assessed were those to which the water was being supplied under the meter rate, viz., the excise office, and in reliance upon the said letter did not take steps to have the excise office entered separately in the valuation roll.'

"In the statement above quoted the complainers suggest an alternative case founded on (1) positive undertaking by the respondents, and (2) representation inducing the complainers to refrain from obtaining an alteration of the valuation roll, but there is only one plea stated, viz., bar founded on an undertaking given to the complainers.

"The terms of the letter are unfortunate, because by referring to a domestic rate being levied on 'the said premises' it may, no doubt unintentionally, have put the complainers off their guard. But in my opinion it falls far short of being sufficient to found the complainers' plea. I doubt whether such a plea is competent at all against a public authority exercising its power and duty of assessment. In any case the letter neither expresses nor implies an undertaking that the domestic rate would be levied on the excise office alone. At the best for the complainers it might be construed as a representation of future intention to that effect, but a representation of future intention is not enough to raise a plea of bar even in a case of contract, and in the present case there was no contract.

"I shall accordingly sustain the respondents' second plea-in-law and refuse the note with expenses."

The complainers reclaimed, and argued—The Court here was dealing with liability for assessment, not with the amount of a valuation. Accordingly the valuation statutes had no application, and attention must be directed to the enactments under which the respondents were empowered to impose assessments. The test of liability was this—Is the building which it is sought to assess actually being supplied with water by the assessing authority? As regards the unit of assessment, physical discontiguity was decisive. If a building had its own walls, gables, and roof, it must be dealt with as a separate and independent unit for purposes of assessment. It was true that a railway station, though consisting of buildings on either side of a line of rails, was considered as one subject, but statute had specially provided that it was to be so treated. Nothing in the valuation roll could of itself render liable any building which was not otherwise liable—*Pumpherston Oil Company* v. *Wilson*, 1901, 3 F. 1099, 38 S.L.R. 830; Valuation Act, 1854, sec. 41. The Valuation Acts were intended to fix the value of lands and heritages, but all questions of classification, of exemptions, and of deductions were excluded from this purview. The case of *Sharp* v. *Latheron Parochial Board*, 1883, 10 R. 1163, 20 S.L.R. 771, was an instance of double assessment. There a remedy was sought by suspension and succeeded. In *Hope* v. *Corporation of Edinburgh*, 1897, 5 S.L.T. 195, the subjects were outside the boundary of the assessing authority. And there too an action of declarator and suspension succeeded though no objection had been taken to the valuation. In *Abercromby* v. *Badenoch*, (O.H.) 1909, 2 S.L.T. 114, the question arose whether persons entered in the valuation roll were proprietors, and it was held that an entry in the valuation roll was not conclusive on the question whether they were proprietors in the sense of the assessing statutes. (Counsel also referred to *University of Glasgow*, 1870, 11 Macph. 982; *M'Laren* v. *Clyde Trustees*, 1865, 4 Macph. 658, and 6 Macph. (H.L.) 81, 1 S.L.R. 31, and *Dante*, 1922 S.C. 109, 59 S.L.R. 101, *per* the Lord Justice-Clerk at p. 123.) Accordingly the Court here was not concerned with the entry in the valuation roll. The question of liability must be determined by the provisions of the assessing statutes themselves. The valuation roll was the servant, not the master, in regard to these questions—*Bank of Scotland* v. *Assessor for Edinburgh*, 1890, 17 R. 839, 27 S.L.R. 611; *Caledonian Railway Company* v. *Lanarkshire County Council*, 1916, 43 S.L.R. 659. In *British Linen Bank* v. *Assessor for Aberdeen*, 1906, 8 F. 508, 43 S.L.R. 442, the Court held that an appeal to the Valuation Court was competent only on the question of value. In this case there was no question of valuation. The only question was, In respect of what subjects does the domestic water rate fall to be imposed? The assessment therefore was illegal, and the complainers were entitled to have the notice suspended. [Counsel then dealt with the question of personal bar, which is not reported.]

Argued for the respondents—[Counsel dealt first with the plea of bar, which is not reported.] If the complainers objected to the assessment in question their proper tribunal was the Valuation Court—Valuation of Lands (Scotland) Amendment Acts of 1857 and of 1887; *Dante*, 1922 S.C. 109, 59 S.L.R. 101. Where objection was taken to the unit of assessment recourse must be had to the Valuation Court. That Court alone could determine whether the whole distillery buildings were properly assessed or not. Assessment depended upon the valuation roll, and the entries in that roll determined the units of assessment. The respondents here had imposed the water rate in accordance with their statutory powers and at the figure which was indicated by the value given to these subjects in the roll. This was consistent both with the principles of the Valuation Acts and the cases in the books, and the assessment should therefore be sustained.

