

one on their behalf, and that Mr Hogarth, who was the defenders' agent as well as the pursuer's, got the bond from her on the condition that it should not be used unless certain existing bonds upon the property were discharged—a condition which was not purified. These are matters in regard to which there has been no inquiry. The proof which has been taken was limited to the pursuer's averments in support of the first head of her plea-in-law. The Lord Ordinary says in his opinion that "proof of the pursuer's averments of non-delivery or conditional delivery and of fraud was disallowed." According to the interlocutor of 10th November 1908, that was not so, because the proof thus allowed was, as I have said, limited to the averments in support of the first head of the pursuer's plea-in-law—that is, the averments relating to the execution of the bond—but the second and third heads of the plea, which raise the question of delivery and fraud, were not disposed of in any way. I therefore think that the pursuer is entitled to be heard upon those questions, and, if necessary, to be allowed an opportunity of proving his averments in regard thereto.

I am accordingly of opinion that a finding should be pronounced in the terms which I have indicated, and that the cause should be remitted to the Lord Ordinary to dispose of the questions which still remain.

LORD DUNDAS and LORD MACKENZIE concurred.

The LORD JUSTICE-CLERK was presiding at a trial in the Justiciary Court.

LORD ARDWALL was presiding at a jury trial.

The Court pronounced this interlocutor—

"Recal the said interlocutor: Find that the bond and disposition in security, dated 4th June 1907, granted by the pursuer Mrs Lillias Ballantyne Garroway or Young, and described in the summons, was not signed by the pursuer and her husband James Young in presence of the instrumentary witnesses Thomas Reilly and Robert Gentles, and that they did not acknowledge their signatures to said witnesses: Therefore find that the said bond and disposition in security was not duly and validly executed by the pursuer and her husband: With these findings remit to the said Lord Ordinary to proceed further with the cause," &c.

Counsel for the Pursuer (Reclaimer)—  
Johnston, K.C.—Kirkland. Agents—  
Oliphant & Murray, W.S.

Counsel for the Defenders (Respondents)—  
Morison, K.C.—Chree. Agents—Macintosh & Boyd, W.S.

Saturday, November 20.

## FIRST DIVISION.

(Before Seven Judges.)

### EDINBURGH TOWN COUNCIL v. EDINBURGH DISTRESS COMMITTEE.

*Burgh—Unemployed Workmen Act 1905 (5 Edw. VII, cap. 18)—Rate Contribution to Distress Committee—Right of Town Council to Object to Application of Rate Money.*

The Unemployed Workmen Act 1905, as applied to Scotland, authorises distress committees to defray their expenses partly by voluntary contributions and partly by contributions "made on the demand of the distress committee by the town council and paid as part of the expenses of the council." It is provided, however, that a separate account shall be kept of all sums supplied by the town councils, and only certain specified expenses paid out of that account. The Distress Committee for the City of Edinburgh having made a demand on the Town Council for certain sums which they proposed to apply in defraying certain specified expenses, held (by a majority—*diss.* the Lord Justice-Clerk and Lords Ardwall and Dundas) that the Town Council was *in titulo* to object to the demand and to question the proposed application of the money.

*Local Government—Audit—Objection to Accounts as Audited under the Direction of Local Government Board—Competency—Unemployed Workmen Act 1905 (5 Edw. VII, cap. 18), sec. 4 (3) g—Local Government (Scotland) Act 1889 (52 and 53 Vict. cap. 50), secs. 68 to 70.*

Under the Unemployed Workmen Act 1905, sec. 4 (3) g, the Local Government Board for Scotland were authorised to make regulations for the audit of accounts of any distress committee. In virtue of this power the Board issued regulations applying secs. 68 to 70 of the Local Government (Scotland) Act 1889 to such accounts; and they directed with regard to the accounts of the Distress Committee of the City of Edinburgh that certain expenses should be charged to the contributions made by the Town Council. The Town Council objected to the charge against their rate contribution, as contrary to the allocation of such money made by the Act. Held (by a majority—*diss.* the Lord Justice-Clerk and Lords Ardwall and Dundas) that the statutory allocation of the expenses of the Distress Committee could not be affected by the provisions for audit made by the Local Government Board, and that the Town Council was not precluded from objecting to the charge against their contribution.

**Local Government—Unemployed Workmen Act 1905** (5 Edw. VII, cap. 18), sec. 1 (6) a, i to iii—**Distress Committee—Rate Contribution**—“**Establishment Charges**,” “**Emigration or Removal to Another Area**,” “**Acquisition of Land**” — **Expenses of Equipment of Farm Colony and Conveyance of Workmen to and from Colony.**

The Unemployed Workmen Act 1905, sec. 1 (6) a, i to iii, provides that contributions by town councils to the expenses of distress committees shall only be applied to establishment charges, expenses of emigration or removal to another area of unemployed, and expenses incurred in relation to the acquisition of land. The Distress Committee for the City of Edinburgh having purchased land in the neighbourhood of the city, set up a farm colony and conveyed its unemployed workmen to and from the colony by rail. It asked a contribution from the Town Council to defray, *inter alia*, the expenses of equipment of the colony and transport of labour, and the Town Council objected. *Held* that these expenses were not “establishment charges,” or “expenses of emigration or removal to another area,” or “in relation to the acquisition of land.”

The Unemployed Workmen Act 1905 (5 Edw. VII, cap. 18), as altered in terms of the application clause of the Act (section 5) to Scottish burghs with a population of 50,000 and over, enacts—“1. (1) For the purposes of this Act there shall be established by order of the Local Government Board for Scotland, under this Act, a distress committee, consisting partly of members of the town council and partly of members of the parish council of every parish wholly or partly within the burgh, and of persons experienced in the relief of distress. . . . (2) The distress committee shall make themselves acquainted with the conditions of labour within their area, and shall receive, inquire into, and discriminate between any applications made to them from persons unemployed. . . . (5) The distress committee may, if they think fit, in any case of an unemployed person, assist that person by aiding the emigration or removal to another area of that person and any of his dependants, or by providing, or contributing towards the provision of, temporary work, in such manner as they think best calculated to put him in a position to obtain regular work or other means of supporting himself. (6) Any expenses of the distress committee under this Act shall be defrayed out of a central fund under their management, which shall be supplied by voluntary contributions given for the purpose, and by contributions made on the demand of the distress committee by the town council and paid as part of the expenses of the council: Provided that (a) A separate account shall be kept of all sums supplied by contributions made by the town councils, and no expenses except (i) establishment charges of the distress committee, including the expenses

