sistent with the practice of making up a title by what has been called a declaratory service. The question in that case was not one of title but of substantial right, and the observations of the Lord President must be taken with reference to a case of that character, and by way of illustration of the nature of the destination.

I do not doubt that it might be possible by a declaratory action to have it established that these fiars are entitled to be infeft, but that would be an unusual mode and not satisfactory to a purchaser. The decree in such an action would not usually proceed on evidence, though I do not say that an *ex parte* proof would not be competent. Lord President Inglis gave great attention to feudal questions, and was certainly not less conversant with this than with other branches of the law, of which he was so eminent an exponent. If his Lordship had intended to discountenance the practice, I should have expected that he would have made a more direct pronouncement. I do not think that the question was in his Lordship's mind, nor did it enter into the decision of the case.

I think that the petitioners, provided their propinquity is proved, which in this case is merely a formal matter, are entitled to decree of service.

Lord Adam—I agree. My understanding certainly is that it has been the practice to make up titles in this way.

Lord Kinnear—I agree with your Lordships. If this had been the first application for the service of children as heirs of provision to a fiduciary fiar, there might have been much to be said against it. But the strongest thing would have been that there was no practice to support it. This is a matter in which practice is everything. But there is no doubt about the practice, and it is therefore unnecessary to consider the logical difficulty which embarrassed the Sheriff in reconciling that practice with certain technicalities of the law of inheritance.

The Lord President concurred.

The following interlocutor was pronounced:—

"Sustain the appeal: Recal the interlocutor of the Sheriff of Chancery, dated 14th February 1900: Find in fact that the deceased Mrs Janet Paul or Macdougall died at Caulfield, Melbourne, in the Colony of Victoria, on the 16th day of January 1890, and had at the time of her death her ordinary or principal domicile furth of Scotland: Find that the petitioners Dugald Graeme Macdougall and Mrs Marion Macdougall or Laidlaw, are children of the deceased Dugald Macdougall: Find that he was the eldest son of the said Mrs Janet Paul or Macdougall: And further Find that the said Dugald Macdougall has left no other children or issue of children now surviving: Find that the petitioners Mrs Catherine Johnstone Macdougall or Corney, Mrs Margaret Macdougall or Williams, Mrs Ann Jane Macdougall, or Paterson, and James Macdougall, are all children of the said Mrs Janet Paul or Macdougall: Find that she has no other children or issue of children now surviving other than as above mentioned: Find further, that the petitioners are entitled to be served as the nearest and lawful heirs of provision in general to the said Mrs Janet Paul or Macdougall under and by virtue of the trust-disposition and settlement and the disposition granted in implement thereof, both referred to in the petition: and remit to the Sheriff of Chancery to serve them accordingly in terms of the prayer of the petition."

Counsel for Petitioner—Cullen. Agent—W. B. Rainnie, S.S.C.

Tuesday, November 20.

SECOND DIVISION.

[Lord Low, Ordinary.

GLASGOW COURT HOUSES COMMISSIONERS *v.* LANARKSHIRE COUNTY COUNCIL.

Statute — Construction — Glasgow Court Houses Act 1890 (53 *and* 54 *Vict. cap.* 58), *sec.* 13 — "*Land and Heritages Situated within Area under Jurisdiction of Public Body.*"

The Glasgow Court Houses Act 1890 authorised the Glasgow Court Houses Commissioners to acquire certain lands and buildings for the purpose of enlarging and improving the Sheriff and Justice of the Peace Court Houses in the city of Glasgow. Section 13 provided that the Commissioners might apportion, assess, and charge the sums of money borrowed under the powers of the Act upon certain public bodies named in a schedule annexed to the Act "in proportion to the gross valuation for the year ending on the 15th of May 1890 of the lands and heritages situated within the respective areas under the jurisdiction of such public bodies." One of the public bodies named in the schedule was the County Council of the county of Lanark.