At advising—

LORD JUSTICE-CLERK (ALNESS)—The complainers in this note of suspension and

interdict are the Distillers Company, Limited. The respondents are the County Council of the County of Fife. The Lord Ordinary has refused the note and the complainers have reclaimed against his decision. The circumstances under which the note was presented are these—In 1915 the complainers arranged with the Wemyss and District Water Trustees to obtain and did obtain a supply of water for an excise office which they own, and which is used by them in connection with their distillery. The office, however, is let to and is occupied by the Excise authorities. It is under the same roof as a timekeeper's office and a small store, which belong to and are occupied by the complainers. The water thus supplied was charged for by the Trustees at meter rate, viz., 9d. per 1000 gallons. The water continued to be supplied to the complainers under that arrangement till 1922, the quantity used by them being approximately 10,000 gallons a-year, and the annual cost being 7s. 6d. or thereby. In 1922 the respondents in virtue of a Private Act of Parliament dated 1913, and entitled the Kirkcaldy and District Water Order Confirmation Act, took over the supply of water to the excise office, and by letter dated 15th May 1922 so notified the complainers. In December 1922 the complainers received assessment notices from the respondents assessing them in respect of the domestic water supply to the excise office on their whole distillery buildings and mills, of which the annual value is £2984. The total annual assessment for which the complainers are thus said to be liable is £944, 18s. 8d. per annum, as compared with 7s. 6d. per annum in previous years. The respondents obtained a summary warrant against the complainers for payment of that sum under pain of poinding and sale, and the present note has been brought to stay these proceedings.

The case for the complainers on record is —(1) That the respondents, by the letter dated 15th May 1922, to which I have referred, and which was signed by one of the joint clerks to the Kirkcaldy District of the Fife County Council, undertook that if the domestic water rate was levied in respect of the water supply it would be levied on the excise office alone; (2) that in any event the respondents are not entitled to make the charge which they are seeking to enforce, because the water was not supplied to the distillery or for its purposes but was supplied to the excise office. In these circumstances the complainers claim the protection they say is afforded them by section 59 of the respondents' Act. To these contentions the respondents reply—(1) That the letter of 18th May 1922 does not bear the construction sought to be put upon it by the complainers, and in particular that it contains no undertaking which ties the respondents' hands; (2) that the respondents are entitled and bound to assess the complainers' subjects as a *unum quid*, and that there is no warrant for disintegrating these subjects, which appear as a single entry in the valuation roll, or for apportioning their annual value for rating purposes as the complainers suggest; (3) that in the sense of section 59 of the Act of 1913 the distillery, not the excise office, is actually supplied with water; and (4) that in any event a pipe from which the respondents are entitled to give a supply to the complainers' premises is situated within 100 yards of the entrance to or the nearest part of these premises, and that the respondents are therefore entitled under section 59 of the Act of 1913 to assess the complainers as they have done.

As the complainers deny the statement made by the respondents regarding the pipe referred to, it is plain that an issue of fact is raised between the parties, consideration of which may have to be deferred, and the Lord Ordinary being against the complainers on the construction of the letter which is pleaded as a bar to the present proceedings has so treated it. The Lord Ordinary has sustained the respondents' second plea-in-law to the effect that the assessment in question was levied in accordance with the respondents' statutory powers and duties, and he has therefore refused the prayer of the note. Looking to the terms of his opinion, I think that the Lord Ordinary should also have sustained the fifth plea-in-law for the respondents, for he has held, as I have indicated, that the letter of 15th May 1922 constitutes no bar to the assessment which the respondents claim a right to levy.

Now logically we must first decide whether the Lord Ordinary is right in his view of the letter referred to, for if the respondents have barred themselves by that document from levying the assessment complained of there is no need to proceed further. As your Lordships are aware, I was at first disposed to think that the letter, having regard to its terms, treating it not as a representation—for it lacks the requisite legal qualities —but as an unequivocal undertaking, and in particular having regard to the absence of an averment or plea either to the effect that the writer in penning the letter exceeded his powers, or indeed any averment tending to explain away or modify its terms, was conclusive of the question between the parties. On further consideration, however, I have revised that impression, and I have come to think, agreeing I understand with your Lordships, that the case cannot properly be decided on that narrow ground. I cannot, however, forbear to add that in my judgment the letter is expressed in singularly infelicitous terms, and that while I of course acquit the writer of any intention to mislead, the language which he permitted himself to use was well calculated to produce that result.

I pass, then, to consider the case upon its merits. Two preliminary observations fall to be made—(1) That as we are dealing with a question of assessment, it is incumbent on the respondents to make it *luce clarius* that the respondents are liable to the impost for which they contend, and (2) that it is *prima facie* startling that the complainers' assessment for the same amount of water should spring for the year 1923 to £944, 18s. 8d. from the sum of 7s. 6d., at which it had remained from 1915 onwards. It is all the more start-

ling inasmuch as having regard to section 98 of the Wemyss and District Water Order Confirmation Act 1910, it would appear that its provisions are substantially the same in regard to this matter as the provisions of the Act of 1913, that it would have been open to the Trustees to have made the same claim as the respondents now make, and indeed that it would have been open to the complainers to plead the same defence as they have tabled in this case. Mr Moncrieff warned us against being influenced in our decision by the untoward financial consequences to the complainers which followed on the respondents' intimation, but that did not deter him from stressing the far-reaching consequences of a judgment against him on the merits of the case.

What, then, is the respondents' answer to the complainers' note? In the first place they say that the complainers have selected the wrong tribunal in which to seek a remedy, and that having regard to their averments the appropriate, and indeed the only, Court to which they can competently appeal is the Lands Valuation Appeal Court. They maintain that the unit of assessment is to be found in the valuation roll, and that inasmuch as the unit there set out is the distillery it must be altered, if it is to be altered, by the Lands Valuation Appeal Court, and that this Court cannot afford a remedy. In the second place the respondents say that the complainers' distillery is in point of fact supplied with water by them, and that the complainers therefore cannot escape liability for the assessment in virtue of section 59 of the Act of 1913. In the third place the respondents say that a pipe from which the complainers can be supplied passes within 100 yards of their premises, and that accordingly they are liable to the assessment in question in virtue of the provisions of section 59.