incurred by them in respect of labour exchanges and employment registers and in the collection of information; and (ii) the expenses incurred by the distress committee in aiding the emigration or removal to another area of an unemployed person and of any of his dependants; and (iii) the expenses incurred by the distress committee in relation to the acquisition, with the consent of the Local Government Board for Scotland, of land for the purposes of this Act—shall be paid out of that account. (b) No such contribution shall in any year exceed the amount which would be produced by a rate of one halfpenny in the pound, calculated on the whole rateable value of the burgh, or such higher rate not exceeding one penny as the Local Government Board for Scotland may approve. . . . 4. (3) The Local Government Board for Scotland may make regulations for carrying into effect this Act, and may by those regulations amongst other things provide— . . . (b) for authorising the establishment, with the consent of the Local Government Board for Scotland, of farm colonies by a distress committee established under this Act, and the provision, with the like consent, by such a body of temporary accommodation for persons for whom work upon the land is provided; and (c) for authorising and regulating the acquisition by a distress committee of land by agreement for the purposes of this Act and the disposal of any land so acquired; . . . and (e) for authorising the acceptance of any money or property by a distress committee established under this Act, and for regulating the administration of any money or property so acquired; and (f) for the payment of any receipts of a distress committee to the central fund, and for the apportionment, if necessary, of those receipts between the voluntary contribution account and the rate contribution account of that fund; and (g) for the audit of the accounts of any distress committee established under this Act in the same manner and subject to the same provisions as to any matters incidental to the audit or consequential thereon as the accounts of a county council; and (h) for enforcing the payment of contributions by any councils liable to make such contributions in pursuance of this Act, and for authorising and regulating the borrowing of money by a distress committee established under this Act; . . . and (m) for the application for the purposes of this Act, as respects any matters to be dealt with by the regulations, of any provision in any Act of Parliament dealing with the like matters, with any necessary modifications or adaptations.”

The Burgh Distress Committees (Unemployed Workmen) (Scotland) Order 1905 provides—“Article XI. Any contribution which the town council are required in terms of the Act to make to the distress committee shall be defrayed out of the ‘burgh general improvement assessment,’ or any other assessment leviable in equal proportions on owners and occupiers, and no such contribution by a town council

shall in any year exceed the amount which would be produced by a rate of one half-penny in the pound calculated on the whole rateable value of the burgh, or such higher rate not exceeding one penny as we may approve: Provided that any rate under this Order shall not be reckoned in calculating the amount of such assessment for the purpose of any statutory limit on such assessment."

The Local Government (Scotland) Act 1889 (52 and 53 Vict. cap. 50), sec. 70, enacts—"The following regulations with respect to audit shall be observed: (that is to say) . . . (4) Any ratepayer may make any objection to such accounts or any part thereof, and shall transmit the same and the grounds thereof in writing to the county auditor, and a copy thereof to the officer concerned, two clear days before the time fixed for the audit, and any ratepayer may be present at the audit and may support any objection made as hereinbefore provided either by himself or by any other ratepayer. (5) If it shall appear to any county auditor acting in pursuance of this section that any payment is in his opinion contrary to law and should be disallowed, or that any sum which in his opinion ought to have been, is not brought into account by any person, whether such payment or failure to account has been made matter of objection or not, he shall by an interim report under his hand report thereon to the [Board] setting forth the grounds of his opinion as aforesaid; and the [Board] shall cause such interim report to be intimated to the objector, if any, and to the officer or other person affected thereby; and after due inquiry the [Board] shall decide all questions raised by such interim report, and shall disallow all illegal payments and surcharge the same on the person or persons making them, and shall allow all sums which ought to have been, but have not been, brought into account. (6) If the [Board] shall be of opinion that although a disallowance or surcharge might be lawfully made, the subject-matter thereof was incurred under such circumstances as to make it fair and equitable that the disallowance or surcharge should not be made, the [Board] may abstain from making the same."

The Regulations (Organisation for Unemployed) (Scotland) 1905 provide, *inter alia*—"Article X. A distress committee may, for efficiently carrying out their powers and duties, employ such officers as are necessary.

"Article XI. A distress committee shall, if possible, obtain office accommodation in premises belonging to a local authority, and where that cannot be done, may provide such accommodation for themselves by hiring suitable premises, on lease, for a period not exceeding the currency of the Act. . . .

"Article XIV. (1) All receipts of a distress committee, from whatever source, shall be carried to the central fund, and all payments shall be made in the first instance out of that fund. Such receipts shall be paid into an incorporated or joint-stock

bank, including any branch thereof, for that purpose appointed by the distress committee, and such payments shall be made by cheques drawn upon such bank and signed by two members of the distress committee and countersigned by the clerk to the distress committee. (2) The distress committee shall keep regular and complete accounts of all receipts and expenditure, and, in particular, such accounts as are necessary to comply with the provisions of section 1 (6) of the Act. (3) A distress committee shall cause all receipts arising from the working of a farm colony to be carried to the central fund and to be afterwards transferred to the credit of the account of voluntary contributions received by the distress committee.

"Note.—Article 14 (3) has by Order by the Local Government Board for Scotland, dated 14th May 1909, been amended to read as follows:—"A distress committee shall cause all receipts arising from the working of a farm colony to be apportioned between the voluntary contribution account and the rate contribution account in proportion to the current working expenditure of the farm colony which these accounts respectively have to bear."

"Article XV. The accounts of a distress committee and of the officers of the distress Committee shall be made up and audited in like manner and subject to the same provisions as the accounts of a county council, and sections 68 to 70 of the Local Government (Scotland) Act 1889 shall apply accordingly, with the necessary modifications and, in particular, with the modification herein set forth, that is to say, 'The Board' shall be substituted for 'The Secretary for Scotland.'

"Article XVI. The distress committee shall from time to time cause a requisition to be sent to the town council requiring them to pay the sum or sums which under the provisions of the Act they are liable to contribute to the central fund in aid of the expenditure thereout for the purposes set forth in the Act, and the town council shall forthwith pay to the distress committee the said sum or sums without any deduction whatever. (2) For enforcing the payment of a contribution by a town council liable to make contributions in pursuance of the Act, such parts of sections 175 and 176 of the Public Health (Scotland) Act 1897 as prescribe the procedure to be followed on default of any local authority to make payment of any contributions payable by them, shall apply as if, with the necessary modifications, they were herein re-enacted, and in terms made applicable to the payment and recovery of a contribution to be made by a town council on the demand of a distress committee."

On June 19, 1909, the Provost, Magistrates, and Council of the City of Edinburgh, *first parties*, and the Distress Committee for the City of Edinburgh, constituted and acting under the Unemployed Workmen Act 1905, *second parties*, presented to the Court a Special Case. The first parties objected to the mode in which the accounts of the second parties had been made up, and had refused to pay the amount requisitioned from them.

The case stated—"2. An abstract of the accounts kept by the second parties for

the financial year from 15th May 1907 to 15th May 1908 has been published. . . . The accounts were made up by the second parties according to special instructions given to them by the Local Government Board for Scotland. In particular, the second parties, on the instructions of the Local Government Board for Scotland, debited to the Rate Contribution Account certain items of expenditure hereinafter detailed which the first parties contend are not properly chargeable against the Rate Contribution Account. These accounts were regularly audited by the auditor appointed by the Local Government Board for Scotland in terms of Art. XV of the Regulations (Organisation for Unemployed) (Scotland) 1905, and the auditor granted his certificate on 17th July 1908. No one lodged with the auditor any objections to the said accounts.

"3. On 20th July 1908 the second parties made a demand upon the first parties for the sum of £3203, 2s. 4½d., being the balance of £3379, 13s. 4½d. charged in the said audited accounts against the Rate Contribution Account, less a sum of £176, 11s. paid by the first parties between the close of the accounts and the date of the requisition. . . . Said sum is within the statutory limit for which the second parties may make requisitions.