Section 15 provided that "the County Council of Lanark, as representing the Lower Ward thereof and the police burghs therein," should pay to the Commissioners out of certain specified assessments such sum "as the Commissioners should assess as the share payable by the said County Council" for the expenses of carrying into effect the Glasgow Court Houses Acts.

By previous Acts of Parliament the county of Lanark, for the purpose of providing and maintaining Sheriff and Justice of the Peace Court Houses, had

been divided into four separate districts, one of which, the Lower Ward district, comprising the Lower Ward of the county, the City of Glasgow, and the Burgh of Rutherglen, had alone to do with the erection and repair of the Glasgow Sheriff and Justice of the Peace Courts. The County Council of Lanarkshire had a large number of jurisdictions under their control. By the City of Glasgow Act 1891 a certain area was taken out of the Lower Ward of the county and added to the city.

In these circumstances the Court Houses Commissioners, acting under section 13 of the Act of 1890, in 1899 assessed and charged upon the County Council of Lanarkshire a sum arrived at by taking the gross valuation for the year 1890 of all lands and heritages within the whole county, including within the county the area added to the city in 1891.

The County Council refused to pay this sum, maintaining (1) that in fixing the amount the Commissioners were not entitled to take into account the valuation of the county as a whole, but only of the Lower Ward, and (2) that it was not competent for the Commissioners to treat lands which were in fact in the city of Glasgow as forming part of the county.

Held (1) (*rev.* judgment of Lord Low, Ordinary) that the words of section 13 were not open to construction, being plain and unambiguous, and that therefore the Commissioners, in ascertaining the amount for which they were authorised to assess the County Council, were bound to take into account the valuation of the lands and heritages within the whole county, and (2) (*aff.* judgment of Lord Low, Ordinary) that the Commissioners were bound to deduct from the valuation of the county and add to that of the city the valuation of area annexed to the city in 1891.

On 21st December 1900 the Glasgow Court Houses Commissioners, incorporated under the Glasgow Court Houses Amendment Act 1872, raised an action against the County Council of the county of Lanark, and also against the Corporation of the City of Glasgow, and the Provost, Magistrates, and Council of the Royal Burgh of Rutherglen, for any interest they might have, in which the pursuers asked decree against the first-named defenders for £7669, with interest at 5 per cent. from 16th December 1899 till payment. The principal sum sued for was the amount assessed upon the County Council of Lanark by the Glasgow Court Houses Commissioners in terms of a resolution passed at a meeting of the Commissioners held on 24th November 1899. The County Council of Lanark lodged defences.

The circumstances which led to the action, and the contentions of parties, are set forth in the following opinion annexed to the interlocutor of the Lord Ordinary (Low)—

"By the Glasgow Court Houses Act 1890 the pursuers were authorised to acquire certain lands and buildings for the purpose of enlarging and improving the Sheriff and Justice of Peace Court Houses in the city of Glasgow. For the purposes of the Act the pursuers were authorised to borrow, upon the security of the assessments to be levied by them under the provisions of the Act, a sum not exceeding £100,000.

"By the 13th section of the Act it is provided—'The Commissioners may apportion, assess, and charge the sums of money from time to time borrowed and outstanding under the powers of this Act, and all interest due thereon, upon the several bodies mentioned in the schedule to this Act annexed, in proportion to the gross valuation for the year ending on the 15th day of May 1890, of the lands and heritages situated within the respective areas under the jurisdiction of such public bodies, and such public bodies shall be bound as quickly as possible to pay to the Commissioners any such sums so apportioned, assessed, and charged.' . . .

"The public bodies mentioned in the schedule are the Magistrates of Glasgow, the County Council of the county of Lanark (the only defenders who have lodged defences), and the Magistrates of Rutherglen.

"The pursuers now sue the defenders for payment of £7669, which they allege to be the proportion of money borrowed under the Act which has been charged upon and is payable by the defenders in terms of the 13th section.

"The sum sued for has been arrived at by taking the gross valuation for the year 1890 of all lands and heritages within the whole county of Lanark, and by including as within the county a certain area (the valuation of which for the year 1890 was £354,859) which in 1891 (by the City of Glasgow Act 1891) was taken out of the Lower Ward of the county and added to the city of Glasgow.

