For these reasons I think that the Sheriff-Substitute was right when he found in point of law that the "pursuers have failed to establish any right or title to collect these accounts from Macfarlane's customers." The Sheriff, while adhering to the Sheriff-Substitute's eighteen findings in fact, recalled his finding in law, and found "in fact and in law that in selling the goods supplied to them by the pursuers the defenders were acting as agents under a *del credere* commission." It is true that in one of the contractual letters the defenders stipulate that their name shall appear in the pursuers' book in a prominent position "as a stockist or agent." It is, however, a familiar fact that among commercial men the word "agent" is often used to include persons who in law are independent traders, and this was recognised in the judgment of Sir W. M. James, L.J., in *ex parte White, in re Nevill*, (1870) L.R., 6 Ch. 397, at pp. 400-1. It is further true that by the express terms of the agreements the defenders undertook personal liability to the pursuers for the price of the consignments as contained in the pursuers' wholesale price lists current from time to time; but I am unable to discover in the agreements any indication that this liability was of the nature of a guarantee or in any way different from the ordinary liability of a purchaser to pay for the goods which he had bought. Accordingly I cannot agree with the Sheriff in his legal finding, and consider that the judgment of the Sheriff-Substitute should be restored.

LORD PRESIDENT—I have had an opportunity of reading and considering the opinions which have just been delivered by your Lordships, and I entirely agree with them.

The construction of the agreements founded on, although they are expressed in somewhat elaborate and, in many places, uncouth language, is not doubtful. They indicate clearly to my mind the constitution of the relationship of seller and buyer and not of principal and agent. Still less obscure is the course of dealing between the parties as set out in the joint-minute of admissions. It shows plainly that there never was, and never was intended to be, any privity of contract established between the pursuers and the customers of the defenders. And inasmuch as it was clear that the course of dealing between the parties, as disclosed in the joint-minute of admissions, was in harmony with and not contrary to the agreements expressed in writing, I am of opinion that it is conclusive of this controversy.

I propose to your Lordships, in accordance with the opinions that you have delivered, that we should recal the interlocutor of the Sheriff, repeat the findings in fact of the Sheriff-Substitute, find in law that on a just construction of the agreements and supplementary agreements founded on, the relationship constituted between the pursuers and the defenders is that of seller and buyer and not of principal and agent, and therefore assoilzie the defenders.

LORD JOHNSTON and LORD MACKENZIE were not present.

The Court pronounced this interlocutor—

"Sustain the appeal: Recal the interlocutor of the Sheriff dated 21st June 1916: Affirm the interlocutor of the Sheriff-Substitute dated 16th February 1916: Repeat the findings in fact contained therein: Find in law that on a just construction of the agreements and supplementary agreements founded on in the first crave of the initial writ, the relationship constituted between the pursuers and defenders was that of seller and buyer and not of principal and agent: Therefore of new assoilzie the defenders and find them entitled to expenses: Find the appellants entitled to additional expenses since 16th February 1916, and remit the account thereof, together with the account of expenses found due in said last-mentioned interlocutor, to the Auditor."

Counsel for the Pursuers (Respondents)—Solicitor-General (Morison, K.C.)—Macquisten. Agents—Carmichael & Miller, W.S.

Counsel for the Defenders (Appellants)—Mackenzie, K.C.—Jamieson. Agent—W. Carter Rutherford, S.S.C.

HOUSE OF LORDS.

Tuesday, October 24.

(Before Earl Loreburn, Viscount Haldane, Lord Kinnear, Lord Shaw, and Lord Parmoor.)

MOSS'S EMPIRES, LIMITED *v.* WALKER AND OTHERS.

(In the Court of Session, January 18, 1916, 53 S.L.R. 298, and 1916 S.C. 366.)

Valuation — Valuation Roll — Process — Failure of Assessor to Give Notice of Increased Valuation—Action for Reduction of Entry—Competency—Valuation of Lands (Scotland) Act 1854 (17 *and* 18 *Vict. cap.* 91), *sec.* 30.

The proprietors of property which had been entered in the valuation roll at an increased valuation brought in the Court of Session an action of reduction of the entry on the averment that the assessor had sent them no notice of the proposed change.

Held (1) that the Court of Session had jurisdiction, and (2) that the action was not incompetent under section 30 of the Valuation of Lands (Scotland) Act 1854, inasmuch as the defect alleged was not an "informality" or a "want of compliance with the provisions of this Act in the proceedings for making up such valuation or valuation roll."