"4. In bringing out the said balance of £3203, 2s. 4½d., the following items, *inter alia*, were debited to the Rate Contribution Account, viz. :—

"(a) The sums paid for railway fares of workmen to and from Murieston . . .	£859	1	7
(b) Certain sums in connection with the working of Murieston Farm Colony, namely:—			
(1) For purchase of seeds and plants	£83	10	1
(2) For furnishings and fittings . . .	225	19	11
(3) For implements and utensils . . .	229	14	10
(4) For sums paid in salaries, taxes, stationery, and sundries . . .	123	13	11
(5) For cartage of refuse . . .	441	9	3
(6) For carriage of goods . . .	14	1	4
(7) (a) The assessed value of work at railway siding . . .	338	10	0
(b) The assessed value of work in repairing buildings and drains . . .	273	4	0
		1730	3
		£2589	4
(c) Sums paid in salaries in carrying on the 'Help' Factory, amounting to £173, 13s. 4d., and rent of factory, £50 . . .	223	13	4
	£2812	18	3

"With regard to these items parties are agreed on the explanations contained in the next four articles hereof.

"5. At Martinmas 1907 the second parties, acting under their statutory powers, purchased, with the consent of the Local Government Board, the estate of Murieston in the county of Midlothian. The price of that estate was paid with funds raised by a loan from the first parties. The second parties provide relief work for considerable numbers of men upon the estate. The work carried on is that of improving the soil by incorporating large quantities of city refuse. The estate is about 13½ miles distant from Edinburgh, and as there is not sufficient accommodation at or near Murieston for the men employed there, the greater proportion of them have been conveyed backwards and forwards by train. The total amount of the railway fares of these men for the year prior to 15th May 1908 was £859, 1s. 7d.

"6. In order efficiently and economically to take on to the estate of Murieston the city refuse used in the work of improving the land, a railway siding which was upon the estate when it was purchased was relaid and greatly extended. That work was done by unemployed men. Similarly, a large number of repairs and improvements were made upon the farm steading and other buildings on the estate, which were in a dilapidated condition—ruinous walls were repaired, buildings re-roofed, and other works of a similar character executed. The wages paid in connection with the work on the railway siding, repairs to buildings, pointing walls, formation of new drains, &c., have to the extent of the assessed value of said work—*i.e.*, the amount equivalent to the estimated cost at which said work would have been done by contract—been charged to the Rate Contribution Account. The value of the work at the railway siding so assessed is £338, 10s., and of the repairs to buildings, &c., £273, 4s. The operations so carried out on the estate were of a beneficial character.

"7. In like manner the second parties made disbursements (a) for seeds and plants appropriate for the utilisation of the estate as a farm colony; (b) for furnishings and fittings for the second parties' offices at Murieston, and for the accommodation required and used at Murieston for the men resident there; (c) for implements and utensils necessary for the working of the land at Murieston; (d) for salary of manager at Murieston, taxes, cleaning, coal and light, stationery, books, printing and advertising, and sundry other items of expenditure in connection with the administration of Murieston estate; (e) for carting refuse to be incorporated with the soil for its improvement; and (f) for the carriage of sundry goods. The sums so expended amounted respectively to £83, 10s. 1d., £225, 19s. 11d., £229, 14s. 10d., £123, 13s. 11d., £441, 9s. 3d., and £14, 1s. 4d., all as before mentioned.

"8. As a means of finding work for the unemployed the second parties carry on

at Calton Road a factory, where work is done in breaking firewood, collecting and sorting waste-paper, &c. In connection with this factory, and in order to supervise the work done there by the unemployed, the second parties employ a manager and an assistant, who form part of their permanent staff. The salaries paid to these officials amount to the sum of £173, 13s. 4d. before mentioned, and the rent of the premises in which the work is carried on is £50."

The First Parties contended—"(*First*) that the first parties are not bound to pay any requisition by the second parties, irrespective of whether the sums demanded have been or will be applied in meeting expenditure falling within proviso (a) of sub-section (6) of section 1 of the Act as payable out of the Rate Contribution Account; (*Second*) that the second parties are only entitled to requisition from the first parties such sums as have been or are to be applied to purposes for which the Rate Contribution may be levied, not exceeding the limit fixed by the Act; that the Rate Contribution may only be levied to meet expenditure falling within the three classes set forth in proviso (a) of section 1 (6) of the Act; and that the items before mentioned, amounting to £2812, 18s. 3d., included in the amount demanded under the said requisition of date 20th July 1908, do not fall within the said three classes of expenditure, and accordingly are not chargeable against the Rate Contribution leviable under the Act; and (*Third*) that it is *ultra vires* of the second parties, or the auditor, or the Local Government Board for Scotland, to charge or allow to be charged against the Rate Contribution Account the foresaid items which, as the first parties contend, do not on a sound construction of the Act fall to be so charged, and, accordingly, that the first parties are entitled, notwithstanding the foresaid audit, to plead that the said items objected to by them as aforesaid do not fall within the purposes for which contributions can be demanded from them under the provisions of sub-section (6) of section 1 of the Act."

The Second Parties on the other hand contended—"(*First*) that the first parties have no right to question applications of any moneys requisitioned by the second parties under the provisions of the foresaid Act or Regulations, or to refuse payment thereof so long as the amount requisitioned does not exceed the limit fixed by the Act; (*Second*) that the second parties' accounts, after being audited and certified by the auditor as correct in terms of the Regulations, are no longer open to challenge; and (*Third*) that the various items objected to by the first parties are properly chargeable against the Rate Contribution Account."

The questions for the Court were—"*(1)* Are the first parties entitled to refuse payment of the sum contained in the requisition of 20th July 1908 on the ground that the said sum or any part thereof does not fall under the terms

of proviso (a) of section 1 (6) of the Act? (*2*) Are the first parties precluded by the audit from objecting to any of the items included in the said requisition on the ground that the same do not fall within the purposes for which contributions can be demanded from them in terms of the provisions of the Act? (*3*) Do the items objected to by the first parties, amounting to £2812, 18s. 3d., or any of them, and if so, which, fall under the terms of proviso (a) of section 1 (6) of the Act?"

The case was heard by the First Division on 16th July 1909, and at the close of the debate the Court pronounced the following interlocutor:—"The Lords, in respect of the importance of the questions involved, appoint the cause to be argued by one counsel on each side before the Judges of this Division along with three Judges of the Second Division on the day of \_\_\_\_\_, and appoint the printed papers in the cause, including copies of this interlocutor, to be boxed to the said Judges of the Second Division."

The case was heard before the Lord President, the Lord Justice-Clerk, and Lords Kinneir, Low, Ardwall, Dundas, and Johnston.