"The defenders maintain (1) that in fixing the amount of the borrowed money which they are to contribute the pursuers are not entitled to take into account the valuation of the county of Lanark as a whole, but only of the Lower Ward; and (2) that it is not competent for the pursuers to treat lands which are in fact in the city of Glasgow as forming part of the county.

"For the purpose of providing and maintaining Sheriff Court Houses the county of Lanark is divided into four separate districts, one of which, the Lower Ward district, comprises the Lower Ward of the county, the City of Glasgow, and the Burgh of Rutherglen. The remaining wards of the county are in other districts, and have nothing to do with the Glasgow Sheriff Court Houses. Further, the defenders maintain that the whole of the sum charged upon them under the 13th section of the Act of 1890 falls to be paid by assessment upon the Lower Ward alone.

"In these circumstances the defenders' contention is, that the words in the 13th section 'lands and heritages situated within the respective areas under the jurisdiction of such public bodies,' refer, so far as the

defenders are concerned, only to the Lower Ward.

"The pursuers, on the other hand, maintain that the 13th section is not open to construction, and that as the jurisdiction of the defenders undoubtedly extends over the whole county of Lanark, the valuation of the whole county must be taken in fixing the proportion of the borrowed money to be paid by them.

"Now, I agree with the pursuers to this extent, that, *prima facie*, the area over which the County Council has jurisdiction is the whole county. But I think that the words used in the 13th section are capable of construction, and that the context and the subject-matter of the enactment may show that they were intended to be used in a more restricted sense than that which they would naturally bear if standing alone.

"The 13th section, in the first place, and in the part under construction, only provides how the proportions of money borrowed by the pursuers, payable by the three public bodies named, are to be ascertained, and it is then enacted that 'such public bodies shall be bound as quickly as possible to pay to the Commissioners any such sums so apportioned.' Now, of course a county council is only a representative body, and I think that the presumption is that the capacity in which it is directed to pay the money is also the capacity in which it is referred to for the purpose of fixing the proportion which it is to pay. If therefore the defenders are given power to assess the whole County for the Glasgow Sheriff Courts, there is no difficulty. But if the defenders' power of assessment is limited to the Lower Ward, it is difficult to see any principle upon which the amount which they have to pay, in a question with the City of Glasgow and the Burgh of Rutherglen, should be fixed by reference to the valuation, not of the Lower Ward but of the whole County. It was said that the buildings which the pursuers are authorised by the Act to erect are to be used as an Appeal Court for the County as a whole. That would have been a very good reason for making the whole County contribute, but I do not think that it is any reason why the Lower Ward should contribute more than its proportion.

"The main question therefore seems to me to be, whether the defenders have power to raise money to pay the amount charged against them under the 13th section, except by assessments laid upon the Lower Ward only?

"The assessing clauses of the Act of 1890 are the 10th and the 15th, but in order to understand the effect of these sections it is necessary to go back to earlier statutes.

"The Glasgow Court Houses Amendment Act 1868 proceeded upon the narrative that 'it would be for the advantage and convenience of the said City' (of Glasgow), 'and of the Lower Ward of the County of Lanark' (including the Burgh of Rutherglen) 'that additional accommodation should be provided for the judges attending the Justiciary Courts at Glasgow, and for the Sheriffs, Justices of Peace, Magistrates and Council, and inhabitants of the said County and City.' The Commissioners were therefore empowered to acquire lands and to erect court houses, and for defraying the expense of doing so they were by section 10 authorised 'to levy and raise by assessment annually, for such period as they may find to be necessary, on and from all heritages situate within the parliamentary and municipal boundaries of the City of Glasgow, and within the Lower Ward of the County of Lanark, including the Burgh of Rutherglen, such sums of money as shall be sufficient for the several purposes before mentioned.'