This case is reported *ante ut supra.*

The defenders, Walker and Others, appealed to the House of Lords.

At the conclusion of the argument for the appellants—

EARL LOREBURN—In this case the facts are extremely short and simple. A property in Glasgow was valued at £950 a-year, and in the valuation roll of the succeeding year it was raised to £1300, but no notice was given by the assessor to the persons affected, the result of which was that they had not a reminder that they could appeal. They did not appeal and they lost the benefit of the statutory right. Those facts are to be taken to be assumed, and the question is whether the parties are to be admitted to proof.

Now upon that the aggrieved parties come to the Court and ask for two things—in the first place, that the entry should be reduced, and in the second place, that the pre-existing figure should be substituted for the figure of £1300. Those are two quite separate questions, and I deal with the first.

It is said that there is a statutory finality in this valuation roll. Whatever finality there be is not created by the general principles of law, but is dependent upon the Act of Parliament; we must therefore look to the sections of the Act of Parliament in order to see what the nature of this valuation roll is, and I shall refer to them a little at length because the question arises as to the meaning of some words that are there used.

The Act says that the magistrates shall annually cause to be made up a valuation roll, that they may take the assistance of the officers of Inland Revenue, that in order to the making up of such valuation they shall appoint assessors, that the duty of the assessors is to ascertain and assess and to make up such valuation roll, that a new valuation roll is to be annually made up by the assessors every year, that the magistrates shall hold a Court for hearing appeals against it, and their deliverances upon such appeals shall be final and conclusive, that all persons who are entered by the assessor in the valuation roll shall be entitled to appeal, that the valuation roll when made up by the assessor is to be retained by him for a certain time, that as soon as the appeals have been heard and the valuation thereby completed the valuation roll shall then be in force, that after the completion of each valuation roll the magistrates shall cause an account to be made out of the costs, and then there is a provision in regard to mistakes to which I shall have again to refer.

Now, as I understand it, under this Act the making up of the valuation roll is the duty of the assessor; it is the duty of the magistrates to cause a valuation roll to be made up. The duty of the assessor relates to value. The valuation roll is completed when the appeals have been disposed of; it then is to be authenticated, and then the valuation roll is in force.

Now the valuation consists of the ascertaining of the rent or value, which is a matter to be determined by evidence, by opinion, by comparison of values, and it is a question of fact. One would expect that a court of law would not be permitted to inquire into such matters. One would expect also that technical difficulties would not be allowed to interfere with the validity of the valuation roll. That is the finality described in my opinion by this statute. One would expect that informalities or errors should be declared to be innocuous and to be disregarded, and also that a court of law should not be permitted to take the duty of valuation upon itself. As a matter of general principle in jurisdiction I certainly consider that unless a court of law is precluded by statute it may reduce any order or assessment which imposes a liability to pay, unless it is made pursuant to Act of Parliament conferring the right to make it upon those who do make it. But here there is, as one would expect, a provision for finality, that is to say, the provision contained in section 30 of this Act of 1854.

The part of section 30 of this Act which is material says that "no valuation roll which shall be made up and authenticated in terms of this Act, and no valuation which shall be contained therein, shall be challengeable or be capable of being set aside or rendered ineffectual by reason of any informality or of any want of compliance with the provisions of this Act in the proceedings for making up such valuation or valuation roll."

Now here there has been a non-compliance with the provisions of this Act, because notice has not been given. Was that a non-compliance in the proceeding for making up such valuation or valuation roll? I do not think that it was. The making up of the valuation roll was the duty of the assessor, and the non-compliance with the Act was not connected with the duty of the assessor in making up that valuation roll, and therefore in my opinion this non-compliance is not protected by the 30th section. It seems to me that if, for example, no assessor were appointed, or no court of appeal were appointed, or no notice were given to the persons entitled to notice, the power of the Court to interpose and to reduce the entry has not been taken away. But the failure to comply with the Act in making up the roll, that is to say, in the assessor discharging his duty as to actual valuation, could not be entertained by the Court.

That seems to me to support entirely the decision of the Inner House in reducing this entry. I do not deal with the ulterior question of whether the assessment of the previous year ought to be restored, because that question never may arise; it may appear upon the trial that notice was given, and we ought not to adjudicate upon a hypothesis which may never be realised. The argument of the Dean of Faculty was that we could not reduce an unlawful entry because we are not able to put anything in its place. I hope it may appear that something can be put in its place if necessary, but whether that be so or be not so it is not right that an unlawful entry should be permitted to remain upon the roll.