Argued for the second parties—Any ratepayer could object before the auditor to certain expenditure being debited to the rates instead of to the voluntary account, but the auditor was final, unless he had exceeded his powers. The Town Council as such had nothing to do with the dispute, and were simply part of the machinery provided for handing over the money. They had nothing to do with the purpose for which the money was asked. The situation was precisely similar in other local administrations where one rating body was made servient to another as regards machinery, and in every one of those cases it could equally well be maintained that the rating body called on could object, *e.g.*, the School Board and the Parish Council. The Parish Council could not ask what the money was wanted for—Education (Scotland) Act 1908 (8 Edw. VII, ch. 63), section 23, sub-section 6, repealing section 48 of the Education (Scotland) Act 1872 (35 and 36 Vict. ch. 62). Another example was the Lunatics (Scotland) Act 1857 (20 and 21 Vict. ch. 71), section 54. Here too the only check was an audit. Again in the Prisons (Scotland) Act 1877 (40 and 41 Vict. ch. 53), section 62, the amount was actually made a charge on the rate and could be paid before the rate was recovered and no provision was made for a separate rate. In the Local Government (Scotland) Act 1894 (57 and 58 Vict. ch. 58) there was a difficulty of a similar kind with regard to the position of the Landward Committee—sections 23 (3), 27 (1 and 3), and 37. There was a separate administration, but no separate means to raise money. The analogy between the Distress Committee and the Landward Committee was practically complete. Here, too, there was no right of control over the Landward Committee. [LORD PRESIDENT

—Suppose the Distress Committee passed a minute resolving to ignore section 1 (6), what would the remedy be under the argument? That would clearly be an excess of power. *Ultra vires* was not the same thing as an administrative mistake in the interpretation of a statute. The Distress Committee were not obliged to wait for the money. Suppose they asked £1000, the Town Council could not say—Tell us what you are going to do with it. The deficiency asked for might be either a realised or a budget deficiency. In such cases the practice was not to wait till the money was spent, but to ask it in advance. The Town Council could not be asked to use its machinery above a certain rate, but incurring, defraying, and keeping the accounts was the business of the Distress Committee, and it had this of good reason in it, that 16 out of 35 of the Distress Committee were members of the Town Council. It would be extraordinary if, after the audit was complete, it could be re-opened, not on the ground of *ultra vires*, but on the ground of a mistake as to the meaning of establishment charges. As to the particular items objected to, establishment charges must include salaries. No Committee was possible without an office. *b* (2 and 4) were therefore proper charges to the rate account. *b* (3) was as plainly an establishment charge as office furniture, and was necessary to set up an operatives' factory. This included the equipment of the labour colony. *b*, 7 (*a* and *b*) were expenses arising out of the acquisition of land. *b* 1 was good as a first year's charge to enable a start to be made, but was not good for future working. So also *a* was a good charge, as transit from Edinburgh to Murieston was a permanent condition of running the colony. In the Isolation Hospitals Act 1893 (56 and 57 Vict. ch. 68), section 17, an analogous definition of establishment charges was given.

Argued for the first parties—The Act provided a safeguard against the Distress Committee putting too much on the rates by enacting that a separate account should be kept, and only certain items debited to that account. The policy of the statute and the view of the Legislature was that wages were not to be put on the rates. Article XI of the "Burgh Distress Committees (Unemployed Workmen) (Scotland) Order 1905" showed that this was not a case where a Town Council was entitled to impose a separate assessment. The amount required was to be taken out of existing assessments. Article XVI (1) of "The Regulations (Organisation for Unemployed) (Scotland) 1905" showed that all that the Town Council could be obliged to pay was the amount covered by the ratepayers' account. The Public Health (Scotland) Act 1897 showed that it was really a debt of the Town Council to the Distress Committee, and, failing payment, the Distress Committee had power to get it out of another party who is not a debtor, viz., the ratepayer. The Town Council had no *locus standi* before the auditor. In the

Local Government (Scotland) Act 1889 there was no power conferred on the auditor or the Local Government Board to say whether money was to be debited to certain accounts. This was a question as to the construction of the statute, and not for the auditor or the Local Government Board. There was no provision in the 1889 Act that the audit was to be final. The assessment imposed was one of many, and it was impossible for particular ratepayers to know whether they were affected or not. The position of a school rate was different, because a separate rate was levied for that particular purpose, and the Parish Council was merely the collector of a specific sum for the School Board, and accordingly the Parish Council had to pay over every penny they got. Here it was quite different, as the Town Council took the money out of the general assessments, and the Distress Committee were entitled to go month by month and ask money, while the School Board were bound to make their demand at stated periods. It was nowhere said that the Parish Council owed a debt to the School Board, while here the statute expressly said that the Town Council were to be debtors of the Distress Committee (section 1 (6) of the Act). The money must come out of the Town Council's general funds. There was no reason for suggesting that the Distress Committee could levy a rate directly. The statute was quite clear that the Regulations were to enforce payment from the debtor and not from the ratepayer of the debtor. To construe section 4 (3) *h* to mean that the Local Government Board could give the Distress Committee authority to levy directly was unwarranted. This enforced the view that the ratepayer had no *locus standi* in the audit. For the purposes of section 4 (3) *h* the Local Government Board could have issued regulations authorising the Distress Committee to recover the amount as a debt as provided in section 176 of the Public Health (Scotland) Act 1897 (60 and 61 Vict. c. 38). Suppose the Town Council had been sued for the money and told that it was to be applied contrary to the statute, it would have been a good defence that this application was illegal, and it would have been no answer that the accounts were audited. There were only three legal charges in the Act capable of being put against the ratepayers' account, viz., establishment charges, emigration and removal, and expenses incurred in the purchase of land, and none of the items objected to fell under these headings. It was out of the question to say that the District Committee and the Local Government Board in their name could levy rates for other charges and meet any objection by saying the accounts had been audited—*Dumbartonshire County Council v. Clydebank Police Commissioners*, October 19, 1893, 21 R. 12, 31 S.L.R. 22; and as to surcharges, *Maclachlan & Mackinnon v. Cameron*, 1899 (O.H.) 6 S.L.T. 384; *Caledonian Railway Company v. Corporation of Glasgow*, July 19, 1905, 7 F. 1020, 42

S.L.R. 773; and *Hamilton and Others v. Nisbet and Others*, July 19, 1905, 7 F. 1034, 42 S.L.R. 781, the street register cases.

At advising—

LORD PRESIDENT—The question that has to be determined in this Special Case arises in respect of the work of the Distress Committee for the city of Edinburgh, constituted and acting under the Unemployed Workmen Act 1905. The Unemployed Workmen Act 1905 is an Act which, in the body of it, makes different arrangements for London and several other places. There is an application clause to Scotland which by its effect utilises both the London clauses and the other clauses. It would be very tedious were I to state in detail the precise way in which the words of the Act are altered by the application clause. The alterations made are very considerable, as your Lordships will have noticed from the copy supplied, in which the alterations are put in red ink, but I do not think we need trouble about this matter, because there has been no controversy between the parties as to the precise effect of this application clause upon the phraseology of the Act. As altered, the clause, section 1 (6), with which we have to do runs thus—“Any expenses of the Distress Committee under this Act shall be defrayed out of a Central Fund under their management, which shall be supplied by voluntary contributions given for the purpose, and by contributions made on the demand of the Distress Committee by the Town Council, and paid as part of the expenses of the Council, provided that a separate account shall be kept of all sums supplied by contributions made by the Town Council, and no expenses except”—and then come three headings—“shall be paid out of that account.” The scheme of the statute, therefore, is that there are two sources of the revenues of the Distress Committee—(1) voluntary contributions; (2) contributions demanded from the Town Council, paid by them, and paid as part of the expenses of the Council. A separate account is to be kept of these expenses, and the statute says that no expenses except certain expenses which it particularises shall be paid out of the rate portion of the account.