Let me examine these contentions in the order stated—1. *Prima facie* it seems to me that the respondents' first contention is unreasonable and indeed futile. It appears unreasonable because it involves that whereas section 59 of the Act of 1913 confers an exemption from liability for assessment on any person who can bring himself within the terms of the exemption there set forth by showing that his building has not actually been supplied with water, the respondents insist that the matter should be concluded against the complainers by an entry in a roll which is admittedly made up without reference to the statutory exemption. And it would appear to be futile, because even if the complainers secured in the Lands Valuation Appeal Court disintegration of the obnoxious entry, they would in my opinion still be liable to assessment on their distillery, provided that the respondents are in a position to demonstrate that the distillery was actually supplied with the water in question. The argument of the respondents *prima facie* seems to me to ignore and to deny all meaning and effect to the exemption which section 59 contains. When the complainers seek in this action the shelter of that exemption, they are coldly referred by the respondents to the valuation roll and bidden to find a remedy in the Lands Valuation Appeal Court. But it appears to me that if the complainers resorted to that Court, directly they disclosed that the basis of their appeal was their liability to assessment, they would probably be informed that they had appealed to a tribunal which had neither the duty nor the right to meddle with questions of assessment.

Let me now come to closer quarters with the problem. Plainly we are here concerned with a question of assessment, not with a question of valuation. That question must in my opinion be determined by the Act or Acts which give the respondents power to assess rather than by the Valuation Acts which give the assessor power to value. Now the section of the assessing Act of 1913 which gives the respondents power to impose a domestic water rate is section 59. That section begins by conferring on them power to levy an annual assessment upon lands and heritages within their area of supply. The power thus given is, however, qualified by provisos relating to three rating subjects—(*a*) dwelling-houses, railway stations, and other buildings, (*b*) agricultural lands, and (*c*) canals, railways, &c. We have little or nothing to do in this case with the two latter classes of subject. With regard to the first, it is provided in effect that the complainers are not to be liable to assessment for the domestic water rate unless (1) they are actually supplied with water, or (2) there is a pipe from which a supply can be given them within 100 yards of their premises. In other words, in order to be liable to assessment these subjects must be actually or constructively supplied with water. It would therefore appear that under the assessing statute the vital questions are—Is the building sought to be assessed actually supplied with water? or can it be so supplied in accordance with the statutory provisions? These would *prima facie* seem to be the only relevant considerations which bear upon the problem of liability for assessment. Each case would seem to fall to be dealt with in accordance with its own circumstances. I think the statute provides a complete and simple code for the ascertainment of liability to assessment, and I am quite unable to see any room for invoking the aid of the Valuation Acts.

But Mr Moncrieff argued that there was no question of liability to assessment truly involved in this case, and that the only question litigated was the amount of the assessment. That with all respect appears to me to be a fallacious argument. Any force which it may possess depends on the assumption that the subject of assessment is not in dispute. But here it is in dispute. The complainers say the question must be determined by reference to section 59 of the Act of 1913. The respondents say it must be determined by reference to the valuation roll. For the reasons which I have already stated I consider the latter contention ill-founded.

Mr Moncrieff further contended that no machinery has been provided by section 59 for the determination of the controversy

between parties, and he pointed by contrast to the machinery provided by that section in reference to revision of the assessment of agricultural subjects. Moreover, he argued that this Court cannot displace one figure and substitute another for it. But that is not in the least necessary. Once we determine that the excise office and not the distillery is the appropriate unit for assessment in virtue of the provisions of section 59, it is for the assessor to work out the figures. It is by no means an obscure or a recondite inquiry. On the contrary, it is simplicity itself. It requires no elaborate machinery. Indeed a second-class clerk could in five minutes provide the answer to the problem.

These views are reinforced by a consideration of the primary purpose of the Valuation Acts. It is, of course, to provide machinery for securing a uniform valuation of property in Scotland. Having regard to the provisions of section 41 of the Act of 1854, nothing can be done under these Acts to make a subject liable to assessment which was formerly exempt, or to make a subject exempt which was formerly liable. The contention of the respondents appears to me to involve a complete subversion of that doctrine. Moreover, though the value of a building as it appears in the valuation roll is conclusive, it does not follow that that building falls to be assessed on that value—*cf. Pumpherston Oil Company*, 3 F. 1099. In other words, all questions as to liability for assessment, exemption from it, or modification of it remain open though the question of value is closed by the entry in the valuation roll. The complainers admit that their subjects are properly included in the valuation roll. But they desire to show, in terms of section 59, that the building in respect of which it is proposed to assess them is not in point of fact supplied with water. But why should they not do so? To that question I have listened in vain for a satisfactory answer from the respondents. No doubt the valuation roll enables arithmetical calculations to be made, but on questions other than value, *e.g.*, deductions or the unit liable to assessment, I apprehend that the assessing statutes, not the valuation statutes, are the proper and final arbiters. There is no question of value involved here, only a question of liability to assessment. The function of the Valuation Acts is to my mind foreign to the determination of any such problem.