VISCOUNT HALDANE—I have arrived at the same conclusion as my noble and learned friend on the Woolsack. The question before us is a more narrow one than might

be gathered from some expressions which occur in the judgments; it is simply and solely whether the pursuer has stated a case sufficiently relevant to allow him to bring his action to proof.

Two objections are taken to the case going further. The first is an objection based on the ground of want of jurisdiction in the Court of Session; the second is an objection based upon the terms of the statute.

Now dealing with the first point it seems to me plain that whenever an inferior tribunal has done something contrary to law which may lead to liability or deprivation of rights, then unless Parliament has stepped in and prevented the Court of Session declaring that to be a nullity and a noxious nullity which is a nullity and a noxious nullity, the Court of Session has the power to make a declaration to that effect. That is of the very essence of the power of suspension and reduction. Parliament may have taken away the right, but if Parliament has not taken away the right to invoke the Court of Session for assistance, then no consideration of inconvenient consequences can affect the mere question of the jurisdiction of the Court of Session to deal with the matter. I am therefore of opinion that the first of the conclusions sought for by the summons—a conclusion for reduction either in terms as there stated or in some modified terms—is a proper conclusion for invoking the jurisdiction of the Court, and that the question of relevancy is not affected by the considerations to which I have referred.

I pass to the second question, which is whether the statute has taken away the power to invoke the jurisdiction of the Court in this case by enacting that no actionable wrong has been suffered, and that turns on the terms of section 30. As the case comes before this House only on the footing of relevancy it must be taken that the averment in paragraph 9 of the condescendence is for present purposes admitted—an averment which alleges that the present appellants, the defendants in the action, failed to transmit to the pursuers the notice to which they were entitled under the Act of Parliament.

Now the structure of the Act of Parliament is this. A valuation roll is to be made up in which the valuing authority, the magistrates or commissioners of supply, may invoke the assistance of an assessor and direct the assessor to make up a valuation roll. The assessor makes up the roll, but if he makes an alteration in any entry of value which occurred in the previous year, then he is by the terms of the statute to give notice to the person affected in order to enable that person to object to the entry proposed to be made; and if that person does object then the question goes to a tribunal of review on which is imposed the duty of dealing with the question by way of review of the assessor's decision.

Now in the present case that notice was not given. That such notice ought to have been given is quite clear, because section 5 says that the assessor is to transmit it to the person included in his valuation along with a notice to such person that if he considers himself aggrieved by such valuation, that is to say, by the entry which is proposed to be put in, he may appeal to the commissioners of supply or the magistrates as the case may be under the terms of the Act, or may obtain redress without the necessity of such appeal by satisfying the assessor that the assessor was wrong. The material consideration is that the assessor, if the valuation which he makes is confirmed and authenticated, has taken a step which may very materially affect the civil rights of the person whose property is entered in the valuation roll for the new figure, and consequently the statute has imposed upon the assessor the duty of giving that person notice before his rights are interfered with.

The Act of Parliament is not a very carefully drawn Act, and I think that the expression about which there has been so much argument, "making up the valuation roll," is an expression that is used with a certain amount of ambiguity. But it is quite clear to my mind that in section 1, where the valuation roll is spoken of as something which the magistrates or commissioners are to cause to be made up by the assessor, and in sections 3, 4, 5, 8, and 11, and section 12, which expressly distinguishes authentication from the making up of the roll, it is shown that "making up" is an expression which belongs to the stage at which the assessor is himself dealing with the valuation roll. On the other hand it is quite true that in sections 18 and 35 "making up" is used in a wider sense which may well extend to some things which other parts of the Act appear to regard as belonging to authentication.

Now if that be so the utmost result is that the expression "making up" is used in section 30 in an ambiguous form. I am not going to read section 30 again. What it says is in substance that mere mistakes or variances in names or designations in the valuation roll are not to render it void, and that where the valuation roll has been made up and authenticated in terms of the Act neither the roll nor any valuation therein are to be set aside or rendered ineffectual by reason of any informality or want of compliance with the provisions of the Act in the proceedings for making up such valuation or valuation roll. Your Lordships will observe that making up and authentication are in that very section distinguished, and the concluding words with which we are dealing here are confined to making up.