"The buildings authorised by the Act of 1868 were duly constructed, and in 1878 certain arrangements had been made between the Commissioners and the City of Glasgow and the Lower Ward, the result of which was that (to use the words of the preamble of an Act which was passed in the latter year for the purpose, *inter alia*, of giving effect to these arrangements) 'the only amount which the Court House Commissioners will require to levy under the Court Houses Acts will be the amount necessary to defray the expenses of maintaining that portion of the said buildings occupied by the Justices of Peace Court, and the buildings occupied by the Justiciary Court.'

"Accordingly, by the 6th section of the Glasgow Municipal Buildings Act 1878 it was provided—'On the passing of this Act the power of the Court Houses Commissioners to levy assessments under section 10 of the Glasgow Court Houses Amendment Act 1868 shall cease and determine, and in lieu thereof the Court Houses Commissioners are hereby authorised to estimate, apportion, assess, and charge, in manner after mentioned, the amount necessary to meet the costs, charges, and expenses of conducting the business of the Court Houses Commissioners, and of maintaining and repairing the buildings apportioned to, and occupied by the Sheriff Courts, Justices of Peace, Justiciary Court, and their several officials, and generally in carrying into effect the purposes of the Court Houses Acts, as amended by this Act, so far as such costs, charges, and expenses shall not be borne by the Commissioners of Her Majesty's Treasury.'

"By the 7th section it was provided that in lieu of an assessment under the 10th section of the Act of 1868 being levied by the Commissioners within the City of Glasgow, the Corporation should pay to the Commissioners year by year 'out of the assessment by this Act authorised,' such sum as the Commissioners should apportion as the share payable by the Corporation.

"The powers of assessment by the Corporation there referred to are to be found in section 29 and subsequent sections of the Act.

"By the 8th section it was provided, that in lieu of an assessment under the 10th section of the Act of 1868 being levied by the Commissioners within the Lower Ward of Lanarkshire, the public bodies having powers of assessment within that ward

should pay to the Commissioners the sum apportioned as the share of tbe Lower Ward out of certain specified assessments.

"By the Act of 1878, therefore, this change was made in the mode of assessment, that instead of the Glasgow Court Houses Commissioners themselves laying on assessments directly, they merely fixed the amounts payable by the City and the County respectively, and the assessments necessary for raising the money were laid on by the local authorities.

"Coming now to the Act of 1890, it was provided by section 10 that the costs, charges, and expenses of purchasing lands and buildings, and of reconstructing and improving buildings, and the like, 'under the authority of the Act, shall be deemed and held to form part of the costs, charges, and expenses mentioned in section 6 of the Act of 1878, and the power of assessment by that Act conferred upon the Commissioners shall apply to and include all such costs, charges, and expenses.'

"The pursuers argued that that section had nothing to do with money borrowed under the powers conferred by the Act, but only applied, like the provision in the Act of 1878, to annual expenses. I cannot take that view. The section applies to the cost of the purchase of lands and other capital expenditure, and the power of assessment is given to enable the pursuers to raise the amount necessary to meet such costs. It seems to me that the assessments authorised in this section are the very assessments upon the security of which the pursuers are authorised to borrow money for the purposes of the Act.

"The 15th section of the Act comes in place of the 8th section of the Act of 1878, and provides that the County Council of Lanark (the defenders) 'as representing the Lower Ward thereof and the police burghs therein,' and the Magistrates and Town Council of Rutherglen, shall pay to the pursuers, out of certain specified assessments 'such sums as the Commissioners shall estimate, apportion, assess, and charge as the shares payable respectively by the said County Council and Magistrates of the Boyal Burgh of Rutherglen, for the costs, charges, and expenses of carrying into effect the Court Houses Acts and this Act and the Act of 1878, so far as applicable to the Commissioners.'

"No provision is made in the Act of 1890 for the way in which any sum apportioned by the pursuers to the City of Glasgow is to be raised by the Corporation, and I imagine that the provisions of the 7th section of the Act of 1878 are still applicable to them.