2. On the question whether the excise office or the distillery is supplied with water I have no doubt at all. The excise office is not only discontiguous to this distillery, but it is admittedly let to the Excise authorities. It is therefore not in the possession of the complainers. I think that the Act of 1913 contemplates that if a building is supplied with water the owner and occupier fall to be assessed but not otherwise. A building, I apprehend, must have its own walls and roof. This building has both. It seems to me to provide the statutory unit contemplated. An interpretation which yields the result that water supplied to enable an excise officer to wash his hands must be deemed to be supplied to the distillery to enable it to produce whisky seems to me far-fetched and inadmissible.

3. As regards the question whether there is a pipe from which the complainers can be supplied with water within 100 yards of their distillery, the parties are at issue regarding the facts and manifestly there must be inquiry regarding them.

Is there anything in the cases which were cited to us which conflicts with the views which I have expressed? I think not. Let me examine these decisions briefly. The cases of the *University of Glasgow* (11 Macph. 982), *M'Laren* (5 Macph. (H.L.) 81), and *Dante* (1922 S.C. 109) illustrate the proposition that the valuation roll while conclusive on the question of value is not conclusive on a question of assessment.

The cases of *Sharp* (10 R. 1163), *Abercrombie* (1909, 2 S.L.T. 114), and *Hope* (5 S.L.T. 193) demonstrate that if an entry is erroneously included in the valuation roll either because it is already there or because the person entered is not the proprietor of the subjects, or because the subjects are not within the assessing area, an action of interdict is a competent and appropriate method for securing the deletion of the entry. The cases of the *Bank of Scotland* (17 R. 839, 18 R. 936), *Barony Parochial Board* (10 R. 39), and *Govan Lunacy Board* (1 F. 591), all of which were decided in the Lands Valuation Appeal Court, deal with the question whether the subjects should be entered in the valuation roll as a *unum quid* or separately. It is, however, proper to refer to the first two cases cited in a little more detail. In the first *Bank of Scotland* case (17 R. 839), where the subjects were entered as a *unum quid*, disintegration was sought by the appellants because otherwise the question of assessment could not be raised and decided. It was an obviously underlying assumption in that case that the question of assessment fell to be dealt with elsewhere than in the Lands Valuation Appeal Court. Even so the Court was chary in its intervention. Lord Trayner said that the Court could not take assessment into consideration, its only function being to determine questions of valuation. Lord Wellwood said that the only effect of the explanation given to the Court of the reason of the appeal was to apprise the Court that a question of assessment had arisen, the solution of which depended upon the houses being separately entered in the valuation roll. But after saying that it was the duty of the Court if it competently could to facilitate the decision of the question raised, he was careful to add (at p. 844)—"In doing so we should in no way prejudice or affect any question of assessment, which must depend on the true construction of the statute which imposes the assessment." In the second *Bank of Scotland* case (18 R. 936) it was plain that the decision on a *unum quid* valuation solved *ipso facto* the question of assessment.

To sum up, the complainers admit, as I have said, that the subjects of which they are the owners and occupiers are properly included in the valuation roll, but they at the same time maintain that they are not

liable to the assessment sought to be imposed upon them. The complainers admit that the valuation roll deals, and deals finally, with all questions of valuation, but they say they are not concerned with these. On questions other than those concerned with valuations, *e.g.*, those concerned with deductions, they argue that the valuation roll is not conclusive. Moreover, they maintain that disintegration in the Valuation Court would not provide them with the remedy which they desire, and would indeed leave the question at issue unsolved. Even if the distillery and the excise office were separately entered in the valuation roll, the complainers might still be assessed for a domestic water rate on the distillery rather than on the office; and they would still maintain that they are exempt from liability, inasmuch as the office, not the distillery, is actually supplied with water. The complainers, in short, maintain that the wrong subject has been assessed — wrong because it has not been supplied with water. In other words, the touchstone of liability is not disintegration but supply. Separability of the subject is inconclusive. Supply to the subject is final. In these contentions I am of opinion that the complainers are well founded. I think that the question whether an assessment has been laid on a building which is in truth exempt from assessment is in accordance with the authorities which I have cited, for the assessment Court, not for the Valuation Court. I regard the valuation roll as the servant of the assessment roll. The respondents regard it as the master. In that view, for the reasons which I have stated, I think they are wrong.

The result would appear to be that the Lord Ordinary's interlocutor should be recalled, that the third plea-in-law for the respondents should be repelled, and that the case should be remitted to the Lord Ordinary to proceed as accords, with particular reference to the fourth plea-in-law for the respondents and the averments which relate to it.

LORD ORMIDALE — The complainers are proprietors and occupiers of the Cameron Bridge Distillery in the parish of Markinch and county of Fife. The respondents are the rating authority of the county.

