been reasonably convinced that William Millar was able to pay this price. Now, I fear that from the beginning it became perfectly obvious that he was not in a position to do so in any reasonable sense of the expression. What happened was, that William Millar having had his offer accepted, set to work to obtain a loan on his newly acquired property, and obtained one for £17,000, and wrote the following letter on the 31st October 1874, the terms of which are material—"In reference to the recent purchase of property at 20 High Street from my late father's trustees for £25,000, I have arranged for a loan of £17,000, and as my father's trustees will have a good deal of money to lend, I beg favour to make application through you to them for the loan of £12,000 sterling, sending to them the following unexceptionable heritable and personal security. All is to be arranged at Martinmas term." Then followed a list of securities [printed *supra*, p. 356], all of which consist of reversions of property already burdened to a considerable extent, a life policy, and a one-seventh share of a sum of £10,000.

That appeal to the trustees was made on 31st October, and on the 2d November the trustees agreed to grant the loan of £12,000. They had not consulted the beneficiaries on the subject, though they had taken them along with them in the previous sale. They consented, however, to grant the loan on the security mentioned in his letter along with the personal obligation of William Millar and the collateral personal security of Mr Walker. The securities have turned out, after a lapse of ten years, entirely inadequate. No doubt the fall in the price of house property and other causes may have accelerated the result, although things lasted for some ten years before the event happened. But the question is, whether these securities were such as the trustees ought to have taken? I am clearly of opinion with the Lord Ordinary that there was no justification whatever for the trustees so dealing with the money of the trust. There was nothing to be gained for the trust by taking a postponed security on the personal security of two Glasgow traders. There was no difficulty in investing the trust-funds, and the only excuse for accepting postponed securities in return for the loan was to accommodate William Millar, and assist him in carrying out his part of the contract of sale. If it could be shown that the transaction was completed on any reasonable view of the interest of the estate, or that it was necessary to take second-class security because none other could be got, I should have given effect to every presumption in favour of justifying the trustees. But I see no ground for either of these contentions, nor indeed has either been maintained. It is unnecessary to go into the matter further, for the Lord Ordinary has very fully explained the grounds of his judgment, and I agree with him. I think it is unfortunate that the trustees kept the beneficiaries in the dark between the acceptance of William Millar's offer and the settlement of the transaction, because it is plain that whenever the beneficiaries came to know of the loan they expressed a very strong dissent. On the whole matter I am of opinion that the Lord Ordinary has decided rightly.

Lord Young, Lord Craighill, and Lord Rutherfurd Clark concurred.

The Court, after delaying the case to allow the deductions which admittedly fell to be made from the sum decerned for by the Lord Ordinary, pronounced this interlocutor:—

"Recal the Lord Ordinary's interlocutor: Find that the sum of £12,000 was lent by the trustees of the deceased John Millar to his son William Millar on unsubstantial and insufficient security contrary to the law and practice of trust administration: Find that the loss thereby sustained by the trust-estate amounts to £8654, 4s. 10d.: Find that the pursuer has paid premiums upon the policies of insurance on the life of William Millar, forming part of the said security to the amount of £153, 19s. 9d.: Ordain the defenders conjunctly and severally to make payment to the pursuers as judicial factor on the trust-estate, of the said sums of £8654, 4s. 10d. and £153, 19s. 9d., together with the sum of £656, 12s. 11d., being the interest due on the said sum of £8654, 4s. 10d. at this date, and the sum of £7, 2s. 2d., being the interest due on the said sum of £153, 19s. 9d. at this date, and with further interest on said sums of £8654, 4s. 10d. and £153, 19s. 9d. at the rate of 5 per cent. per annum till paid, and that on receiving from the pursuer an assignation to the securities held by him for said sum of £12,000: *Quoad ultra* assoilzie the defenders from the conclusions of the action: Find the pursuer entitled to expenses," &c.

Counsel for Pursuer — Asher, Q.C. — Low. Agent—Donald Mackenzie, W.S.

