of lighting a thing when you apply a light to it. You may talk of lighting a thing when you effectively cause that thing to begin to burn. In my view the true meaning of the word "light" in rule 95 is the first of these, because, in the only commonsense view of it, the object of the rule is to prevent people prematurely returning when it is still uncertain whether there will be an explosion or not, and subjecting themselves and others to danger—because if one man returns others will follow him. But nobody can tell, if a light is once applied, whether effectual lighting will follow or not. Accordingly I think here that there was an undoubted breach of the rule as it stood.

It is true that the Sheriff-Substitute goes on to say that there was another rule which was not a special rule of the Coal Mines Regulation Act, but was only a rule of the colliery itself, of the existence of which rule the man does not admit that he was aware, which said that rule 95 was "applicable to all cases where the lighting of a shot had been attempted and the men had retired." I take it that that second rule added nothing to rule 95, but was merely a way of expressing what I have been expressing, that the meaning of "lighting" in that rule is as I have explained it. It is true that the Sheriff-Substitute puts his judgment upon the second rule. I think that it is much safer to put it upon rule 95 itself, and as the question is put, in my opinion, it must be answered in the affirmative, although the precise reason for answering it in that way is rather different from the reason upon which the Sheriff-Substitute proceeded.

LORD JOHNSTON—I agree. I do not think it is necessary to decide whether the Sheriff-Substitute is ill-founded in arriving at his decision in proceeding upon the additional rule, if, as we hold, the decision itself is well-founded on the statutory rule.

LORD CULLEN—I concur.

The Court answered the question in the affirmative.

Counsel for the Pursuer (Appellant)—Moncrieff, K.C.—Keith. Agents—Simpson & Marwick, W.S.

Counsel for the Defenders (Respondents)—Horne, K.C. — Hon. William Watson. Agents—W. & J. Burness, W.S.

HOUSE OF LORDS.

Tuesday, October 29.

(Before the Lord Chancellor (Haldane), Earl of Halsbury, Lord Atkinson, and Lord Shaw.)

BRITISH LINEN BANK *v.* CITY OF EDINBURGH.

(In the Court of Session, November 18, 1911, 49 S.L.R. 127, and 1912 S.C. 139.)

Loan — Burgh — Statute — "Redeemable" Stock — Edinburgh Improvement and Tramways Act 1896 (59 *and* 60 *Vict. cap. ccxxiv*), *sec.* 83.

The Edinburgh Improvement and Tramways Act 1896, sec. 83, enacts—"The Corporation, in addition to the powers contained in the Edinburgh Corporation Stock Act 1894, may, and they are hereby authorised, at any time to create and issue a new class of stock for all or any of the purposes for which the Corporation may create and issue stock, to bear any rate of dividend which the Corporation may fix, and all stock of such class shall be redeemable at the option of the Corporation at one and the same period to be fixed by the Corporation, but not exceeding sixty years from the first issue of such stock."

The Corporation resolved to issue under its 1894 and 1896 Acts a stock "redeemable at par after the expiration of a period of thirty years from 15th May 1897." The certificate of such stock bore "redeemable at par after Whitsunday 1927. Interest payable half-yearly on 15th May and 11th November."

Held (*rev.* judgment of the Extra Division), on a consideration of the whole statutes, that the Corporation was not bound to redeem at Whitsunday 1927, but merely had an option so to do.

[The case is reported *ante ut supra*, where will be found the relevant sections of the statutes.]

The defenders the City of Edinburgh appealed to the House of Lords.

At the conclusion of the arguments—

LORD CHANCELLOR—This appeal raises a question of construction on a section in one of a series of private Acts, and as is often the case in the construction of a private Act of this kind, the relation to each other of the sections in the various Acts which have to be considered is attended with some obscurity. But although the question is an important one, and although in the view which I have to express I am differing from Judges, including Lord Kinnear, for whose opinion I have a very great respect, yet so fully and ably has the question been argued before us on both sides, and so unhesitating is the conclusion to which I have come, that I feel no hesitation in dealing with the case

immediately on the conclusion of the argument.

The pursuers in the action were the British Linen Bank, and they brought an action of declarator to have it established that when a certain period should arrive the Corporation of Edinburgh were bound to redeem the holdings of a certain stock. The stock was issued by the Corporation of Edinburgh, the appellants in this case, in 1897, under powers contained in an Act passed in the year previous. The British Linen Company were the allottees of a part of that stock which was issued under a resolution passed by the Corporation of Edinburgh pursuant to the Act to which I have referred.

Now the whole question here is whether the Corporation of Edinburgh are bound to redeem the stock which is held by the respondents after the expiration of a period of thirty years from the 15th May 1897. Lord Skerrington held that they were not and dismissed the pursuers' action. On appeal to the Extra Division of the Court of Session the learned Judges who constituted that Extra Division took a different view.