In connection with the distillery there is an excise office. The office is in a building detached from the distillery buildings. The building belongs to the complainers, but the office is let to the Excise authorities and is in their exclusive possession. In the same structure are a timekeeper's office and a small store which belong to and are occupied by the complainers. The annual value of the structure is said to be about £21 and that of the excise office £6. In 1915 the complainers obtained a supply of water for the excise office by arrangement with the Wemyss and District Water Trustees, paying therefor by meter rate which was fixed at 9d. per 1000 gallons. The quantity used per annum was about 10,000 gallons and the annual cost about 7s. 6d. The supply of water to the excise office was taken over by the Kirkcaldy District Committee in 1922, in virtue of the Kirkcaldy District Water Order 1913, and in December 1922 the complainers received notice that they were assessed in respect of the supply of water for the domestic water rate as owners and occupiers of the whole distillery buildings and mills whose annual value is £2984, the total assessment amounting to £944, 18s. 8d. An appeal to the County Council Committee against this assessment was dismissed. Thereafter the complainers received a final notice for payment of the assessment with £96 of penal interest, and as they declined to pay the domestic rate on the whole distillery buildings in respect of the supply of water to the excise office, the respondents have threatened to enforce payment by poinding and sale of the complainers' property. Hence the present note of suspension.

It appears to me that in presenting their case the respondents gave too much of their attention to the Valuation Court and valuation roll and too little to the assessing Act —the Water Order of 1913. The valuation roll is conclusive on the subject of value and of nothing else. That is in accordance not only with statutory provision but with general practice. If subjects are not liable for assessment independently of the Valuation Act, that Act is powerless to make them liable. Section 41 of the Lands Valuation Act 1854 enacts—"Nothing contained in this Act shall exempt from or render liable to assessment any person or property not previously exempt from or liable to assessment." That section, as Lord Cranworth observed in *M'Laren* v. *Clyde Trustees*, 6 Macph. (H.L.) 81, at p. 84, "must be read as if introduced into every clause of the Act." In the same case in the Court of Session Lord Neaves (giving the opinion of the Court), whose judgment was affirmed by the House of Lords, said—4 Macph. 58, at p. 64—"The Valuation Act is not an Act for taxing parties. It is an Act merely for valuing properties. The warrant and nature of each assessment must be looked for in the original Acts imposing it, and it is only the arithmetical ascertainment of its amount that the Valuation Act is intended to facilitate." These observations were quoted with approval by the Lord Justice-Clerk in *Dante*, 1922 S.C. 109. And dealing with the rates in question in that case, Lord Salvesen said (at p. 127) — "The question whether a particular individual is legally assessable in respect of burgh and poor rates is one which can only be determined by the Law Courts, for if he is not so assessable the assessing authority has no right to levy assessments upon him, and if they attempt to do so they are acting beyond their statutory jurisdiction." The assessing Act of 1913 must therefore be looked to to ascertain whether or not the complainers, in respect of the subjects in question are under its provisions liable to be assessed in respect of water supply. The important section is section 59, which enacts that after an estimate of the expenses to be incurred for the purpose of water supply has been duly made up, the county council

may impose and levy an assessment called the domestic water rate upon all lands and heritages within the limits of supply at a rate sufficient with other water revenues to meet the estimated cost. This general enactment is then qualified by certain provisos, the first of these being the proviso with which we are concerned in this case. It is as follows:—"Provided that as regards all persons who shall be owners or occupiers of any dwelling-house, railway stations, or other buildings, they shall not be liable to be assessed in respect thereof for the domestic water rate unless such dwelling-houses, railway stations, or other buildings shall have been actually supplied with water under this Order, or unless some pipe of the District Committee, or through which the District Committee is entitled to give a supply, shall be laid down within one hundred yards of the same"—as measured in the way set out in the section. The latter clause, dealing with constructive supply, I shall refer to later.

The land or heritage with which this case is concerned is a building, and that building is, according to the complainers, either the excise office or the structure which includes it, the timekeeper's office, and the store. I take it to be the latter, as the complainers are willing that for the purposes of this case it should be so taken. The respondents maintain, on the other hand, that the buildings actually supplied with water are the whole distillery buildings, and that these constitute the proper unit both of assessment and valuation. In my opinion they are wrong, and the complainers are right. The distillery itself is not actually supplied with water by the respondents. The complainers have, in fact, for distilling purposes, an independent and private source of supply. The excise office building is a detached building not in contact with any other building, but self-contained and standing separate and apart. It is, no doubt, the property of the complainers, but that is not the test. Unless the contention that supply of water to the excise office is supply of water to the whole distillery is well founded—and in my opinion it is not well founded—there is nothing in the part of section 59 with which we are dealing to make anything but the excise office building *per se* liable to assessment.

The Valuation Acts are, no doubt, referred to in the Act of 1913, but I agree with the Lord Ordinary's observation that there is nothing in the terms of the assessing statute which gives any special effect to the entries in the valuation roll. Section 62 provides that assessments authorised by the Act of 1913—and that means only assessments so authorised—shall be deemed to be assessments under the Public Health Act, and under reference to the Roads and Bridges Act of 1878 they fall to be imposed according to the valuation of lands and heritages in the valuation roll—that is to say, the amount of them is to be ascertained by the valuation roll.

