

in the case of *Fair*, that Glencoe, i.e., Macdonald of Glencoe, the pursuer's author, was meant to be the drawer of the bill, and the representatives have not even denied that fact. . . . According to the doctrine laid down in *Fair's* case, therefore, there is nothing to prevent the pursuers, as standing in the place of Glencoe, to have subscribed the bill or to bring an action as has been done in the present case." Accordingly under the law as it stood before the Bills Act of 1882 it was open to any holder of a bill in which the drawer's name was blank to fill it up, and section 20 does not alter the law at all.

The question, then, is—Is there anything to prevent the document in this case being regarded as a document of debt? The authorities make it clear that there is not. Mr Crabb Watt endeavoured to differentiate this case from the cases quoted by urging that in them it clearly appeared who the drawer of the document was. But in this case also there is no doubt who was in right of the obligation and whose name should have been inserted as the drawer. In the first place the document is stamped, and is addressed "Mains of Cults, Aberdeen," Mr Lawson's home; and then it bears *in gremio* to be "for value received, in season of shire stallion." That being so, it is vain to say that the identification of the drawer is not perfectly established by the document itself. Then Mr Watt says the document is not holograph; but in the case of such a document as this that can make no difference. I therefore think that Lawson's executors are entitled to credit for the £60 contained in the document in question, because that document, although not a bill in the sense of the above mentioned Act, is valid as an acknowledgment of debt.

As to the alleged part payment of £28, I am of opinion that it has not been proved. I quite agree with what has been said by your Lordship that we must not scan too critically proofs coming up from the Sheriff Court. But where a proof *prout de jure* is allowed in an action of accounting it does not follow that it is unnecessary that each item be proved *habili modo*. The evidence of the debtor, partially corroborated by his wife, is not habile to prove payment or part payment of such a debt as is here in question. I therefore am of opinion that Mr Watson is not entitled to credit for the said sum.

On the whole matter I agree with your Lordships that the Sheriff's interlocutor should be affirmed.

The Court affirmed the Sheriff's interlocutor.

Counsel for the Pursuers (Respondents)—A. R. Brown. Agents—Finlay, Rutherford, & Paterson, W.S.

Counsel for the Defender (Appellant)—Crabb Watt, K.C.—Moncreiff. Agents—Simpson & Marwick, W.S.

Friday, July 12.

## FIRST DIVISION.

MOTHERWELL MAGISTRATES v.  
DAVID COLVILLE & SONS, LIMITED.

*Assessments—Burgh—Water—Owner's Water Assessment—Liability of Owner of Premises Supplied by Meter—Burgh Police (Scotland) Act 1892 (55 and 56 Vict. c. 55), secs. 264 and 359—Motherwell Water (Additional Supply) Act 1900 (63 and 64 Vict. c. lxvii), sec. 25—Burgh Sewerage, Drainage, and Water Supply (Scotland) Act 1901 (1 Edw. VII, c. 24), sec. 2.*

A burgh which, under section 264 of the Burgh Police (Scotland) Act 1892 and a section in somewhat similar terms of a private Act, had been supplying manufacturers, who were both owners and occupiers of their works, with a supply of water for other than domestic purposes, by agreement, and charging therefor by meter, adopted Part I of the Burgh Sewerage, Drainage, and Water Supply (Scotland) Act 1901, and proposed to charge them, in addition to the charge by meter under the agreement, the owner's half of the water assessment, under section 2 of that Act.

*Held* that the manufacturers were not chargeable with the owner's water assessment.

The Burgh Police (Scotland) Act 1892 (55 and 56 Vict. c. 55), sec. 264, which makes provision for the commissioners of a burgh where there is more water than is required for domestic purposes giving a supply for other than domestic purposes, by agreement or on terms fixed by the Sheriff, contains this proviso—"Provided that when water is thus supplied from such surplus it shall not be lawful for the commissioners to charge the parties obtaining the same both with the portion of the burgh general assessment applicable to water supply [water assessment], and also for the supply of water obtained by them, but the commissioners may either charge the said assessment leviable on such premises or charge for the supply of water furnished to the same as they shall think fit. . . ."

Section 340 provides for the commissioners assessing all occupiers of lands or premises according to the valuation roll, subject to the exceptions after provided, in the sums necessary for the general purposes of the Act.

Section 359 provides for the commissioners levying upon all owners and occupiers of lands and premises a special assessment not to exceed threepence in the pound for the general improvement of the burgh, and enacts—"And such special assessment shall for the purposes of this Act be called 'the general improvement rate,' and shall be leviable either from the owner or occupier of such lands or premises in equal proportions, or in whole from the occupiers

thereof, but in the latter case the occupier shall be entitled, on payment thereof, to deduct from his rent the proportion payable by the owner, and such assessment, so far as the occupier is concerned, shall be recoverable in the same manner as the burgh general assessment is authorised to be recovered."