Now the Distress Committee made a demand upon the Town Council of Edinburgh, these being respectively the second and the first parties in this case, for a sum of £3000 odds. At the same time they quite frankly showed their account and the way in which they proposed that their expenses should be dealt with, and the Town Council thereupon demurred to paying the whole sum demanded upon the ground that the accounts showed, as they contended, that the Distress Committee proposed to contravene the proviso which I have partially read and to debit expenses to what I may call the rate portion of the account which did not fall within any of the three heads particularised in the proviso; and the matter referred to your

Lordships in this Special Case is whether the Town Council are bound to pay the sum. Now the second parties, the Distress Committee, make two answers to the refusal of the Town Council. They say, first of all, that they, the Town Council, have no power of criticism in this matter. They point out—what is the fact—that these accounts are audited by the Local Government Board under a provision as to audit which the Local Government Board laid down in virtue of the powers which are given them by section 4, sub-section 3, of the statute as to various things and, *inter alia*, as to providing for an audit. They also point out as a fact that the Local Government Board really instructed the auditor to divide the expenses in the way in which he has, and that they have been properly divided, and that being so, they say that the Town Council have no more to do with the matter. Secondly, they say that, even if they are not right on the first point, these expenses which they propose to charge against this fund do fall under one of the particularised items in the proviso, viz., item 1, “Establishment charges of the Distress Committee,” or perhaps under 2, “Expenses incurred by the Distress Committee in aiding emigration or removal to another area of an unemployed person.” I shall recur to this question later, for it is necessary first of all to deal with the first of these answers, because it is of a prejudicial character, and if sound would prevent us going into the latter point.

The work that is committed to the Distress Committee is a difficult and delicate one, and it might well be that Parliament had provided for their being able to call for a certain contribution and then had left it to them under certain checks to apply it. But I have not been able to see that it has done so. I am driven by the words of the Act to the conclusion that the contributions which they are entitled to demand from the Town Council is a contribution that is payable only under the sanction of the proviso, and I have been quite unable to bring my mind to the view that a person who is bound to pay under a statute and who finds in the statute a certain condition which must be fulfilled if he is to pay is not *in titulo* to raise the question of whether that condition has been or has not been fulfilled. I think it would require explicit words in the statute to take away that right from him and to vest it in someone else. It was sought in argument to liken the position of the Town Council in this matter to that of bodies who act as mere collectors for other bodies to whom they hand over the money, and there are several instances of that which can be adduced. But I think that when you come to look at the phraseology of the Acts which provide for the payments made in the cases so instanced, you find an absolute contrast between them and the present case. It is not necessary to go through them all, but I shall take as an example the Education Act and the provision for the school rate. The provision for the school rate is under section 44 of the

Education Act of 1872. It provides that "Any sum required to meet a deficiency in the school fund . . . shall be provided by means of a local rate"; and then it goes on—"The school board of each parish and burgh shall annually"—I am leaving out words that do not matter—"certify to the parochial board"—that of course is now changed to the parish council—"or other authority charged with the duty of levying the assessment for relief of the poor . . . the amount of the deficiency . . . required to be provided by means of a local rate; and the said" parish council "is hereby authorised and required to add the same under the name of 'school rate' to the next assessment for relief of the poor, and to lay on and assess the same" in a certain way. Now, one cannot read those words without seeing that the parish council in that case was put in the office of a mere collector, and the difference between that case and the present is simply that there is no proviso in the Education Act. There is no condition to be fulfilled before the parish council has to do what it is told to do except the simple and sole condition of the school board certifying to the amount of the deficiency and the amount of the rate that they wish imposed; and the whole condition is implemented the moment that the demand is made. Well, what more violent contrast can there be than between that case and the case here, where the payment itself is subjected to a proviso? Another matter which was supposed to create a difficulty upon this view of the matter was this. It was said, Suppose the Distress Committee here made the demand before their accounts were ready, what then? Well, I think that the result would have been that the Town Council would have been bound to suppose that the Distress Committee were going to act exactly in accordance with the Act of Parliament, and would have been bound, therefore, to make the payment. But, then, after the Distress Committee had got the money, and when they came to deal with it, the objection of the Town Council would have been precisely the same as it is now, only it would have arisen at a different stage. It seems to me that as the Distress Committee have, quite rightly, told the Town Council how the money was used, the question can be raised at this stage by a special case. If, on the other hand, they had got the money first and then had proposed to use the money in a manner contrary to the Act, I suppose the question could have been raised, if necessary, by interdict. It seems to me to make no difference in the rights as between two parties to say that in one set of circumstances you can raise it by a prophylactic method, namely, by special case, and in other circumstances by interdict. That seems to me only to be matter of the remedy, and to have nothing to do with the right.

Next, with regard to the matter of audit that seems to me to leave the point exactly where it was. It is quite true that there is a power of audit which is under the control

of the Local Government Board. The audit is for general purposes, and for general purposes alone, and if I am right in my conclusion as regards the conditional obligation to pay, then it is quite clear that the mere fact that there is an audit afterwards cannot alter that condition, and that there again nothing can avail except the precise words of the Act of Parliament, which, if the Legislature so intended, should have relegated to the determination of the auditor, and to the auditor alone, the question as to whether the condition has been purified.

I pass next to the question whether the objection of the Town Council here is well founded. Here I am bound to say that I think one has not a little difficulty, owing to the question being brought before us by Special Case. We can only take the statements as we find them, and I am not quite certain that these are quite as full upon this matter as one might have wished, but we must take them as we find them. And here I must offer one word of explanation. One of the things that the Distress Committee may do is to "aid in emigration or removal," and another thing they may do is to "contribute towards the provision of temporary work in such a manner as they think best calculated to put him"—that is, the unemployed person—"in a position to obtain regular work." Now this Distress Committee has started a farm colony called Murieston. That farm colony, of course, is in the country, not in the City of Edinburgh. The expenses incurred by aiding emigration or removal to another area of an unemployed person is one of the particularised items, but the provision of temporary work is not. This farm colony being out of Edinburgh, it was necessary to take the unemployed people to it, and the cheapest and best way no doubt was to take them by railway; and one of the sums accordingly is £800 odds for railway fares for workmen to and from Murieston. All the other sums are in connection with Murieston itself. Of the two headings under which it is said that these things fall I will take first expenses incurred in "aiding emigration and removal." Now I do not think that by any possibility you can twist the words "emigration or removal" so as to mean taking a workman for a day to provide him with temporary work. That, *ex hypothesi*, does not fall within the class of expenditure for which the rates are to be employed. I think the journey to and fro is obviously an incident of that work, and cannot be called "emigration or removal," which I think is a more or less permanent process. Well, then, the other head is "Establishment charges of the Distress Committee." I cannot have any doubt as to what that means. It refers to the central organisation and establishment of the whole Distress Committee, their offices, their clerks, and so on, but it has not, I think, anything to do with a farm colony which exists for the simple purpose of providing temporary work. So far as there are central charges they are *pro tanto* charged against this fund, as we



see by the accounts which are made part of the Special Case, and no objection is made to those items; but the whole of the items which are specified upon page 5 of the Special Case seem to me to have to do with the farm colony and the Help Factory, which is in the same category and has nothing to do with central charges in the true sense of the word at all.