I think it is a sound rule of construction in dealing with an Act of Parliament that where the Act as a whole contains a scheme which expressly confers a definite right on the person concerned, then you are not to treat the definite language of that Act in an earlier section as repealed by language which is not precise and which occurs in a merely general form in a later section, only because the later language is capable of that construction. If the language is ambiguous, if a phrase like "making up"

is used in two senses, then you ought, in my view of the rule of construction, to interpret the statute not as destroying the right previously given, or as abrogating it, and accordingly, applying that rule, I have come to the conclusion that the expression "making up" is, to put the case at its very highest, an ambiguous expression which is not sufficient to take away the right conferred in definite terms by section 5.

Other arguments have been relied upon in the judgments in the Court below, and the rule of *ejusdem generis* has been invoked. I think that rule is very often—more often perhaps than is commonly realised—a difficult rule to apply. As I understand the principle it applies when there is an enumeration of particular instances, every one of which illustrates a single species which makes up a class. Then when you have general words following the enumeration of the individual cases you confine these general words by the species which is the dominant factor in the enumeration. It is difficult to say what the species is here, but I think that without invoking the rule of *ejusdem generis* you may properly say that looking at section 30 as a whole the kind of mistakes and omissions which are intended are mistakes and omissions not of a substantive character, and that the only possible exception to that is the expression at the end relating to want of compliance with the provisions of the Act in the proceedings for making up such valuation or valuation roll. It appears to me that the natural construction of these words is to regard them as at all events not covering anything more important or much more important than the specific and rather trivial cases which are referred to in the earlier part of the section. And I am the more impressed with the necessity of that construction by the circumstance that I can see no limit to what might be included in these words if the Dean of Faculty's contention were right. It may well be that the magistrates might sit in a fashion which made the case absolutely *coram non judice*, or that there might be no proper sittings of the magistrates at all. The provisions of the statute would be violated, and if the provisions of the statute as referred to in the concluding words of ssction 30 are to have no limits set as to the cases which are there included, then I can see no corresponding limit to what the Dean of Faculty's argument would cover.

Under these circumstances I have come to the conclusion that the judgment of the majority of the Inner House was right, and that this appeal ought to be dismissed.

LORD KINNEAR—I agree entirely with my noble and learned friends, and I shall endeavour to state very shortly what is the view of the case which strikes me.

I confess that I have found only one serious difficulty in considering it, and that is because I find myself differing so widely from three learned Judges for whose opinions I have great respect; but then I think that the dissentient Judges have been misled by an entire misapprehension of the pursuers' case, as if this were an action for obtaining a review in the Court of Session of the erroneous decision of a valuation court whereby the value of the pursuers' property has been overstated in the roll. If that were so, then I should agree with the dissentient Judges, and with a great part of the argument which has been addressed to your Lordships, that the Court of Session had no jurisdiction to do anything of the kind. That Court is not a valuation court, it is not a valuation appeal court, and I take it to be perfectly certain that it has no jurisdiction to determine the annual value of lands and heritages in Scotland. But, then, this is not a process of review; on the contrary, it is an action brought in the Supreme Court for the purpose of setting aside as incompetent and illegal a valuation made by the assessor in excess of the power committed to him by the statute.

Now I apprehend that there can be noquestion at all of the jurisdiction of the Court of Session to entertain an action of that kind. Wherever any inferior tribunal or any administrative body has exceeded the powers conferred upon it by statute, the jurisdiction of the Court to set aside such excess of power as incompetent and illegal is not open to dispute.

I think that is what the Court is asked to do in this case. They are not asked to consider whether the assessor has not made an erroneous valuation, or to substitute a different value of their own in place of his. The complaint is that by the assessor's failure to perform his statutory duty the pursuers have been deprived of their right of appeal, and upon that the Court is not invited to consider any question of valuation whatever, but solely to determine whether the assessor's proceedings conform to the statute or not, and if not, to set aside his valuation as null. That consideration seems to me to dispose entirely of the argument of the learned Judges in the minority as to the exclusive jurisdiction of the Valuation Court. It is nothing to the purpose to say that in matters of valuation the jurisdiction of the Valuation Court is exclusive, and when the pursuers complain that they were prevented from appealing, it is futile to answer that if they were aggrieved by a valuation their remedy was to go to the Valuation Appeal Courts and not to the Court of Session. The whole ground of complaint is that they were not allowed to do what it is said they ought to have done. The Lord Justice-Clerk cites the language of Lord President Inglis in the case of *Stirling* v. *Holm*, 1873, 11 Macph. 480, 10 S.L.R. 296, but, with very great deference, there is nothing in that language which touches the question in hand. The Lord President says that the Judges of the Valuation Appeal Court are just as much a supreme tribunal as the Judges of the Court of Session, but the point of that observation is this—that assuming that the Court of Session had no jurisdiction to interfere with the decision of the Valuation Appeal Court on the merits, it had been