Counsel for Defenders—D.-F. Mackintosh, Q.C. —Dickson. Agents—C. & A. S. Douglas, W.S.

Tuesday, February 22.

FIRST DIVISION.

[Exchequer Cause.

THE HAMILTON WATERWORKS COMMISSIONERS *v.* ALLAN (SURVEYOR OF TAXES).

Revenue—Income Tax - Burgh Waterworks.

The Hamilton Waterworks Commissioners by local Act were empowered to levy, *inter alia*, a domestic water-rate of sixpence per pound upon the annual value of premises which were supplied with water, and section 34 of that Act provided that "it shall be lawful to the Commissioners to supply any corporation or company or person with water for other than domestic use at such rates and upon such terms and conditions as shall be agreed upon between the Commissioners and the corporation or company or person desirous of having such supply of water, and the rates so agreed upon shall be recoverable in the same manner as any other rates under this Act."

Hamilton Barracks being within the boun-

daries of the burgh were entitled to a supply of water from the Commissioners, but though Government were not obliged to take a supply, it was in fact supplied by meter, and charged for at a tariff scale, and the domestic rate was not levied. *Held* that the surplus revenue arising from the payment made under this agreement was profit from the sale of water, and so liable to assessment for income-tax under Schedule D of the Income-Tax Acts.

Glasgow Water Commissioners v. *Millar*, January 22, 1886, 13 R. 489, followed.

At a meeting of the Commissioners of Income Tax for the Middle Ward District of the county of Lanark held at Hamilton on 24th September 1886 an appeal was taken by the Hamilton Waterworks Commissioners against an additional assessment made on them under Schedule D for the year 1885-86 of £567 in respect of surplus profits, the duty upon which was £18, 18s., in the following circumstances, which are taken from the Case stated by the Commissioners of Income Tax:—The Hamilton Waterworks Commissioners were empowered by statute to supply the town of Hamilton with water, and to impose (1) a rate not exceeding sixpence in the pound, known as the "domestic water-rate," upon the annual value of the premises supplied with water; and (2) a rate called "the public water-rate," not exceeding sixpence in the pound, "upon all dwelling-houses and parts of dwelling-houses occupied as separate dwellings, and buildings used as dwelling-houses, inns, hotels, and taverns, and all shops warehouses, offices, manufactories, and other premises used for trade, manufacture, or business, situated within the limits of this Act, including the office-houses, yards, and pertinents of the same."

It was provided by the Hamilton Waterworks Act 1854, section 33, that "the supply of water for domestic use shall not be held to include a supply of water for railway purposes or for public baths, or for public establishments, or for cattle, or for horses, or washing carriages, when such horses and carriages are kept for hire or by a dealer, or for any trade, manufacture, or business whatsoever;" and (sec. 34) that "it shall be lawful for the Commissioners to supply any corporation or company or person with water for other than domestic use at such rates and upon such terms and conditions as shall be agreed upon." Such supplies were given and charged according to a tariff and scale made up yearly and published by the Commissioners. Among other rates in the tariff or scale published by the Water Commissioners for the year to Whitsunday 1885 was a charge of £1, 15s. for each 100,000 gallons of water supplied to persons who were charged with the public water-rate, and a charge of £3, 10s. for the like quantity of water where the person supplied was not charged with that rate. In these cases, where payment was made according to the quantity of water supplied, the domestic rate was not levied.

The Commissioners having more water than was required for the burgh, also supplied water to persons outside the boundaries of the burgh at rates which were fixed by agreement.

Hamilton Barracks, belonging to the Government, were situated within the boundaries of the burgh, and so were entitled to a supply of water from the Commissioners; but although it was not compulsory on the Government to take it, the water was supplied by the Commissioners, the quantity being measured by meter, and charged for at the tariff scale of £3, 10s. per every 100,000 gallons consumed, there being no charge for the "public water-rate" on the annual value of the barracks. The amount paid for the water supplied in the year to May 1885 was £396.