The Public Health (Scotland) Act 1897 (60 and 61 Vict. c. 38), sec. 136, provides that the "public health general assessment" of that Act shall in burghs be assessed, levied, and recovered in the like manner and with the like powers, but without any limit (save as in the Act subsequently imposed) as the "general improvement rate" of the Burgh Police (Scotland) Act 1892.

The Motherwell Water Additional Supply Act 1900 (63 and 64 Vict. c. lxii), sec. 25, enacts—"The Commissioners may furnish to any person within the limits of compulsory supply a supply of water for other than domestic purposes, . . . for any trade, manufacture, business, or occupation, . . . and either in bulk or otherwise, such respective supplies being so furnished at such rates and upon such terms and conditions as may be agreed on, or in the event of disagreement either as to the ability of the Commissioners to give the supply, or as to the rate or terms or conditions on or in respect of which the supply is to be given, the same shall be fixed by the Sheriff upon summary application by either of the parties, and the decision of the Sheriff shall be final: Provided always that so far as possible the rate for such supply of water shall be uniform to all persons in the same circumstances and requiring the same extent of supply, and the charges for such supply shall be recoverable in the same manner as any other water-rates or charges may be recovered under the authority of this Act: Provided further, that when water is so supplied the Commissioners shall not charge the persons obtaining the same with the domestic water-rate and also charge for water supplied under this section, but the Commissioners shall have the option either to charge the persons obtaining such supply with the domestic water-rate in respect of the premises for which such supply is given, or to charge for the same by meter, or to charge the special rates as may be fixed as aforesaid for water supplied for the purposes or any of them in this section mentioned. . . ."

Section 40—"The estimate to be made up in manner before provided shall be submitted to and considered by the Commissioners at a meeting to be held as soon as conveniently may be after they shall have obtained a copy of the valuation roll or rolls for the year then current, and at such meeting or any adjournment thereof the Commissioners may, and they are hereby authorised and required, in order to raise such a sum of money as, along with the other water revenues of the Commissioners, shall be sufficient for the purposes aforesaid, annually to impose, assess, and levy a rate for the purposes of this Act (and that over and above and in addition to any rates which the Commissioners are authorised

to impose or levy, or may have imposed under the Police Acts, or under any other Act in force within the burgh) to be called 'the domestic water-rate' upon and from the occupiers of all lands and premises, and the parts and pertinents of the same within the limits of compulsory supply on the full yearly rent or value thereof. . . ."

The Burgh Sewerage, Drainage, and Water Supply (Scotland) Act 1901 (1 Edw. VII, cap. 24), sec. 2, which is in Part I of the Act, the Part applying under sec. 8 to certain burghs only when adopted by resolution of the Town Council, enacts—"In any burgh, or in any special or separate drainage district formed therein under any Act, the expense incurred either before or after the passing of this Act for sewerage and drainage or water supply, as the case may be, within the same, or for the purposes thereof, and the sums necessary for repayment of any money borrowed therefor either before or after the passing of this Act, together with the interest thereof, shall be paid out of a sewer assessment or water assessment, as the case may be, which the town council of the burgh shall raise and levy on and within such burgh or (in the case of the sewer assessment) within such special or separate district, in the same manner and with the same remedies and modes of recovery and incidents as are provided for the public health general assessment therein. . . ."

Sec. 4 (2) substitutes for the words in sec. 264 of the Burgh Police Act 1892 which are printed *supra* in italics the words "water assessment."

On December 11, 1906, the Provost, Magistrates, and Councillors of the Burgh of Motherwell, *first parties*, and David Colville & Sons, Limited, steel manufacturers, *second parties*, presented a special case dealing with the second parties' liability for water assessment.

Motherwell, a burgh constituted under the General Police and Improvement Act 1862, had a water supply of its own, in connection with which the Motherwell Water Additional Supply Act 1900 was obtained. Under section 25 of that Act (*supra*) and the 264th section of the Burgh Police (Scotland) Act 1892 (*supra*) the first parties, by agreement, had for some years been supplying the second parties, who were owners as well as occupiers of their works, with a supply of water for manufacturing purposes, for which the charge was by meter. On 4th March 1902 the first parties by resolution adopted Part I of the Burgh Sewerage, Drainage, and Water Supply (Scotland) Act 1901, and thereafter claimed to charge the second parties, in addition to the charge for water supply under the agreement, the owners' half of the water assessment under section 2 of that Act (*supra*). Such assessment if legal fell, under section 347 of the Burgh Police (Scotland) Act 1892, and under section 42 of the Motherwell Water Additional Supply Act 1900, to be made upon one-fourth of the value of the second parties' works, and, as proposed to be levied in November 1905, amounted to £165, 17s. 8½d.