"I therefore think that it is plain that whatever sum is apportioned to the defenders under the 13th section must be raised by them by assessment upon the Lower Ward alone, and accordingly I am of opinion that the construction of that section for which the defenders contend must be adopted. As I have already indicated, it seems to me that the words 'the respective areas under the jurisdiction of such public bodies,' are capable of being read as referring only to areas which are under their jurisdiction for purposes connected with the Glasgow Court Houses, with which alone the Act deals. I quite recognise that the fact that in the schedule the County Council are named without any words of limitation, whereas in the 15th section they are described 'as representing the Lower Ward,' is a point in favour of the pursuers' view, but I do not think that that is sufficient ground for holding that the words in the 13th section are not open to construction, or for putting a different construction upon them than that which would otherwise fall to be adopted.

"The next question is, whether the pursuers, in allocating the borrowed money among the three public bodies, are justified in calculating the amount payable by the defenders upon the basis of the valuation of the Lower Ward as it stood in 1890, and before a large part of its area was added to the City of Glasgow.

"The last clause in the 10th section of the Act of 1890 appears to me to have a direct bearing upon that question. It is in these terms — 'Provided that such powers of assessment shall be held to apply to the whole area included within the municipal boundaries of the City and Royal Burgh of Glasgow, as the same may be extended under any Act of Parliament, including any portion of the County of Renfrew over which such area may extend.'

"Now, if I am right in the construction which I have already put upon the assessing sections, the words 'powers of assessment' in that clause simply mean the power which the pursuers have of fixing the amount which the Corporation must raise by assessment, and that is just what the pursuers are empowered to do in regard to borrowed money by the 13th section. The clause therefore seems to me to amount to this, that in allocating the sum for which the Corporation are to assess, the pursuers are to have regard to the whole area which is in fact included within the City of Glasgow at the time when the assessment or allocation is made.

"And that view appears to me to be quite consistent with the 13th section. The main object of that section is to fix the proportions in which money borrowed under the authority of the Act shall be paid by the three public bodies named. The words are, 'in proportion to the gross valuation for the year ending on the 15th day of May, One thousand eight hundred and ninety, of the lands and heritages situated within the respective areas under the jurisdiction of such public bodies.' Now, it is clear that the value of the assessable subjects within the three areas is to be taken from the valuation roll of 1890 alone, but I do not think that it follows that the extent of the respective areas is also to be taken in all time coming as that which existed when the roll of 1890 was made up. The words used are no doubt capable of bearing that meaning, but I also think that they are capable of

meaning that the value as given by the roll of 1890 shall be applied to the areas which at the time when the allocation is made are in fact under the jurisdiction of the respective public bodies. And it seems to me that there is a sufficient reason for adopting the latter construction. What the Commissioners are empowered to assess and charge upon the three public bodies are the sums of money 'from time to time' borrowed and outssanding. The Act therefore contemplated that the pursuers might exercise their borrowing powers gradually, and might charge and assess upon the public bodies one sum one year and another sum another year. Now, if the pursuers are bound to assess the Corporation of Glasgow and the defenders according to the respective areas of the City of Glasgow and the Lower Ward as appearing in the valuation roll of 1890, although since that roll was made up these areas have entirely changed, it is plain that the proportions fixed by the 13th section will be entirely overturned. I am therefore of opinion that the duty of the pursuers is to apportion the sum to be assessed according to the areas actually included within the City of Glasgow and the Lower Ward respectively, but upon the basis of the value of the lands and heritages within these areas as given in the valuation roll of 1890. Such an apportionment seems to me to satisfy the language of the 13th section, and to maintain the proportions thereby directed.

"I am therefore of opinion that upon both the questions raised in the case the defenders are entitled to prevail."

On 15th June 1900 the Lord Ordinary pronounced the following interlocutor—"Finds that the pursuers, in ascertaining the amount for which they are authorised to charge and assess the defenders the County Council of the County of Lanark, in terms of the 13th section of the Glasgow Court Houses Act 1890, are not entitled to take into account the valuation for the year ending on the 15th day of May 1890 of the lands and heritages within the whole county of Lanark, but only within the Lower Ward thereof; and further, that the pursuers are bound to deduct from the said valuation of the Lower Ward, and to add to that of the City of Glasgow, the valuation of those parts of the Lower Ward taken from the county and annexed to the city by the City of Glasgow Acts 1891 and 1896."