Accordingly, I am of opinion that the first question falls to be answered in the affirmative, the second in the negative, and the third in the negative.

**LORD JUSTICE-CLERK**—Your Lordship has so clearly and sufficiently stated the position as between a town council and a distress committee as laid down in the statute, that I feel it to be quite unnecessary to go over the details of that matter, accepting as I do all that your Lordship has said as both accurate and exhaustive. Accordingly, I shall speak only on the question which has arisen between the two public bodies.

I cannot say that I have found this case to be unattended with difficulty. The principal question raised is a new one, on which little guidance is to be obtained from authority. After consideration, however, I have found myself unable to concur in the judgment which is proposed by your Lordship upon the first and most important question in this Special Case.

That question is whether the first parties, the Town Council of Edinburgh, have the right in law to control the action of the second parties, the Distress Committee, in the exercise of their statutory duties, by refusing to assess the ratepayers for the money for which the second parties requisition, on the ground that they do not consider that the second parties are making proper use of the money. They are thus claiming the right to judge and decide on the competency of the second parties to apply money raised by assessment to particular purposes. It is this right which I have found myself unable to hold to be vested in them.

It would, of course, be in their power to refuse to assess for any sum greater than could be raised under the rating limitation given in the Act—no rate of a higher amount than the sum per pound authorised by the Act could be laid on.

But if the requisition presented to the Town Council is within the limit of rating per pound, then I hold that they are not entitled to refuse to assess, unless some proper revising authority placed them in the position of being debarred from assessing.

The purpose of the statutory arrangement for assessing plainly was to enable the parties in the position of the second parties to obtain the funds for carrying out their duties, without the ratepayers being subjected to the expense of a separate assessment, by giving them the power to call upon the first parties to add the necessary amount to the general burgh rate, and so get it collected by the officials who were ga'hering in the city assessments, the amount being simply added on to the

burgh rate. The convenient course of regulating collection in such a manner is nothing new.

My view is that there is no sufficient ground for saying that there was any other purpose in the clause regarding collection than to give convenient machinery for collection, by utilising the burgh machinery already existing—in short, that is a collecting provision and nothing else devised in order to prevent unnecessary depletion of funds intended for the promotion of a charitable purpose by heavy payments for collection of funds, which is too often little short of scandalous in very many organisations ostensibly intended to collect funds and apply them to carry out the charitable intention. This is not a case in which the position is such that if the requisitioning body uses funds provided by assessment in a manner that is not according to their powers, the ratepayers, who alone are interested, have no remedy. Every ratepayer has a legal right to impugn the expenditure of a body for whose purposes the rate is levied, on the ground that the body which administers the rate is acting illegally.

By sub-section 4 of section 20 of the Act of 1889 the accounts of the expenditure are subject to official audit, it being laid upon the auditor, not merely to see to proper vouching, but also to call the attention of the Local Government Board, as the controlling authority, to any items which in his view as auditor should be disallowed, and this he is to do whether any ratepayer has stated objection or not. The purpose of such report is, as it is expressed, that the Local Government Board “shall decide all questions raised.” This is the method provided by the statute for reviewing such matters as form the true subject of this case, and that the Town Council is not a dominating authority entitled to control the second parties, but only a collecting hand for gathering the funds required, the ratepayer and the auditor having the right and the duty respectively to stimulate the Local Government Board to exercise its powers of control to prevent any action by the Distress Committee causing an improper call upon the ratepayers.

I do not think it necessary to go into the question of further review by a court of law. All that, it seems to me, should be decided now is whether the first parties can competently raise the primary question in this case, and I am of opinion that they cannot.

As regards the questions of detail I say nothing. Lord Dundas, whose opinion I have seen, deals with them as I should be inclined to do, were I of opinion that they could be disposed of by this Court under this Special Case.

**LORD KINNEAR**—I agree in the opinion of the Lord President, and I have really nothing to add to his Lordship's opinion; but as the first question which we have to consider is certainly one of some general importance, I think it may be right to express my own views of it in my own

words. I should agree that if the question were whether the Town Council, or this Court, upon appeal by the Town Council, can interfere with the discretion of the Distress Committee in the execution of what your Lordship has called their very delicate and very difficult duties, I should regard it as a very startling proposition to say that we could; but that is not what we are asked to decide. The first point for consideration is whether there is any question of legal right as between the Distress Committee on the one hand, and the Town Council on the other, competently brought before this Court which we have jurisdiction to determine. It is perhaps somewhat difficult for either of the parties to this Special Case to say that there is no such question, because a Special Case proceeds upon agreement, and the agreement of the parties is that certain facts which they say concern their respective interests are truly set forth in the case, and that these facts raise a question of law upon which they desire the judgment of the Court. I do not, however, think that that is at all a conclusive consideration, because we still have to inquire whether the question of right which the parties bring before us in this particular form is a competent question for the decision of the Court if it were brought before it by any ordinary form of action at law; and I am of opinion that it is, for the reason that your Lordship in the chair has already given. I think the plain words of the statute exclude the construction that the Town Council is appointed to be a mere collecting body for the purpose of raising assessments that are to be contributed to the funds of the Distress Committee. The statute gives no direct or indirect power of assessment for rating to the Distress Committee, but it gives them a legal right, not to cause any levy upon the ratepayers, though that may be the consequence of their legal right, but to demand a contribution from the Town Council. That makes them direct creditors, and the Town Council the direct debtors, in a claim created by Act of Parliament of one body against the other. But then the Act that gives that claim goes on to provide by section 1 (6) (a) that a separate account shall be kept of the sums supplied by the Town Council and that no expenses except certain specified expenses shall be paid out of that account. That is a positive and perfectly clearly expressed qualification of the right of the Distress Committee to demand money from the Town Council. They are entitled to make the demand, the Council are bound to provide the money, provided it is within the statute; but if they say, "We are going to apply the money which we demand payment from you to purposes that are not within the condition limiting your liability," then I apprehend the Town Council must have a perfectly plain right to say, "You are going beyond the liability imposed upon us by the Act of Parliament"; and if it does make such a statement, then I apprehend it has exactly the same right to appeal to the

ordinary courts of law to determine the question of legal liability which is thus raised, as the Distress Committee have to appeal to the courts of law to enforce the demand which they are entitled to make. They say, on the one hand, "The statute gives us the right to demand a payment"; the Town Council say, on the other hand, "The statute gives you a right to demand a payment for certain purposes only, and you concede that you are demanding it for other purposes." There is a direct question of legal right which must be determined by somebody, and it can only be determined by the ordinary courts of law, because the statute has provided no other tribunal.