argued that on the principle I have already suggested they might interfere if the procedure of the Valuation Appeal Court were *ultra vires;* and it is upon that point that the Lord President says they are not an inferior court, they are a supreme court; and we do not interfere with it any more than we interfere with the Court of Justiciary or the Court of Teinds. But that does not affect in the slightest degree the doctrine that the Court will correct the proceedings, not of a supreme court but of an inferior court, or, as I have said, of an administrative body in so far as they are *ultra vires.* It seems, however, to be suggested in the judgment to which I have referred that the Valuation Appeal Judges are the only competent Court even for this purpose, and it may be that the Dean of Faculty is right in saying that it would be within their power to decide any such question if it were brought before them in any competent form. But they are excluded by exactly the same cause as has excluded the Appeal Court of the Magistrates. They have no jurisdiction whatever except by way of appeal from the magistrates, and a complaint against the unlawful proceedings of an assessor which has never been considered by the magistrates at all cannot in any form be brought before the appeal Judges.

If there is no doubt as to jurisdiction—and I think there is none—the only question is whether this action is excluded by the condition in the 30th section of the Act that no valuation roll and no valuation contained therein "shall be challengeable or be capable of being set aside or rendered ineffectual by reason of any informality or of any want of compliance with the provisions of this Act in the proceedings for making up such valuation or valuation roll."

Now I agree entirely with, and I do not desire to repeat, what has been said upon that section by both my noble and learned friends. I entirely assent to the observation by my noble friend near me (Viscount Haldane), which I think was also made by the noble Earl on the Woolsack in the course of the discussion, that the argument derives no aid from the doctrine of *ejusdem generis.* But taking the words as they stand, I apprehend that they are to be construed, not as an isolated enactment, but as part of a statute which is to be read as one consistent whole. I cannot assent to the doctrine laid down by the Lord Justice-Clerk that you are to treat this single Act of Parliament as if it were two separate statutes, so that a later clause may be held as by implication repealing an earlier one. The rule is that you must construe an Act of Parliament as a whole; and so reading it, I apprehend that it is a very startling proposition to say that when the Act has begun by conferring a substantial right upon the subject which is necessary for his protection it is to be assumed that that right has been destroyed or nullified by an ambiguous clause in a later part of the same statute. One thing that is clear is that Parliament thought it necessary that the owner or occupant of premises that were to be valued should have an opportunity of appealing to the Valuation Court if he were aggrieved by any valuation. Now that is a valuable substantive right. I do not consider whether it would have been at all reasonable or just to subject the owners and occupiers of land to the individual judgment or individual caprice of an assessor—of a valuing expert—without appeal, because that was a question for Parliament, and is plainly decided by the provisions of the Act, and I cannot hold that that is taken away by any subsequent ambiguous clause. But taking the clause as it stands, I am of opinion, for the reasons already given by my noble and learned friends, that the ground of the pursuers' complaint is not a departure from or non-compliance with provisions in the proceedings for making up the valuation. His complaint is that a valuation has been fixed upon him under conditions which the assessor was not empowered by any Act to impose upon him. The assessor is called upon to value his land, and to give him an opportunity of appealing if he is aggrieved, and there is nothing in the statute which would enable him to substitute for that appealable deliverance a final peremptory decision of his own, and that is in fact what has been done.

Now the true objection of the pursuer is that what has been done is in excess of power—it goes beyond any power contained in the Act—and I think it is no answer to say that you cannot find fault with a departure from the provisions of the Act as regards procedure. Whether you can or not, the respondent has still to show under what clause in the Act he has power to do what he has done. There is no affirmative power which will enable the assessor to value lands subject to any other condition than those which the Act has imposed. I think that condition has been distinctly violated, and for that reason I agree entirely with the course proposed by my noble and learned friends.

LORD SHAW—There has been such an elaboration of pleadings in this case, and the summons contained such a variety of conclusions, that it might have been supposed that a much larger question was before the House than there actually is. The actual question before this House is whether a certain very limited proof allowed in the Court of Session should proceed, to which question the appellants reply that the action as laid should be at the present stage dismissed, a court of law not having jurisdiction to entertain it.