Accordingly the respondents' contention that in the present proceedings the only question raised, standing the entry in the valuation roll, is one of value is in my opinion untenable. They found on the admission that the excise office is embraced in the entry "Cameron Bridge Distillery and Mills (part of)," and the further admission that the domestic water rate is leviable in respect of the excise office. That, they say, leaves open only the question of value, and the entry in the valuation roll is conclusive of that until it is corrected by the Valuation Court. It is quite true that the complainers do not claim total exemption, but then their claim for relief is based, not on the ground that the valuation of the subjects is excessive, but on the ground that they have a right of absolute immunity from liability to assessment in respect of the greater part of the subjects contained in the entry. In other words, their attack is not on the unit of value but on the unit of assessment. Assuming that this Court cannot purge the roll by a direct order, the effect of a judgment in the present process in favour of the complainers would surely lead to precisely the same result. The form of action in which relief is sought is largely if not entirely due to the course adopted by the respondents to recover the assessment claimed by them. Relief has been granted in various forms of process. In *M'Laren* (4 Macph. 58) there was an ordinary petitory action. In *Sharp* (10 R. 1163), where the collector threatened diligence on a distress warrant, as here, suspension was the form. Interdict was the corrective order adopted in *Hope* (5 S.L.T. 195), which was decided on the terms of an assessing Act, and also in *Abercromby*, 1909, 2 S.L.T. 114. I do not think that the Valuation Court could competently order the disintegration of an entry when the right to disintegration depended on a question of assessability or non-assessability; and further, mere disintegration would not necessarily have been conclusive of the present dispute, for the same argument would have remained open to the rating authority: They would have proceeded, founding on the two entries in the roll, to lay on an assessment in respect of each on the ground that the excise office was just a part of the distillery, and that supply of water to a part was supply of water to the whole.

In my opinion the *Bank of Scotland* cases in 17 R. 839 and 18 R. 936 do not support the respondents' general contention, for although in the absence of any report of the relative proceedings in the Second Division it is difficult to speak with confidence, it seems to me sufficiently clear that no claim for immunity from assessment in the case either of the banking office or of the dwelling-house was raised but a question of value only. Both the subjects, it was admitted, were assessable, but it was contended that they should not be treated as a *unum quid* but should be separately valued in order, as the rubric puts it, "to satisfy the purposes of a local Act which in authorising an assessment made a distinction between dwelling-houses and offices." Being therefore a question of value it was for the Valuation Court to deal with it.

As to the effect which should be given to

the letter of 15th May 1922, while I have no doubt that in the absence of any averment to the contrary by the respondents the clerk to the Kirkcaldy District Committee must be taken to have had authority to bind them, I am unable for the reasons stated by the Lord Ordinary to hold that the letter is relevant to support the fourth plea-in-law for the complainers. In particular, I am not satisfied that it was competent for the public authority so to restrict their power and duty of assessment as in effect to give a preference to particular ratepayers.

As the question arising on that part of section 59 which deals with the constructive supply of water appears to depend on a question of fact with regard to which the parties are in dispute and has on that account been held over by the Lord Ordinary, we are not in a position to deal with it in the present reclaiming note, and accordingly I agree that we should pronounce an interlocutor in the terms suggested by your Lordship.

LORD ANDERSON—On 12th March 1923 the Collector of the Fife County Assessments sent to the complainers a demand-note of the consolidated rates payable in respect of certain properties belonging to the complainers at Cameron Bridge. The assessments claimed were grouped under three heads—(1) General assessment, amounting to £413, 9s. 10d., (2) Public water rate, amounting to £38, 4s. 3d., and (3) Domestic water rate, amounting to £967, 5s. No dispute arises as to the general assessment or the public water rate, the amounts whereof have been paid by the complainers. The complainers maintain that as regards the domestic water rate they have been grossly over-assessed. For that reason they refused to pay the amount claimed under this head, and on 27th April 1923 they were served by a sheriff-officer with a notice demanding immediate payment of the foresaid sum of £967, 5s. together with £96, 14s. 6d. of penal interest, under certification that if payment was not made a summary warrant which had been obtained would be enforced by poinding and sale of the complainers' effects. The complainers' rejoinder to this threat was to bring on 28th April 1923 the present process of suspension and interdict, in which they crave suspension of the said notice and all grounds and warrants thereof. The Lord Ordinary refused the note of suspension, and the reclaiming note has been taken against that judgment.

It is necessary at the outset to consider the statutory powers of levying assessments and charges as to water which the respondents possess. These powers are conferred by the Kirkcaldy District Water Order Confirmation Act 1913 (which I shall refer to in the sequel as "the Act of 1913") and by the Wemyss and District Water Order 1910. To meet the expenses of the water supply of the Kirkcaldy district the respondents are authorised by said Orders (1) to charge meter rates for water actually supplied; (2) to levy an assessment called the public water rate upon all lands and heritages within the limits of supply, said assessment not to exceed threepence in the pound—section 60 of the Act of 1913. It is to be noted that all lands and heritages within the district are liable to the public water rate whether or not water is supplied actually or constructively; (3) to levy an assessment called the domestic water rate upon certain lands and heritages in the district at a rate determined by the requirements of the respondents—section 59 of the Act of 1913. To ascertain the extent of these requirements the statutory provisions are as follows:—By section 58 of the Act of 1913 the District Committee are directed to frame a budget in August for the current year from Whitsunday to Whitsunday, setting off against the estimated expenditure the water revenues other than assessments. The balance of estimated expenditure has to be met by the respondents by assessments of public and domestic water rates. The amount of the latter rate per pound will depend on the total sum required to be raised.

