LORD CULLEN—I concur.

The Court refused the appeal and affirmed the interlocutors of the Sheriff and Sheriff-Substitute.

Counsel for the Appellant — Moncrieff, K.C. — Patrick. Agents — Macpherson & Mackay, W.S.

Counsel for Respondent—Hon. W. Watson, K.C.—Gentles. Agents—J. & F. Anderson, W.S.

Thursday, January 6.

FIRST DIVISION.

[Lord Anderson, Ordinary.

SLORACH *v.* WILLIAM KERR & COMPANY.

Expenses — Process — Separate Actions by Different Pursuers against Same Defenders for Same Negligent Act Leading to the Injury and Death of One Person.

Apart from specialties requiring separate actions to be raised, it is not legitimate to throw on an unsuccessful defender the expense of more than one action in respect of the same negligent act leading to the injury and death of one person.

Observed per the Lord President—"So far as this case is concerned I think we may allow the expenses of the two summonses, but it must be understood that if this practice should become general it may be necessary to lay down some general rule which will bring it to an end, and if necessary penalise it."

Mrs Frances Mary George or Slorach, Deveron House, Dumbarton, as an individual and as tutrix and administratrix-in-law of her four pupil children, brought an action against Messrs William Kerr & Company, machinery haulage merchants, Glasgow, concluding for damages in respect of the death of her husband, which she alleged to be due to the negligence of the defenders. Charles Slorach and others, the five children of the deceased, who were above the age of pupilarity, with consent of the said Mrs Slorach, brought a separate action against the same defenders, concluding for damages for the death of their father, which they averred was due to the same negligent act. Separate issues having been adjusted, the parties agreed that the two actions should be tried by one jury and on the same evidence, and that the productions lodged in the one action should be held as productions lodged in the other. The jury having awarded damages to the pursuers in each action, the defenders obtained rules upon the pursuers to show cause why a new trial should not be granted.

The Court having discharged the rules, the pursuers moved for expenses in each action up to the date of the trial, and referred to *Karrman* v. *Crosbie*, 1898, 25 R. 931, 35 S.L.R. 725.

LORD PRESIDENT—The question raised on this motion is whether the expenses of the two summonses which were raised (1) on behalf of the mother for herself and as tutrix for her pupil children, and (2) by the children who were above pupilarity, should be allowed. The question, of course, relates only to that part of the proceedings which was anterior to the trial.

Now this matter was the subject of a dictum by Lord Watson in the case of *Darling* v. *William Gray & Sons* (1892, 19 R. (H.L.) 31, 29 S.L.R. 910). He said—"There is not a single instance in which the Court has allowed two actions to be brought in respect of the same negligent act leading to the injury and death of one person. Even in cases where the right of relatives to sue has been recognised they must bring one suit, and one only, in which the damages due to them respectively might be assessed." I do not understand that dictum to mean that it is incompetent to present separate summonses, but—apart from specialties requiring separate actions to be raised—I understand it to mean that it is not legitimate to throw on the unsuccessful defender the expense of more than one action. I cannot say that in the present case I understand why the course was adopted of serving two summonses and making up two records. It rather appears to me to have been a wholly gratuitous and unnecessary expense, and it suggests that the dictum of Lord Watson requires to be brought to the notice of the profession.

So far as this case is concerned I think we may allow the expenses of the two summonses, but it must be understood that if this practice should become general it may be necessary to lay down some general rule which will bring it to an end and if necessary penalise it.

LORD MACKENZIE — I am of the same opinion.

LORD SKERRINGTON—I concur.

LORD CULLEN—I am of the same opinion.

The Court discharged the rules, of consent applied the verdicts, and in respect thereof decerned against the defenders for payment to each of the pursuers of the sum found due to them, and found the pursuers entitled to expenses.

Counsel for the Pursuers—Watt, K.C.—Aitchison. Agents—J. Miller Thomson & Company, W.S.

Counsel for the Defenders—Sandeman, K.C.—J. A. Christie. Agents—Balfour & Manson, S.S.C.

VALUATION APPEAL COURT.

Tuesday, January 11.

(Before Lord Salvesen, Lord Cullen, and Lord Hunter.)

BURNTISLAND HARBOUR COMMISSIONERS *v.* ASSESSOR FOR BURNTISLAND.

Valuation Cases — Value — Harbour — Method of Valuation—Revenue Principle or Contractor's Principle — Deficit on Year's Accounts.