That appears to me to be an end of the question as to whether the Town Council has a *locus standi* to raise any question of this kind in the first place; and whether, in the second place, we have a jurisdiction to determine the question so raised. But then a separate point arises on the provisions of the regulations issued by the Local Government Board for audit of the accounts of the Distress Committee. Now I have no doubt that the Local Government Board, in issuing these regulations so far as they are directory, was acting within its power, and we must assume that the regulations are perfectly proper and expedient to make; but then I cannot infer by implication from anything that the Local Government Board has done an intention to deprive the Town Council of the legal right which I hold the statute has given to them, or to relieve the Distress Committee of the condition which this statute has imposed upon their right to demand contribution from the Town Council. I cannot find anything in the statute which could be held as committing to the judgment of the Local Government Board the question whether the statutory condition should stand or not, and therefore I should decline to read their regulations as implying a consequence that if expressed in plain words they would have no power to effect. The restriction of the Town Council's right has been ascribed to the Local Government Act of 1889, and in so far as they contain regulations for audit the provisions of that statute have been made applicable to the accounts of the Distress Committee. But if any inference can be drawn from the provision for allowing ratepayers to object to limit the right or title of other persons to dispute the claims of the body whose accounts are being audited, no such inference can in my opinion be made to apply in a question between the Town Council and the Distress Committee. The regulations of the Local Government Board derive their statutory force, not from the Act of 1889, but from the Unemployed Workmen Act of 1905, and the regulations they are authorised to make by that Act cannot be construed so as to defeat substantial rights created by the Act itself.

I am therefore of the same opinion as the Lord President upon the main question. As to the questions of detail I concur with his Lordship and I have nothing to add.

LORD LOW—I concur with your Lordship in the chair and with Lord Kinnear, and I would only add a single word in regard to those items which are objected to and which fall under number 7 of the charges enumerated on page 5 of the Special Case, because these are in a somewhat different position from the charges to which your Lordship in the chair specially referred to. These charges are first, £338, being “the assessed value of work at railway siding”; and secondly, £273, being “the assessed value of work in repairing buildings and drains.” Now it was argued for the Distress Committee that these expenses fall within the third head in the proviso which authorises expenses to be charged against the burgh contributions which are incurred by the Distress Committee in relation to their acquisition of land for the purposes of the Act; and it was contended that these charges might be regarded as expenses incurred in relation to the acquisition of Murieston. It seems to me that that view is untenable. I take it that expenses incurred in relation to the acquisition of land includes such things as law expenses, perhaps valuations, and so forth, but I cannot see how it can possibly cover expenses incurred in utilising the land after it has been acquired. Here the land was utilised by the construction of a railway siding and repairing certain buildings, and I think it is plain that such expenses do not fall within the purview of the third head of the proviso. With that addition I entirely concur with what your Lordship in the chair and Lord Kinnear have said, and I have nothing more to add.

LORD ARDWALL—I have had the privilege of reading the opinion written by Lord Dundas, with which I agree, and I have nothing to add. I may say that I concur in the opinion which has been delivered by the Lord Justice-Clerk.

LORD DUNDAS—The first question put to us in this Special Case involves, to my mind, considerable difficulty; but I have come to the conclusion that it ought to be answered in the negative. I am unable to see that the first parties have any right or title to scrutinise the application by the second parties of moneys requisitioned by them, or to refuse payment of the same so long as the amount demanded falls (as it admittedly does in this case) below the limit fixed by the statute. I humbly think that the first parties, the Town Council, as such, are in this matter mere collectors—a body whose statutory machinery for rating purposes is by the Statute of 1905 made available to another statutory body—the second parties. Such a situation does not appear to me to be in itself unreasonable; and I am unable to find any material distinction between the position of the first parties, as I conceive it to be, and that of other analogous cases in the region of statutory administration with which your Lordships are familiar, and to which we were referred at the discussion. I cannot

see that the first parties are here in the position of debtors against whom liability for a debt is sought to be made out; the money requisitioned is not, as I think, their money at all, but merely money passing formally through their hands from the ratepayers to the second parties. If a case of misapplication of funds requisitioned by the second parties arises, it seems to me that the Act of 1905 expressly provides a remedy to those whose money is *ex hypothesi* being misapplied, viz., the ratepayers, who, as I think, are the true debtors, and have the real right, title, and interest to protest against misapplication. By section 3 of the Act the Local Government Board for Scotland are authorised to make regulations for carrying the Act into effect, and, *inter alia*, (g) for the audit of the accounts of any distress committee established under the Act “in the same manner and subject to the same provisions as to any matters incidental to the audit or consequential thereon as the accounts of a county council.” In virtue of this authority the Local Government Board issued a regulation—article 15—which is printed in the case, and which seems to me to fall accurately within their powers, and to competently import the terms of the sections of the Local Government (Scotland) Act 1889 to which it refers, with the modification that “The Board” is to be substituted for “The Secretary for Scotland.” Turning to section 70 of the Act of 1889, one finds (sub-sections 4 and 5)—[*His Lordship here read the sections quoted above*]. It seems to me that the words of the sub-sections I have partially quoted are wide enough to include all such questions as are sought to be raised in the present case; and I think that the right and title to raise them are by the statute given to the ratepayers and not to the parties. I apprehend, as at present advised—though the question was not argued to us, and it is not necessary here to decide it—that a ratepayer who was dissatisfied with a decision by the Local Government Board might apply by any competent process to the Court; and if he could show that the Board in reaching their decision had proceeded *ultra vires*, might succeed in obtaining a decree of Court to that effect. If my apprehension is correct, the divergence of opinion in the present case as to the answer to be given to the first question becomes, to a large extent, one of form rather than of substance, for, on that assumption, such questions as are now sought to be raised could be competently tabulated before and decided by the Court in some future process; and I recognise that this Special Case affords a cheap and speedy method for their solution. But, for the reasons briefly above indicated, I am unable to hold that the first parties have any right or title to raise the subject-matter of the first question for the consideration of the Court.

The majority of your Lordships are of a contrary opinion upon this point; and it is therefore open to me (which it would not otherwise have been) to express a view

upon the merits of the case as disclosed in articles 4 to 8 thereof. I do not desire to do more than offer a very few remarks on this head. It is, I think, difficult, upon the rather scanty materials provided by the case, to pronounce a confident or final opinion in regard to all the items tabulated; and it rather appears to me that the questions involved are such as would (in the first instance, at all events) be at least as suitable for determination by a Government department—viz. the Local Government Board—as by the Court. For my own part I confess I should be disposed to give a more liberal interpretation to the words “establishment charges” than the majority of your Lordships are prepared to do. I do not think they need necessarily be limited to the proper charges of the head office of the Distress Committee. I observe that section 3 (b) of the statute expressly contemplates the “establishment” of farm colonies; and I should have thought the proper “establishment charges” of such colonies might, within reasonable limits, be brought under the application of the proviso (a) (i) to section 1 (6) of the Act, so as to admit some of the items shown in article 4 (b) of the Special Case, and perhaps (c) also. At the same time I think that item (a) is, even upon the most generous construction of the proviso, quite inadmissible; and the same remark would, in my judgment, apply to some of the items of head (b).

**LORD JOHNSTON**—I agree with your Lordship in the chair in thinking that the items objected to for the first parties in this case, amounting to £2812, 18s. 3d., are all of them items to which the proviso (a) of section 1, sub-section 6, of the Unemployed Workmen's Act 1905 do not apply, and I shall confine what I have to say to the prejudicial points which have been argued before us, as matters precluding our acting upon this opinion, and so holding that the first parties are entitled to refuse payment of these sums under the requisition of the second parties, of date 20th July 1908.