The question in this Case was whether the supply of water to the barracks formed a source of profit to the Commissioners as being a supply of water at rates agreed upon, as provided by section 34 quoted above.

The Surveyor of Taxes maintained that the transaction as to barracks was a sale of water, and the surplus revenue thus derived was a profit or gain assessable for income-tax under Schedule D of the Income-tax Act.

The Water Commissioners maintained that it was not, but was a sum which was in lieu of statutory rates, viz., the "public water-rate" and "domestic rate," and therefore should be treated as if actually levied in the form of these compulsory rates. They therefore maintained that the assessment ought to be reduced by the surplus revenue arising from the £396.

The latter view was sustained by the Income-tax Commissioners for the Middle Ward of Lanarkshire, and the Surveyor of Taxes took this Case.

Argued for him—This was a case of selling water by measure, and so was within the rule laid down in the case of *The Glasgow Water Commissioners*, January 8, 1886, 13 R. 489.

No appearance was made for the Water Commissioners.

At advising—

LORD PRESIDENT—It appears to me impossible to distinguish this from the second branch of *The Glasgow Corporation Waterworks* case. We have an Act of Parliament authorising the Hamilton Waterworks Commissioners to supply the town with water, and there are two rates which they are entitled to levy according to the value of the premises charged with the rate. The first is a rate not exceeding 6d. a pound, which is called the domestic water-rate, and the second is a rate called the public water-rate, which is levied upon all premises within the town, whether they are supplied with water or not. Now, as regards that public rate, it has no bearing upon the present question. The domestic rate is a rate charged upon the annual value of premises which are supplied with water, and the occupier or owner of the premises is by section 31 "to request the Commissioners to supply him with water," and if he makes such request, then he is entitled to demand a supply of water for domestic use, and the Commissioners are bound to give that supply at a fixed rate not exceeding 6d. per pound upon the annual value of the premises. But then it is enacted by section 33 of the statute that "the supply of water for domestic use shall not be held to include a supply of water for railway purposes, or for public baths, or for public establishments, or for cattle, or for horses, or washing carriages when such horses or carriages are kept for hire or by a dealer, or for any trade, manufacture, or business whatsoever." And section 34 provides that "it shall be lawful to the Commissioners to supply any corporation or company or person with water

for other than domestic use, at such rates and upon such terms and conditions as shall be agreed upon between the Commissioners and the corporation or company or person desirous of having such supply of water, and the rates so agreed upon shall be recoverable in the same manner as any other rates under this Act."

Now, although the payment that is to be made for this supply of water under section 34 is called a rate, that is rather an unfortunate term to use, because it confounds it with the annual rates or the payments upon annual value which receive effect in the domestic rate. The thing which is called a rate is really the price of water sold, because the payment is levied according to the quantity of water received and used.

Now, that being so, the question in the present case is, whether the water supplied to the barracks at Hamilton is properly charged for under the 33d and 34th sections, and so forms a source of profit within the meaning of the case which I have just referred to? It is quite possible that if the barracks had made an application under section 31 to have a domestic supply, they might have been entitled to have it. I cannot tell. That question is not before us, but it is very possible, I think, that the barracks may properly be held to be a public establishment within the meaning of section 33. Be that as it may however,—whether they would be entitled under the statute to a domestic supply, or whether under section 33 they are excluded from demanding a domestic supply,—the state of the fact is that as between the barracks, or the public authorities representing the barracks, and the Water-Works Commissioners, the existing arrangement is that the barracks buy the water under sections 33 and 34, and do not pay a domestic rate. Now, in that state of the facts we must take it that that is the proper mode of charging, and if that be so, then the principle of the *Glasgow Waterworks* case is directly applicable, and must be applied in this case; and therefore I am of opinion that the Commissioners are wrong, and that their judgment ought to be reversed.