The *contentions* of the parties were stated thus—"The first parties contend that by the Act of 1901 the incidence of the water rate in burghs to which that Act applies or is made to apply (including Motherwell) is altered so as to subject all owners to liability for one-half thereof, and that the second parties as owners are and must be so liable unless they can show some exemption in their favour, and no such exemption exists. They further contend that an owner's liability is not affected though the occupier should be charged not by water assessment but by meter or other special arrangement, because the provisions in the Acts of 1892 and 1900 barring the charge of both a meter rate or other rate under special arrangement, and also the proportion of the burgh general assessment applicable to water supply or the domestic water rate, apply only to charges upon the occupier, who alone could be assessed or charged in 1892 and 1900, and are effectual only to prevent a double charge upon the occupier. It is not contended that section 264 of the Act of 1892 or section 25 of the Act of 1900 is repealed, but it is contended that the election therein prescribed is between the meter or special rate on the one hand and the occupier's assessment on the other, such assessment being then the whole but now only one-half of the water assessment; and that the owner's liability for one-half of the assessment arising for the first time in 1902 in terms of the Act of 1901 is absolute and unaffected by the election prescribed in the said sections.

"The second parties maintain that the 264th section of the Act of 1892 and the 25th section of the Act of 1900 unequivocally forbid the first parties from making the second parties pay both the owner's half of the water rate and also the sums under the special agreement; and that not only does the Act of 1901 not repeal either section 264 of the Act of 1892 or section 25 of the Act of 1900, but by Part I of section 4 of the Act of 1901 the 264th section of the Act of 1892 is verbally amended, showing conclusively that Parliament had full in view that that section was to remain in full force notwithstanding the Act of 1901."

The *question of law* was—"Are the first parties entitled to assess and charge the second parties, as owners, for the owners' half of the water assessment upon one-fourth of the value of their works as appearing in the valuation roll, and also to charge the second parties, as occupiers, for water supplied to their works by meter or under special arrangement?"

The *argument* of parties appears from the printed contentions (*supra*), the first parties further arguing that if any inequity was caused to the second parties the proper remedy was for them to have the charge under the agreement altered, and if necessary fixed by the Sheriff.

LORD PRESIDENT—The burgh of Motherwell has a water supply, and that water supply was originally dealt with by a special Act of 1900. That Act in many ways really

repeated the terms of what at the time was one of the general Acts, namely, the Burgh Police Act of 1892. It provided among other things for allowing the Commissioners to furnish to any person within the limits of compulsory supply a supply of water for other than domestic purposes to shops, factories, &c. And it provided that the supply should be made at such rate for the water as the Commissioners and the person getting it should agree upon, and if they could not agree then there was power to the parties to apply to the Sheriff summarily to fix the rate for them; and then it goes on—"... [quotes *proviso* to sec. 25 of *Motherwell Water Additional Supply Act 1900, supra*]

Now the assessment under the Act of 1900 was on the occupier alone, but in 1901 the Burgh Sewerage, Drainage, and Water Supply (Scotland) Act was passed, and by that Act the assessment was altered and was assimilated to the assessment under the improvement rate under the Act of 1892. The improvement rate is an owner and occupier rate, but it is a rate which is one rate but which may be levied from both owner and occupier, or in the option of the burgh may be levied altogether from the occupier, in which case, however, he is entitled to deduct one-half of the rate from the rent he pays to the owner. The actual incidence therefore of it is, one-half on the owner and one-half on the occupier. The other clauses of the Water Act are in many cases left untouched, and particularly the clause as to exemption. The question has arisen where the parties, as here, are owners and occupiers, and are paying a special rate by agreement, whether they are also to pay their ordinary domestic rate as owners.

I have come to the conclusion that they are not so liable. I think the fair reading of the section is, as counsel put it, that it is settled that when water is wanted for more than merely domestic purposes the supply is arranged in respect of the premises for which the supply is wanted, and then the burgh is entitled to get a rate per gallon for the water so supplied, and every gallon is paid for, including in the quantity the gallons that would be used for domestic supply. But the burgh here desire to levy an assessment in addition. Well, if they did that they would be paid over again for the same water; and the ratio of exemption seems to me to be entirely untouched by the fact that instead of being leviable from the owner entirely the rate is now spread one-half on the owner and one-half on the occupier. I see no reason why the effect should be to allow the burgh to charge twice for the same water. I do not mean by that that the burgh would get anything it is not entitled to; the only result would be that certain other ratepayers would pay less, but there is no reason why certain premises should be penalised under the new Act more than they were under the old. I am therefore of opinion that the question should be answered in the negative.