Much was said at the debate regarding the valuation roll and the part played by its entries in determining the question at issue between the parties. For reasons which I shall suggest later I am of opinion that the valuation roll has no bearing on that question. It falls to be decided solely on a consideration of the provisions of section 59 of the Act of 1913. That section consists of a general enacting clause with three provisos. The general clause and the first proviso are the parts of the section that are of importance. The general clause authorises the respondents to levy the assessment of the domestic water rate on all lands and heritages within the limits of supply. This general power is, however, limited by the first proviso to particular lands and heritages. The proviso is expressed negatively to the effect that owners or occupiers of dwelling-houses, railway stations, or other buildings shall not be liable to be assessed in respect thereof for the domestic water rate unless such dwelling-houses, railway stations, or other buildings shall have been actually supplied with water under the Act of 1913. Water has admittedly been actually supplied. It has admittedly been supplied, not to a dwelling-house or railway station but to a "building." There is no dispute as to the building to which water has been supplied. It is a building consisting of three parts all under one roof and contained within the four bounding walls of the building. One part is used as a timekeeper's office, another part as a small store, while the third part is an excise office. The whole building belongs to the complainers, and the timekeeper's office and store are occupied by them and used for the purposes of their business of distillers. As to the excise office, the respondents admit that it is let to and occupied by the Excise authorities. The respondents' water is admittedly supplied only to the part of said building which is let as an excise office. As regards the rest of the complainers' distillery, the complainers use their own water supply therein. It is common ground that while the said building is near the main distillery it is not in contact therewith but is completely sepa-

rated therefrom. The question on the said section appears to me to be this plain issue of fact—To what building has water been supplied, to the building which I have described or to the whole distillery, including said building?

The complainers do not dispute their liability to pay the respondents in respect of the water actually supplied either by a meter rate or by a domestic water rate, but the difference between them and the respondents as to quantum is disclosed in statement 2 of the note and the answer thereto. The respondents find an entry in the valuation roll to this effect—"Cameron Bridge Distillery and Mills (part of) . . . £2984." As the building containing the excise office is admittedly included in this omnibus entry, the respondents maintain that they are entitled and bound to levy a domestic water rate in respect of the whole of said valuation of £2984. Supply to a part, it is said, is supply to the whole. "Building" in the section means group or association or congeries of buildings. The short answer to all this would seem to be that the section does not say so, and in a taxing Act the taxpayer is entitled to demand that the statute should be strictly construed. The complainers on the other hand contend that the building supplied with water is the excise office and not the distillery. They offer to pay rates on the annual value of that office or even of the separate building in which it is contained. The annual valuation of the building is said to be £21. The difference in quantum between the parties is thus as follows:—The complainers offer a rate of 6s. 4d. per pound on £21 = £6, 13s.; the respondents' assessment is £967, 5s. The respondents' demand is even more startling if it is kept in mind that for the same supply of water as the complainers proposed to take in 1923 they paid in 1922 the sum of 7s. 6d. as a meter charge at the rate of 9d. per 1000 gallons.

It is to be noted that section 59, so far as I have dealt with it, does not refer to the valuation roll at all. This roll is referred to in the second and third provisos, but, as I read these provisos, solely for the purpose of the ascertainment of annual value. As the respondents' case is based entirely on the valuation-roll entry to which I have referred, along with the provisions of section 62 of the Act of 1913, it is necessary to consider the terms of that section and also to determine what is the relation between valuation and assessment. Section 62 provides that assessments under the Act of 1913 shall be levied and recovered in the same manner as nearly as may be as assessments under the provisions of the Public Health Acts. When these Acts are examined as to this topic it is found that the method imposed is that prescribed by the Roads and Bridges Act 1878 by sections 52 and 82 whereof it is provided that assessment shall be levied on all lands and heritages within the district, one-half payable by owners and the other half by tenants or occupiers and "shall be imposed according to the valuation of the lands and heritages in the valuation roll." All this seems to me to bear solely on the question of valuation and to afford no aid where there is difference as to the identity of the subject or unit of assessment. The valuation roll itself, as its name implies, has no different effect. Prior to 1854 separate rolls had to be made up for the purpose of imposing different assessments. The Lands Valuation (Scotland) Act 1854 was passed with the object of obtaining for purposes of assessment a uniform valuation of all lands and heritages in Scotland. But the sole purpose of the Act was valuation. This is plainly shown by the terms of the Act itself, and in particular by the provisions of section 41 thereof. That the entries in the valuation roll are not conclusive as to assessment has also been judicially determined—*M'Laren*, 6 Macph. (H.L.) 81; *University of Glasgow*, 11 Macph. 982; and *Sharp*, 10 R. 1163. Thus the valuation roll is conclusive as to value, once the unit of assessment has been ascertained, but it is not conclusive, or indeed in any way determinative, as to what that unit is. Accordingly the entry in the valuation roll founded on by the respondents is not conclusive as regards the point at issue. That entry does not determine the unit of assessment. That unit has to be ascertained on a consideration of the terms of section 59 of the Act of 1913. The question, as I have said, on that section is, What building has been supplied with water? The primary test, in my opinion, is discontiguity to other buildings or separateness therefrom. Is the building supplied an individual or independent building in physical fact? If it is, then it seems to me that the unit of assessment is the annual value of that building. The building in question not only satisfies these tests but there is a further circumstance favouring the complainers' contentions. The part of the building actually supplied with water is a distinct tenement or holding let to and occupied by a third party. This fact seems to me to emphasise the illegality of the assessment complained of.