With regard to that order for proof, what is asked by the pursuer of the case is that he should be allowed to establish that the Corporation of Glasgow did not, in terms of the Act of 1854, transmit to him a notice which would have warned him that as compared with the preceding year the current year's valuation roll was to contain an altered figure with reference to his property. That is the sole subject of probation—a probation which presumably would have been simple and brief. I feel some regret that the appeal has reached this House at this stage.

On this and on other grounds it is highly undesirable that this House should now be led into a discussion of what remedies would be open as between the parties if the entry of £1300 in the valuation roll should have to be deleted as unlawful. When, if ever, that discussion is reached the problem it presents will have to be solved. But it is inexpedient to enter upon it upon a basis of hypothesis and at a stage which is premature.

My own view with regard to the Valuation Act of 1854 is largely in accord with those of your Lordships, but is most nearly expressed by the noble and learned Earl on the Woolsack, because I think that when the statute deals with the making up of a valuation and a valuation roll it deals with it, in the first place, as the work of the appointed officer, the assessor; and, in the second place, as having to be substantially finished by, I think, the 25th of August in each year; while, in the third place, it deals with the ascertainment and statement of a figure of money.

If that be the true view of the expression "making up of the roll," viz., as the work of a certain man, done by a certain date, and resulting in a certain figure, it appears to me that that being accomplished, we are then asked to look at the other provisions of the statute as to what is to be done, it may be concomitant with, but generally in many cases subsequent to, that operation of making up.

Thus comes the stage of appeal, and the decisions of Appeal Courts or of private applications made to the Assessor and the substitution of a new figure. All these things may result in certain corrections or alterations made upon the roll which the Assessor made up, and the roll which he has made up plus the corrections and alterations made as the result of these proceedings to which I have referred, is then treated in the statute as not a "made up" roll but as a completed roll, and it is to the completed roll, first made up, then corrected or altered, that the final mark of authentication is attached.

That being the proceeding I ask myself now what is the construction to be placed upon section 30 of this statute. Upon that topic I have to observe that I respectfully dissent from some of the learned Judges in the Court below in holding that section 30 does not in itself, by one expression as the context of another, limit and define what are the possible applications of the section. Your Lordships will forgive me for citing again that in section 30 what cannot be assailed is not "any want of compliance with the provisions of this Act." There are more than one of the judgments in the Court below which treat it not only as merely that but say that that is not in any way affected by the context. That is not what the statute says. The statute refers to "any want of compliance with the provisions of this Act in the proceedings for making up such valuation or valuation roll." For the reasons that I have given it appears to me clear that the want of compliance there referred to applies, and applies solely, to that first stage of making up the roll by the Assessor at the fixed date to which I have referred. It would be sufficient, therefore, to say that section 30 of the statute does not apply to the stage of error or fault or defect which is here referred to in this record, viz., an omission to give the appellant the statutory notice which would have warned him of the increased valuation and opened the way for an appeal against it.

But I do not think it would be right or doing justice to this case to treat it merely upon that ground, because in the view which I take of this statute, or of any statute affecting the liberty or the pecuniary rights of the subject, I think it would be the very last resort of construction to give a clause such as section 30—namely, an absolvitor from defects as to compliance with certain conditions—the effect of entirely wiping out the careful and detailed provisions set forth in the statute for the protection of the subject's rights. I cannot hold that that is the correct construction. For instance I find myself confronted by section 5, and section 5 is a plain provision to the effect that if in making up the roll for this year the Assessor finds that he has to vary the figure which is in the roll of last year, he shall give intimation of that fact to the ratepayer, or assumed ratepayer, so as to permit him to make that appeal to the judgment of the Appeal Court under which he will obtain justice. It would require the very plainest language in the Act of Parliament itself, or in a subsequent Act, to wipe that section out of existence. For myself I have the greatest doubt of the possibility, apart from a most clear and express provision to that effect, of wiping out a series of protective clauses of a statute by a reference to a general provision at the end with regard, it may be, to procedure.