The Act of 1905 is drawn on a scheme which certainly makes it impossible to say of it that he who runs may read. It commences by creating distress committees for each of the metropolitan boroughs of London, brought into relation with one another by the creation, and placed under the control, of a central body. It then, by section 2, transmutes this London distress authority into one for the provinces in England, by slumping the functions of the central body and distress committees of London, and confiding them to a local distress committee. That some confusion should be created by this method of enactment is not to be wondered at. And it does not minimise this so far as Scotland is concerned that what is provided for the provinces in England is transferred to Scotland by a mere application clause—section 5—transmuting English terminology into Scottish.

The objects of the Act necessarily involve expenditure, and the principal provision

with regard to the source whence such expenditure is to be met is section 1, sub-section 6, which provides with regard to London that the expenses of the central body under the Act, and any sanctioned expenses of the distress committees under the Act, “shall be defrayed out of a central fund under the management of the central body,” to be fed by (a) voluntary contributions, and (b) by contributions made on the demand of the central body by the council of each metropolitan borough, in proportion to the rateable value of the borough, and paid “as part of the expenses of the council.” From what fund is not made clear. But it is clear that the contribution on demand of the borough is an obligation of the council, to be met, as any other obligation, out of the borough funds.

Under section 2 the distress committee of an English municipal borough and urban district with a population of 50,000 and upwards, which “shall be established by order of the Local Government Board,” is to have “the same duties and powers so far as applicable as are given by this Act to the distress committees and central body in London.” Consequently the distress committee of one of the larger English municipal boroughs have by reference, coupled with a good deal of implication, the power to demand a contribution from the council of the municipal borough, which must be paid as part of the expenses of the council—though again no particular fund from which the payment is made is pointed out. Section 2 of the Act is divided into three sub-heads, each of which has a declaration appended having reference to the particular provision which it makes, and the third sub-head winds up with this declaration, that “any expenses incurred by a council under this provision shall be paid . . . in the case of a borough council out of the borough fund or borough rate.” One cannot help suspecting that this declaration was really intended to be general, and in all cases to impose the burden of the contribution, on demand of the distress committee, on the borough fund or borough rate of the borough of question. But that is certainly not the enactment, for “the declaration expressly refers to an exceptional and not to the general case.

In order to make the Act applicable to Scotland “royal, parliamentary, or police borough” is declared to be the equivalent of the “municipal borough or urban district” in England, and “borough general improvement assessment,” or any other assessment leviable in equal proportions on owners and occupiers, is declared to be the equivalent of “borough fund or borough rate.” Hence in the general, as distinguished from the special case, there is no more indication for Scotland, than there is for England, of the source whence the municipal contribution on demand of the Distress Committee is to be met, except that it is to be “paid as part of the expenses of the council,” which in Scotland is declared to mean “the Town Council.”

The Local Government Board have evidently felt the pinch of this difficulty, for in their statutory rules and orders 1905, enacted under section 4 of the Act, they have in article 11 declared that any contribution which the town council are required in terms of the Act to make to the distress committee shall be defrayed out of the burgh general improvement assessment, &c. I question very much whether the Local Government Board had any power to make that declaration. But assuming that it had, or assuming that by implication the declaration at the end of sub-section 3 of section 2 of the Act can be read as general and not special, it still remains that the contribution on demand of the distress committee to be made by the town council can only be called for to defray certain limited charges, among which the items in question in this case are not, in your Lordship's opinion, in which I concur, included. That they have been so included is apparently on the instigation, if not on the positive instructions, of the Local Government Board. And the first prejudicial point which has been raised is that the Town Council of Edinburgh, which comes under the general case of sub-section 1, and not under the special case of sub-section 3 of section 2 of the Act, is not *in titulo* to object, but that objection is only competent to the individual ratepayer of the city.

I am unable to see any intelligible ground for this contention. The situation differs entirely from that created by the Education Act of 1872, the Lunacy Act of 1857, and the Prisons Act of 1877, to which we were referred. To take as a sufficient example the Education Act of 1872. By sections 43, 44 and 48 of the Act, which provide for the school board assessment or education rate, the deficit on the school board expenditure for the year, after applying their other sources of income, is to be ascertained by the school board, who are then not to indent upon the parish council for the sum they require to balance their expenditure, as if it were a sum to be provided by the parish council as a charge upon its own funds, but the school board is simply to intimate the sum required, and to call upon the parish council to lay on, collect, and hand over an assessment which will produce it, to which the statute itself gives the name of "school rate." In this the parish council is not meeting an obligation imposed upon it, but merely acting as the hand of the school board for the avoidance of multiplication of assessing and collecting machinery. The parish council have no concern with the amount of the school rate, and could not be heard to object that it was swollen by unauthorised expenditure. Such objection lies only in the mouth of the ratepayer, who may raise it by a suspension of a charge for his school rate or otherwise. But the case is quite different here. The contribution on demand is an obligation of the Town Council. They must find the means to pay it somehow, and I will assume competently and properly out of the burgh general improvement assessment. But supposing

that a ratepayer objected to pay that assessment, on the ground that it was enhanced to meet a demand which the distress committee had no right to make or the town council to pay, the question at issue could not be determined between him and his town council who lay on the assessment, because the distress committee would not be a party to the cause. Nor could the ratepayer have any *locus standi* to raise the question directly with the distress committee. The question at issue can be raised, and can only be raised, between the town council and the distress committee. This objection, therefore, of the Distress Committee is not well founded.

It is next maintained that the question is foreclosed by the concluded audit of the Distress Committee's account without objection. The provisions for audit are, under section 4 of the Act, that the Local Government Board may make regulations for the audit of the accounts of any distress authority established under this Act, in the same manner and subject to the same provisions as to any matters incidental to the audit, or consequential thereon, as the accounts of a county council. In their Statutory Rules and Orders, 1905, dated 14th November 1905, the Local Government Board have provided for an audit in like manner and subject to the same provisions as apply to the accounts of a county council under sections 68 to 70 of the Local Government Act 1889, with all necessary modifications. Turning to these sections it is clear that the object of the audit provided is to ascertain that the expenditure of the council and of its officials has been authorised and proper, and that neither it nor any of its officials fall to be surcharged with any particular payment. Over any such surcharge reported by the auditor, the Local Government Board has full power, either to direct or pass from the surcharge. But we are not concerned here with any question of surcharge. All the payments in question may be expenditure quite properly incurred by the Distress Committee, and yet the question remain, who is to find the money to meet them. That question is not covered by the provision for audit; nothing done by the auditor can preclude its being raised by the party interested, and that party is the Town Council. This objection therefore is, I think, also without foundation, and there is, therefore, nothing to prevent this Court entering into and disposing of, as your Lordship proposes to do, the merits of the question raised.

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

Counsel for the First Parties — D. - F. Dickson, K.C.—Cooper, K.C.—Macmillan. Agent—Thomas Hunter, W.S.

Counsel for the Second Parties—Clyde, K.C.—Fleming, K.C.—Hon. W. Watson. Agent—Arch. Campbell, S.S.C.