I am not moved by certain considerations of expediency which were urged by the respondents. It was said that, if the entry in the valuation roll does not fix the unit of assessment, there is no machinery provided for doing so. If that be so, it is the fault of the Act, but it does not seem to me to be a matter of difficulty to determine the annual value of the building actually supplied. Again it is said that much additional labour will be thrown on the assessor if the complainers succeed. Again, this result is in part the fault of the Act, and is in part due to the action of the assessor himself in including a building, separately let and occupied, with the complainers' distillery in his valuation roll.

The propriety of the form of process chosen by the complainers was challenged by the respondents. It was not maintained that suspension and interdict was *per se* incompetent. Indeed, this form of action seems to me to be that which is most appropriate for arresting execution on a summary warrant authorising diligence. It was said,

however, that the complainers' averments were irrelevant to support the prayer of the note. Liability to pay some domestic water rate being admitted, it was argued that the complainers' sole remedy was to get, in the appropriate Court, the omnibus entry in the valuation roll disintegrated into its constituent elements. But when the complainers endeavoured to have this done in the local Valuation Court, the respondents opposed on the ground that the alteration was sought for the purposes of assessment, and the Court, on this allegation, refused to interfere. The respondents' suggestion is, therefore, that the complainers should be driven from pillar to post with the result that in neither Court are they to be allowed the opportunity of ascertaining the proper unit of assessment.

But even if the complainers had been successful in getting the building to which the water has been supplied disintegrated in the valuation roll, I am not satisfied that the question at issue between the parties would have been solved. It would still have been open to the respondents to maintain the argument on which they endeavour to justify the assessment. Even if the entry had been disintegrated, they could still maintain that supply to a part is supply to the whole, that the building supplied was part of a group, congeries, or association of buildings in respect of the whole of which the rate could be justly demanded. It follows, therefore, that the remedy suggested by the respondents, to take proceedings in the Valuation Courts, is no remedy at all, and that the present process is the appropriate form of action for determining the question at issue between the parties. As to how that question should be decided, my opinion is that on the admitted facts the building which was supplied with water is not the distillery but the building of which the excise office forms part.

With reference to the plea of bar which is maintained by the complainers on the terms of the letter of 15th May 1922 from the clerk of the District Committee to them, I agree with the Lord Ordinary, for the reasons which he has stated in his opinion, that it is not well founded. On the whole matter I am of opinion that the reclaiming note should be sustained and the interlocutor of the Lord Ordinary recalled.

LORD HUNTER did not hear the case.

The Court recalled the said interlocutor, repelled the third plea-in-law for the respondents the County Council of the County of Fife, repelled also the fourth plea-in-law for the complainers, and remitted the case to the Lord Ordinary to proceed as accords with particular reference to the fourth plea-in-law for the said respondents and the averments relating thereto.

[The respondents having subsequently, with a view to an appeal to the House of Lords, withdrawn their fourth plea, the Court on 15th March 1924 repelled of consent the fourth plea-in-law for the respondents, and *simpliciter* suspended the notice and warrant and proceedings complained of in the note of suspension and interdict.]

Counsel for Complainers—D. P. Fleming, K.C.—Macdonald. Agents—Fraser, Stodart, & Ballingall, W.S.

Counsel for Respondents—Moncrieff, K.C. —Patrick. Agents—Wallace, Begg, & Company, W.S.

Saturday, February 9.

FIRST DIVISION.

[Sheriff Court at Cupar.

CARSTAIRS *v.* SPENCE.

Road—Servitude of Way—Prescription—Acquisition by Forty Years' Possession—Proof of Use for More than Twenty Years—Presumption as to Prior Period.

For more than twenty years before an action of declarator and interdict was raised with reference to a road by which access was had to a piece of ground through a neighbouring field, there had been continuous use of the road for carts by the owners of the piece of ground, for the purposes for which the ground was used. During the earlier part of the prescriptive period there had been occasional use of the road by carts bringing manure to the ground. The road was the only access to the ground available for cart traffic, had been used at a time anterior to the prescriptive period for access to the ground of men, horses, ploughs, and other agricultural implements, and was marked on an Ordnance Survey sheet dated more than forty years before.

Evidence which was *held* sufficient to complete the proof of user as of right during the whole prescriptive period.

Road—Servitude—Prescription—Character of Servitude.

Where the owners of a piece of ground had acquired a servitude of way for carts through an adjacent field by use, during the prescriptive period, of a road for agricultural and market garden purposes, which were the only purposes to which the ground had been put, *held* that the servitude was not limited to use for agricultural and market garden purposes, but was a servitude of way for carts for all purposes.

Mrs Jessie Lindsay or Carstairs, St Andrews, and David Carstairs, joiner, St Andrews, *pursuers*, brought an action in the Sheriff Court of Fife and Kinross at Cupar against John D. Spence, builder, St Andrews, *defender*, craving for declarator that the pursuers were respectively proprietors of two pieces of ground in St Andrews and of a road bounding one of the pieces of ground, "free from any right or servitude of passage in favour of the defender," and for interdict against the defender "(1) from using the passage or roadway . . . as an access to land belonging to him . . . for the passage of himself, his servants, bestial, and