It is upon that view of the case that I listened with much interest to the argument upon jurisdiction. Your Lordships have dealt with it in a manner to which I entirely assent, but I trust my noble and learned friend Lord Kinnear will permit me to say that I agree particularly with him that none of the judgments of the Court of Session in regard to valuation cases are going to be invaded in substance or effect by the judgment which this House is now pronouncing. I would, however, except from that category the case of *Sharp* v. *Latheron Parochial Board* (1883, 10 R. 1163, 20 S.L.R. 771), in this sense, that I am not quite able to follow the grounds of the judgment of the Second Division in that case. But I am consoled by the reflection that that decision was ultimately come to after a judgment had been pronounced by my noble and learned friend Lord Kinnear, and I take this opportunity of appending in this House my adhesion to what he said with regard to the function of the Court of Session even in valuation cases. As a Court for keeping the administrative bodies in the country right in regard to obedience to or compliance with the statute, his Lordship says—"The complainer has been twice assessed and will require to pay a double poor rate for the subjects in question unless he can obtain

redress in this process. If his statement is correct he was in my opinion entitled to rely upon the Assessor having followed the course prescribed by the statute, and to assume that no entry affecting him would appear in the valuation roll except those which had been sent to him and of which he had approved. As he had no notice of the entries he had no opportunity of appealing against them. But he cannot be precluded by the statutory finality of the valuation roll if the conditions upon which it is made conclusive have not been satisfied."

That being so, I look at these conclusions in view of the argument as to jurisdiction, and I would say quite freely that I think the case has been largely confused by the numerous conclusions in it. For there are conclusions in this summons not only to affect the rescinding of the erroneous entry but to put in another. Now to put in another entry appears to me to be an incompetent task for the Court of Session.

I would put my view as to jurisdiction thus—It is within the jurisdiction of the Court of Session to keep inferior judicatories and administrative bodies right in the sense of compelling them to keep within the limits of their statutory powers or of compelling them to obey those conditions without the fulfilment of which they have no powers whatsoever. It is within the power of the Court of Session to do that, but it is not within the power or function of the Court of Session itself to do work committed to be performed by those administrative bodies or inferior judicatories themselves.

That is the particular point in the present case—for this reason, that according to the arguments in the Court below, reflected in the judgments, which we have had the pleasure of reading, it appears to be considered that it followed that if the figure of £1300 erroneously arrived at was deleted, then another figure took its place automatically.

With regard to that, I state the proposition almost in terms of the statute by saying that the figures which appear in the valuation roll are figures which appear for one year and for one year alone. Whether they were old figures, repeated figures, or freshly-arrived at figures, they are the figures found in the valuation roll for one year and one year alone; and there is no authority in the valuation law of Scotland for the automatic appearance of a figure not of this year's roll from the roll of some other year.

The figure of £950 which is appealed to is not in the valuation roll—£1300 is there. £950 has never been entered there, and no figure can be entered there except by the valuation officer and by the valuation authority. It is said that under the law of Scotland, if we delete the one figure as being an illegally-arrived at figure, *ergo*, so the contention is, there is a figure of nothing inserted, or a figure of £950 inserted. I differ from both these views. If the erroneous figure disappears it will be the task of the law to find a remedy for a case in Scotland in which a portion of heritable property by a mistake in law has not had a figure attached to it, and I for my own part agree with my noble and learned friend on the Woolsack in thinking that the law of Scotland is not so barren of resources as to fail in finding a remedy for such a situation.

Upon the point of the proof I only desire to observe that in my opinion it was a correct procedure upon the part of the Inner House to demand that the averment of the pursuer be made clear and affirmative to the effect that in point of fact no notice was sent. If there had been transmission of the notice, although no receipt of it can now be remembered or proved, there is no violation of the statute; and it is for the pursuer averring no transmission, and thus averring a defect of procedure under the statute, not only to enter upon proof but substantively to discharge the *onus* of proof that the sending out of the notice did not take place.

LORD PARMOOR—I agree. The question appears to me to be a simple one of statutory construction, and I only desire to say a very few words on that point.

Under section 30 of the Act a valuation roll which is not challengeable is a valuation roll "made up and authenticated in terms of this Act." Now in my view the valuation roll to which the Dean of Faculty referred is not a valuation roll "made up in terms of this Act;" it is only a valuation roll "authenticated in terms of this Act"; and that a valuation roll is not made up in the terms of the Act which omits the transmission of notice under section 8. My view is a very simple one therefore—that the terms on which the appellants rely in section 30 do not refer at all to the document they describe as a valuation roll, which in my opinion is not a valuation roll "made up in terms of this Act."

Their Lordships dismissed the appeal with expenses.

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