A harbour during thirty years of its existence was valued on the revenue principle, *i.e.*, on the basis of the actual net receipts of the undertaking. Thereafter in a year in which the accounts of the harbour showed a loss, the assessor adopted the contractor's principle, and fixed the valuation at the rate of 1½ per cent. on £500,000 as the value of the undertaking. *Held* that the valuation ought to be made on the basis of the profits derived from the undertaking in the preceding year, and that where the accounts showed a deficiency the annual value fell to be entered as nil.

At a meeting of the Burgh Valuation Appeal Court of Burntisland on 23rd September 1920 the Burntisland Harbour Commissioners appealed against the following valuation of subjects in the burgh:—

Description of Subject.	Proprietor.	Tenant and Occupier.	Feu-duty or Ground Annual.	Yearly Rent or Value.
Harbour and wet docks, including railway sidings and fixed machinery	Burntisland Harbour Commissioners	Proprietors	—	£7500

They claimed that the amount of valuation to be substituted should be nil.

The Court having dismissed the application, the appellants obtained a Case for appeal.

The Case stated—The following *facts* were admitted or held to be proved:—"1. That the subjects the Burntisland harbour and wet docks, including railway sidings and fixed machinery, are owned by the appellants and occupied by them. 2. That the revenue or profits principle based on the abstract of accounts of revenue and expenditure of the appellants for each year had been adopted by the assessor and his predecessor for more than thirty years. 3. That in valuing the Burntisland harbour and docks the accounts of the Burntisland Harbour Commissioners for the year to 30th September 1919 showed an excess of expenditure over revenue of £3491, 6s. 4d. 4. That the amount of capital expended on the Burntisland harbour and docks is £661,713, as shown in the abstract of accounts for year to 30th September 1919."

The contentions of parties as stated in the Case were as follows—"It was maintained on behalf of the appellants, *inter alia*—(1) That the harbour and docks belonging to the appellants fell to be valued for the year 1920-21 on the revenue or profits principle, which had been followed for more than thirty years by the assessor and his predecessors in valuing the undertaking; (2) that for the year 1919-20 the valuation of the undertaking ascertained on the revenue principle was £3698, being the surplus of revenue after the deduction of expenditure for maintenance, wages, &c., based on the abstract of accounts of revenue and expenditure of the appellants for the year to 30th September 1918, and that the valuation for each of the prior years was ascertained by adopting the same principle; (3) that for the year 1920-21 there was an excess of expenditure over revenue of £3491, 6s. 4d., based on the abstract of accounts of revenue and expenditure of the appellants for the year to 30th September 1919, and that accordingly the subjects, in conformity with the principle of valuation hitherto adopted, fall to be entered in the valuation roll for the year 1920-21 at nil; (4) that the assessor in arriving at and fixing the valuation at £7500 for the year 1920-21 had adopted the contractor's principle by taking 1½ per cent. on £500,000 as the value of the undertaking (which was not admitted or proved), and that such a method of valuation for the subjects in question was totally inapplicable; (5) the contention of Mr Sulley for the assessor that the valuation should be £7500, which was arrived at by taking one-half of £15,000, being the yearly average valuation of the undertaking for a period of thirty years, and that the contractor's principle was a check on the valuation so arrived at, was unwarranted by any authority or principle and not appropriate in the circumstances.

"It was maintained, on the other hand, for the assessor, *inter alia*, that all heritable subjects fell to be entered in the yearly valuation roll at a yearly rent or value, and that such an extensive heritable subject capable of useful occupation could not be entered as nil; that where subjects such as the present undertaking, capable of productive use and of earning a return by such use, becomes unremunerative through any circumstances, the occupation is still beneficial and rateable and that the subjects in question were capable of use, being fully equipped as before the War. That owing to the War and relative Government restrictions the revenue had fallen off very considerably and the assessor was entitled to consider what other method of valuation should be adopted in the special circumstances of the present case in order to arrive at a fair valuation. That the present circumstancese were abnormal, peculiar, and artificial owing to the restrictions imposed by the Government and the Coal Controller, and that taking an average of the valuation of a number of years, £7500 was a very moderate sum to be adopted as the valuation. That even on the contractor's principle £7500 was a low estimate in arriving at a valuation."

The Case was heard on 11th January 1921.

Argued for the appellants—The assessor had adopted a purely arbitrary capital valuation of £500,000, for which no reason had been shown, since the accounts showed an actual loss for the year 1919-20 of about