Lord Shand—I regret that we have not had the benefit of an argument from the respondents in this case, for I confess I have very considerable difficulty about it. I understand your Lordships are agreed in the view which your Lordship has now expressed, and accordingly my view is of very little moment, but the difficulty I have lies here. The distinction between the *Glasgow* case and the present is this, that in the *Glasgow* case it is quite clear that all the water sold, which was said to be the subject of profit made, was water given to persons who clearly were not entitled to it as for domestic purposes. They were all in trade, and it was for the purposes of trade that they were entitled to make arrangements to get water and did get it. In this case it is not for purposes of trade. Section 33 of the Hamilton Waterworks Act provides that the supply of water for domestic use "shall not be held to include a supply of water for railway purposes, or for public baths, or for public establishments, or for cattle, or for horses, or washing carriages, when such horses or carriages are kept for hire or by a dealer, or for any trade, manufacture, or business whatsoever." That, I take it, is meant to fulfil the same purpose as the clause of the Glasgow Act,—it is meant to provide that under the head of domestic use water is not to be given for trade purposes or uses. And accordingly if this had been a case where parties were not entitled to water for domestic uses, as the *Glasgow* case was, I should have been clear with your Lordship that the judgment of the Commissioners should be reversed, but it is because I am not satisfied of that that I have a difficulty. I think the barracks are just as much entitled to water for domestic use as any large establishment or house where a great many people reside. And accordingly the view which the Commissioners have taken is this: They say that having considered the question, they "were of opinion that the decision of the Court in the case cited by the surveyor did not apply, as the above-mentioned sum of £396 really represented the statutory rates,"—that is to say, as I understand it, that was just the alternative way in which the barracks paid for the water, which they were entitled to get under the domestic rate, but which they wished to take and arrange to pay for in another way.

It is quite true that as a matter of fact the water is paid for by meter, but that does not satisfy me that the Commissioners are making profit by the sale of it. If the barracks were entitled to get their water as an establishment, to be supplied under the domestic rate—the public water rate,—then they are simply taking this alternative mode of reaching the sum they have to pay for the water so taken, and in that case I am not satisfied that these Commissioners are really making profit by it.

Accordingly upon that distinction between the two cases I do not feel able to concur with your Lordships in reversing the decision, but it is better that it should be decided now, and having stated these difficulties I have nothing further to add.

Lord Adam—I agree with your Lordship in the chair, and do not share Lord Shand's doubts. It appears to me that the only case we have to deal with is the case of the Hamilton Barracks, which in point of fact are supplied and pay for the water by meter. It is said that the Crown, or whoever represents the Hamilton Barracks, may be entitled to have water for domestic use under an earlier clause of the statute, and that if so they would not be liable. How that may be I cannot in the least tell. Whether the barracks would or would not be entitled to make a demand on the Commissioners to be supplied with water as they are now, and to be assessed only at the domestic rate, I have not the least notion. That is not the question before us, for we know in point of fact that they are not so supplied. On the contrary, they are supplied under a different section, which says that the supply of water for domestic use shall not be held to include a supply of water for railway purposes, or for public baths, or for public establishments, and that it shall be lawful for the Commissioners to supply any corporation or company or person with water for other than domestic use at such rates and upon such terms and conditions as shall be agreed upon. Now, the representatives of Hamilton Barracks have agreed with the Waterworks Comissioners that they shall be supplied with water on certain terms and condi-

tions. It follows that it was entirely optional on the part of the barracks whether they would take it on such terms and conditions or not. If they were not satisfied with the terms and conditions they need not have taken the water. Therefore it is not compulsory, but it is entirely a voluntary contract between the two parties. In other words, it simply appears to me to be this, that the Water Commissioners are selling water to the Hamilton Barracks at certain rates and on certain conditions. It humbly appears to me that that is exactly the case which we had to deal with in the *Glasgow* case. I cannot assume on the facts stated here that the Hamilton Barracks would have a right to get the water at the domestic rate, and treat the case upon that footing. I assume that they know their rights, and that if they had that right they would have exercised it. But they have not done so. They have entered into an entirely voluntary agreement with the Commissioners to buy water from them at certain specified rates. That is the only case we have to deal with, and it is no hardship on the Hamilton Barracks to take it in this way, for this reason, that they may use the water not only for domestic purposes, but for public and general purposes without paying any more for domestic use, because they are not charged for domestic use. The price they pay covers that.