The pursuers reclaimed.

The arguments on both sides turned wholly upon the terms of the Acts of Parliament, and sufficiently appear from the opinions of the Court.

At advising—

LORD JUSTICE-CLERK—The first question in this case is, whether the 13th clause of the Glasgow Court Houses Act of 1890 is to be read according to the plain meaning of the words to be found in it, or whether they are open to construction, and must be read in a different sense. By a series of statutes provision was made for court houses for the different courts of law which held their sittings in Glasgow, and the taxation necessary for providing the funds to be expended was, as regards the landward part of the county of Lanark, put on the Lower Ward of that county. In many clauses this is expressed in distinct terms. And even in the Statute of 1890, in the 15th section, special matters relating to assessment on the Lower Ward are dealt with, where an alteration is being made upon the assessment in connection with some of the previous Acts. These clauses in former Acts and in this Act are made the ground for the contention that section 13 must not be read according to its literal meaning, but must be read as if there were words in it which would restrict the assessment to the same area as that to which it is restricted under the other statutes relating to the Court Houses of Glasgow. But the formidable difficulty of doing so is to be found in the very contrast between this clause and those occurring elsewhere which relate to similar matters. This clause says in so many words—[*His Lordship read the section*]—and the public body mentioned in the schedule is the "County Council of the County of Lanark." These words seem to me to be distinct and unambiguous, and in such sharp and marked contrast to the other assessing enactments in the statutes preceding that it is impossible to find sufficient ground for putting any gloss upon them not consistent with their direct meaning. It is impossible for the Court to gather what the Legislature intended except from the language used, and the language used being so specific, I feel myself unable to hold that it can be made to mean something different because of likelihood suggested from the correlation in which it is found. I am therefore of opinion that the Lord Ordinary's interlocutor should be altered in so far as relates to the first question.

In regard to the second question, which is the question whether in apportioning the assessment the pursuers are bound to deduct from the valuation of the Lower Ward of Lanarkshire, and to add to that of the City of Glasgow, the valuation relating to the lands and heritages of the Lower Ward which have been annexed to the City, I am of the same opinion as the Lord Ordinary, that they are bound to do so, and upon the same grounds.

LORD YOUNG—I concur.

LORD TRAYNER—There are three public bodies liable to the pursuers in the assessment in question, who may be briefly designed as (1) the Corporation of Glasgow, (2) the Corporation of Rutherglen, and (3) the County Council of Lanark. The last-named body alone defends this action, and it contends that the proportion of the assessment for which it is liable is only that proportion which effeirs to the valuation of lands and heritages in the Lower Ward of Lanarkshire instead of the lands and heritages in the whole county. The Lord Ordinary has sustained this contention on what he holds to be the proper construction of the 13th section of the Glasgow Court

Houses Act of 1890. In reaching this construction his Lordship has taken into account the provisions in several Acts of Parliament of earlier date in which the assessment (the same or equivalent assessment to that now sued for) has been imposed upon the lands in the Lower Ward of Lanarkshire alone. I should regard what the Lord Ordinary has done as legitimate if it could be said that the 13th section of the Act of 1890 was open to construction. But if that section is plain and unambiguous, then it must have effect according to its plain meaning irrespective of anything to be found in previous Acts. Now, I am of opinion that the section before us is not open to construction, and that the view which the Lord Ordinary has taken is unsound. The section provides that the assessment is to be imposed on the three public bodies I have already designed "in proportion to the gross valuation for the year ending 15th May 1890 of the lands and heritages situated within the respective areas under the jurisdiction of such public bodies." There are two things here provided for which are fixed and unchangeable, namely, the three bodies who are to pay the assessment, and the standard by which the amount of the total assessment is to be ascertained. This is clear enough. But it appears to me equally clear and fixed what it is that each is to pay as its proportion, for that is to be estimated on the given valuation of the "lands and heritages situated within the respective areas under the jurisdiction of such public bodies." Jurisdiction is not perhaps the most correct word to use in the circumstances, as the County Council of Lanark has and can exercise no jurisdiction proper in the county. But the meaning of the phrase is clear enough. It is the area over and in which the County Council exercises the power and performs the duties which the Legislature has conferred or imposed upon it. That area is the whole county of Lanark, and therefore it appears to me that the necessary meaning of the statutory provision is that the County Council of Lanark shall pay the assessment in question in the proportion which the valuation (as at the given date) of the lands and heritages in the county of Lanark bears to the valuation of the lands and heritages in the city of Glasgow and burgh of Rutherglen.