LORD KINNEAR—I have come to the same conclusion. The argument to the contrary

seems to be, that the proviso by which the Commissioners are prohibited from charging two rates for a supply of water amounts to an exemption in favour of certain ratepayers, and that therefore the only persons who can take benefit from that provision are ratepayers falling within the contemplation of the Legislature when the Act in question was passed. If the clause in question were merely a personal exemption, there might be some force in that argument. But I do not think that is the meaning of the Act. I agree with your Lordship that according to the plain construction of the section what the Commissioners are allowed to do is to furnish a special supply of water to persons requiring an unusual quantity for the benefit of certain premises, at a price to be fixed by agreement, or failing agreement by the Sheriff. They may give this additional supply at what is presumed to be a fair price, and then the statute goes on to provide that the Commissioners are not to charge the price so fixed and also the ordinary water-rate as if no such agreement were made. Now it seems that the section deals not with particular ratepayers but with particular premises, which may be supposed to require more than the ordinary supply of water, and with the method by which the proper rate for such exceptional supply should be ascertained. The logical order for considering the matter appears to me to be to ask first what is the rate to be charged and then to consider who are to be liable for it. Now as I read that section the enactment is plain that one rate only is to be charged, and in the event of its being determined to give a special water supply at a price ascertained in terms of the statute that rate is to be charged and no other. I therefore concur in the opinion your Lordship has expressed.

LORD DUNDAS concurred.

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

Counsel for the First Parties—Blackburn K.C.—McDonald. Agents—Bruce, Kerr, & Burns, W.S.

Counsel for the Second Parties—The Dean of Faculty (Campbell, K.C.)—Spens. Agents—J. & J. Ross, W.S.

Friday, July 12.

## FIRST DIVISION.

[Glasgow Dean of Guild Court.

SUMMERLEE IRON COMPANY,  
LIMITED v. LINDSAY AND OTHERS.

*Burgh—Dean of Guild—Building Regulations—Height of Building—Building Abutting on Two Streets Parallel to One Another, and of Different Widths—The Glasgow Building Regulations Act 1900 (63 and 64 Vict. cap. cl), secs. 60 and 62.*

The Glasgow Building Regulations Act 1900, section 60, provides that no

building, "except with the consent of the Corporation, be erected in, on, or adjoining any street" above a certain height, viz., the width of the street and half as much again, but not to exceed 100 feet. Section 62 provides that, where any building is intended to be erected "so as to front or abut upon more than one street," the height is to be regulated by the widest street, "not only so far as such building . . . will abut upon such widest street, but also, so far as it . . . will abut upon the narrowest of such streets to a distance of 50 feet from the side of such widest street."

*Held* (1) (*diss.* Lord Johnston) that section 62 applied to a proposed building which would abut on a street in front, and would run back therefrom to and abut on a lane (or street) at the back parallel to the front street; (2) that section 62 only supplied the street whereby the height was to be calculated, section 60 enacting the restriction which must be read together with the power given in that section to the Corporation to dispense therewith; and consequently (3) that the corporation had power to dispense with the restriction in the case of the building proposed, and the proprietors', with the consent of the Corporation, right to build irrespective of the restriction.

*Opinion* (*per* Lord Johnston, *diss.*) that section 62 did not apply to the proposed building, but only to buildings on a corner stance, and consequently that the proposed building must be regulated by section 60 alone.

*Burgh—Dean of Guild—Building Regulations—Title to Appear—Height of Building—Right of Neighbouring Proprietors to Object to Proposed Buildings—The Glasgow Building Regulations Act 1900 (63 and 64 Vict. cap. cl), secs. 60 and 62.*

The Glasgow Building Regulations Act 1900, sections 60 and 62, impose restrictions on the height to which buildings may be erected without the consent of the Corporation having been obtained.

*Held* that neighbouring proprietors, inasmuch as they had an interest, had a right to see enforced the provisions of the Act, and were entitled to lodge objections in a petition for lining for a proposed building which did not observe the restrictions.

The Glasgow Building Regulations Act 1900 (63 and 64 Vict. cap. cl), section 60 (1), enacts—"After the passing of this Act no building other than a church shall, except with the consent of the Corporation, be erected in, or on, or adjoining, any street, of a greater height than the distance between the building lines of such street and one half more of such distance; and in no case except with such consent of the Corporation shall such height exceed one hundred feet."

Section 60 (3)—"Whenever the Corporation consent to the erection of any build-