That being so, I think this is purely the case of a sale of water by the Water Commissioners to the Hamilton Barracks on the terms agreed on between them, and the case therefore distinctly falls under the *Glasgow* case in my view.

Lord Mure was absent.

The Court reversed the determination of the Commissioners, and remitted to them to sustain the assessment to the extent of £567.

Counsel for Appellant (the Surveyor of Taxes) —Sol.-Gen. Robertson, Q.C.—Young. Agent—David Crole, Solicitor to Inland Revenue.

Wednesday, February 23.

SECOND DIVISION.

[Lord M'Laren, Ordinary.

YOUNG *v.* DOUGANS.

Partnership—Joint-Adventure—Term of Endurance.

Terms of a correspondence between the inventor of a patent and a person with whom he was negotiating as to its working, *held* by the Court not to disclose any concluded contract of joint-adventure for its working, in respect that the terms of the alleged contract were never settled, and in particular that no period for its endurance had ever been agreed on.

In September 1885 W. J. Young applied for a patent for improvements in commodes or closets for indoor use. The application was accepted in March 1886. This was an action by him against Andrew Dougans for £1000 as damages for breach by the defender of an alleged contract of joint-adventure for obtaining the patent and working the same under the name "Young's Patent Earth Closet Company," under which the pursuer should contribute the invention and the defender as an equivalent the capital necessary for the proper conduct of the business, the profits being equally divided.

The defence was that negotiations took place but no concluded agreement was ever come to, and, in particular, no time of endurance ever mentioned; that the defender had during the negotiations made certain experiments, but in April 1886 had decided not to proceed further with the proposed joint-adventure, and intimated that intention to the pursuer; that he was willing to bear the expense of these and the pursuer's expenses pending the negotiations and in connection with showing commodes at an exhibition in Edinburgh, and had already borne great part thereof.

He pleaded—"(3) There being no concluded contract of joint-adventure between the parties the action should be dismissed with expenses. (4) *Separatim*—No term of endurance having been specified, the alleged partnership was terminable at will, and the defender was therefore entitled to withdraw from the same."

It appeared from the documents put in evidence that between April and July 1885 there was correspondence in which it was still a moot point whether there was to be a sale to the defender of the invention, or a joint-adventure, or any arrangement at all. On 7th July 1885 the pursuer wrote—"On considering your alternate proposals about the working of my commode, permit me to put the following questions:—A joint-venture, what does it mean, will it be necessary to value my patent? If so how much value do you put on it? . . . Please explain what position I shall occupy in carrying out this proposal? . . . I shall be glad to receive written replies." Scroll reply by the defender.—"Joint-venture means fair division of profits, value of patent; any undertaking to provide capital for proper working of business would be sufficient. . . . Position in carrying out proposal of joint-venture—have no fixed idea on this. Have you any? Above hurriedly written at fireside. You can alter or amend for my perusal. I send your letter containing queries for your guidance." Letter, pursuer to defender, 6th August 1885.—"I am willing to go on with you in a joint-venture with my commode on the terms you name, viz., You to provide all funds for the proper conduct of the business to enable us to execute orders, print circulars, advertise, exhibit, appoint agents throughout the United Kingdom and Ireland, and otherwise bring the article prominently before the public, all of which is to be held as equivalent to my patent. Profits to be equally divided between us. The name of company to be 'Young's Patent Dry Closet Company.' A set of books to be kept for the company. Commodes at first to be contracted for. My position, I think, should be bookkeeper and manager under your surveillance." Letter, pursuer to defender, 8th August 1885.—"Considering the stage of our negotiations, also of my finances, I think it proper to let you know that I am urgently in need of £100. This has arisen partly from my being ill the whole of last summer, and partly from business not paying, and possibly from my being too much taken up with this patent and outlays