There is nothing in the clause before us which limits the proportion which the defenders have to pay to the value of the lands and heritages in the Lower Ward alone, and nothing to suggest such a limitation, and it rather appears to me that the correct inference to be drawn from the difference between the terms of the Act of 1890 and previous Acts is, that in 1890 it was not intended to distinguish between one part of Lanarkshire and another, otherwise the terms of the earlier Acts would have been repeated. The terms of section 15 of the Act of 1890 lend some support to this view, for the Lower Ward of Lanarkshire is there dealt with (as distinguished from the whole county) in such a way as to suggest at least that the two things were present to the mind of the Legislature or those who framed the Act.

But while it is fixed once for all who are to pay the assessment and what is to be the standard of valuation according to which the respective proportions are to be estimated, I think one of the features necessary for ascertaining the amount of each party's contribution is not so fixed. The area under the jurisdiction of each of the parties may change, and in fact has changed. While the standard is the valuation of May 1890, it has to be applied to the actual state of facts at the time the assessment is made. Accordingly, I am of opinion that the three bodies are liable in that proportion of the assessment which effeirs to the lands and heritages under their jurisdiction respectively when the assessment is made, and that if any lands (for example) have been taken out of the county of Lanark and included within the city of Glasgow, the assessment in respect of the value of such lands must be borne by the city and not by the county. The result is that the County Council of Lanark must pay the assessment in respect of the value of all lands within the county of Lanark at the date of the assessment, except, of course, such lands as are included in the city of Glasgow and burgh of Rutherglen.

LORD MONCREIFF—I agree in the second finding of the Lord Ordinary, but differ as to the first.

The ground of my difference is that the language of the 13th section of the Glasgow Court Houses Act 1890 differs in such a marked way from that of the previous statutes and other clauses of the Act of 1890 to which the Lord Ordinary refers that I am forced to conclude that the difference is intentional. The clause which we have to construe occurs in a group of clauses, 11, 12, and 13, which deal with power to borrow money on security of assessments; and the 13th section deals with the apportionment of such assessments. As regards the County Council of the County of Lanark, the question is whether the area under its jurisdiction which is to be subjected to assessment is the whole County or only the Lower Ward. The Lord Ordinary has held that, while *prima facie* the clause extends to the whole County, the words admit of construction, so as to confine them to the Lower Ward. Though not without difficulty, I have come to the conclusion that they do not, for the reason which I have already stated. The difference in expression may be intentional or it may be unintentional; but as it stands it is not merely unambiguous, but it is in sharp contrast with previous enactments by which burdens in connection with the Glasgow Court Houses were thrown on the Lower Ward alone, and also with clauses which follow in the same statute which show that when it is intended to confine an assessment to the Lower Ward of the County this is expressly stated. I refer in particular to the 15th section and to the 19th of the Act of 1890.

As to the Lord Ordinary's second finding,

I agree with him on the grounds which he states, that the pursuers are bound to deduct from the valuation of the County the valuation of those parts of the Lower Ward which were taken from the County and annexed by the City of Glasgow Acts 1891 and 1896.

The Court pronounced the following interlocutor:—

"Recal the said interlocutor reclaimed against: Find that the pursuers in ascertaining the amount for which they are authorised to charge and assess the defenders the County Council of the County of Lanark, in terms of the 13th section of the Glasgow Court Houses Act 1890, are bound to take into account the valuation for the year ending on the 15th day of May 1890 of the lands and heritages within the whole County of Lanark: And further that the pursuers are bound to deduct from the said valuation and to add to that of the City of Glasgow the valuation of those parts of the said County annexed to the City by the City of Glasgow Acts 1891 and 1896: Remit the cause to the said Lord Ordinary to proceed therein."

Counsel for the Pursuers — Sol.-Gen. Dickson, Q.C.—Younger. Agents—Webster, Will, & Company, S.S.C.

Counsel for the Defenders—H. Johnston, Q.C. — Cook. Agents — Bruce, Kerr, & Burns, W.S.

Thursday, November 22.

SECOND DIVISION.

[Sheriff-Substitute at Glasgow.

DORNAN *v.* JAMES ALLAN SENIOR & SON.

Reparation — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37)—*Agreement—Settlement of Claim—Injury not Resulting in Death — Discharge — Essential Error.*

In an arbitration upon a claim for compensation under the Workmen's Compensation Act 1897 between a workman and his employers, the employers pleaded that the workman had discharged his claim. The workman was injured in the course of his employment on 29th August 1899. On 27th September his employers' foreman called on him and presented to him a receipt bearing to be a final discharge of all claims competent to him against the firm in respect of the injury, and asked him to sign it in return for a payment of £2, 7s. 4d., being equivalent to four weeks' compensation under the Workmen's Compensation Act 1897, telling him that the employers' surgeon had reported that he would be fit for work in six weeks from the date of the accident, or in about a fortnight from the date of the conversation. The workman read over the document, and without consulting his own doctor, signed the receipt and received the money. The employers' surgeon had in fact reported as stated by the foreman, and it was not alleged or proved that the foreman had made any other representation inducing the workman to sign the discharge. Both parties relied on the report in entering into the agreement, but it turned out to be erroneous, the workman remaining unfit for his usual work till 6th March 1900.

The Sheriff-Substitute awarded compensation, being of opinion that in entering into the agreement for settlement both parties were under such essential error as to render the discharge null and void.

A case for appeal having been stated at the instance of the employers, the Court (*diss.* Lord Young) *recalled* the award of the arbiter, and remitted to him to dismiss the claim, on the ground that the parties, although they had relied upon an opinion which ultimately proved to be erroneous, had not been in error as to any matter of fact at the time the discharge was signed.

In an application under the Workmen's Compensation Act 1897, by John Dornan, labourer, Glasgow, against James Allan senior & Son, ironfounders, Glasgow, the employers pleaded that the claim had been discharged, and produced a discharge which was signed by the claimant, and ran as follows:—"*N.B.—This is a final Dicharge. No.* 4727. *Class B.* I, John Dornan, 337 Garscube Road, Glasgow, do hereby acknowledge receipt of the sum of two pounds seven shillings and fourpence paid to me by Messrs James Allan senior & Son, ironfounders, Glasgow, in full satisfaction and discharge of any claim competent to me in consequence of personal injury sustained by me on or about 29th August 1899 in the course of my employment with the said firm."

The Sheriff-Substitute (GUTHRIE) repelled this defence, and awarded compensation to the claimant at the rate of 11s. 10d. a-week from 12th September 1899 till 6th March 1900, less £2, 7s. 4d. paid to account in respect of the injuries received by him while in the employment of Messrs Allan on 29th August 1899. Against this decision James Allan senior & Sons appealed.

In the case stated for appeal at their instance the Sheriff-Substitute found the following facts to have been admitted or proved —"(1) That the respondent was hurt in the course of his employment in the appellants' works in Possil Road, Glasgow, on 29th August 1899, and that notice of the injury was given on 15th September; (2) That the respondent signed the receipt and discharge (No. 3/1 of process) on 27th September 1899; (3) That the appellants' foreman, John M'Cusker, on that day called for respondent, as he was in the