The question is really a very narrow one. It turns upon the construction of a few words in the Act of 1896, and if those words were quite clear in themselves and the Act in which they occur contained no reference to other Acts, it would be easy to deal with the question shortly. Section 83 provides that the Corporation, in addition to the powers which are contained in the previous Act of 1894, are now authorised to create and issue a new class of stock for any of their purposes—"to bear any rate of dividend which the Corporation may fix, and all stock of such class shall be redeemable at the option of the Corporation at one and the same period to be fixed by the Corporation, but not exceeding sixty years from the first issue of such stock." If I were reading these words without any obligation to have regard to anything else, I should read the words "at one and the same period to be fixed by the Corporation" as referring to the expression "all stock," and as meaning that in whatever sections the main block of stock was issued the period of redemption was to be the same in all cases—one period for all the sections. But the great question which arises is as to the meaning of the word "redeemable." As I interpret the word, it means redeemable at the option of the Corporation, the words which immediately follow "at the option of the Corporation" relating to the word "redeemable."

Now that so far might be simple enough, but it ceases to be simple if you proceed to import into the meaning of the words "stock and stockholder" the relation of debtor and creditor. To my mind the fundamental fallacy of the reasoning of the Court below is this, that the learned Judges have tried this question as if it could only be a question of the relation of debtor and creditor. Of course if you get the relation of debtor and creditor, then the word "redeemable" may come to have a very different significance from what it has here. A creditor is *prima facie* entitled at some time to get his money paid and his debt thus redeemed. But if the relation is not one of debtor and creditor the situation may well be very different.

The mere desire to raise money does not by any means necessarily import that you resort to the establishment of the relation of debtor and creditor. In England when the Usury Acts were in force it was legally impossible to borrow money at more than a certain rate of interest. Consequently in order to get money impecunious persons whose credit was not good were in the habit of doing what was very extensively done, namely, selling annuities. Sometimes these annuities had attached to them an option of repurchase on the part of the seller of the annuity. But although this was a device for getting round the difficulty of borrowing money, it substantially avoided anything that was really in the nature of borrowing by substituting the sale of a perpetual annuity. I observe that the Corporation of Edinburgh in the earlier days of its history resorted to the same device. The first of the Acts to which our attention had been called is the Act of 1838, the purpose of which was to extricate the Corporation of Edinburgh out of some of its financial difficulties. From this Act it appears that at that time the Corporation of Edinburgh, in order to get over the difficulties which it had with its creditors, granted a number of annuities which were to satisfy those creditors. The only sections to which I need refer are section 41 and section 44, which show that the debts and obligations were to be "compounded by granting free of all charges and deductions to all and every person in right of such debts, bonds of annuity in the manner and form hereinafter provided at the rate of 3 per cent.," and then over the page in section 44 these are described in the form of bond as perpetual annuities. That was at any rate one mode in which the Corporation of Edinburgh was enabled to raise money. Then under a later Act, the Act of 1879, there was conferred a power to raise money by mortgage, which shows the Corporation exercising the power of borrowing in its real form—that of borrowing by granting debtor and creditor obligations with security.

Now in that state of things the Act of 1894, which is the first of the two Acts with which we have to deal, was passed. The Act of 1894 contains several sections which throw light upon the question with which we are concerned. First of all, the preamble refers to the annuities granted in favour of the city creditors in lieu and satisfaction of their debts. Then there is a definition of "statutory borrowing power" in section 2, which shows that the expression is meant to include almost every form of raising money, whether by borrowing or by creating annuities.

Then we come to section 5, which enables the Corporation of Edinburgh to create a

stock which is to take the place of the older securities, and which is to be one of the modes, although I think not the only mode, by which for the future the Corporation is to be able to raise its money. It is said in section 5 that where the Corporation has any statutory borrowing powers it is to be empowered to create "redeemable stock to be from time to time issued for such amount within the limit of their powers" at a certain price to bear dividends as the Corporation should resolve, and to "become redeemable as hereinafter provided after the expiration of one and the same period from the first creation of Corporation stock." Then sub-section (3) says that "the resolution for the first creation of Corporation stock shall provide that such stock shall be redeemable at the option of the Corporation at par after the expiration of a period to be fixed by the resolution not exceeding sixty years from the first creation of the stock."

Now the reason why I read that section is because it throws light upon the situation in which the Corporation stood when the Act of 1896 was passed. It shows, to my mind, that the Corporation had powers of raising money by issuing what were, strictly speaking, perpetual annuities, redeemable in the sense of being repurchaseable upon certain terms, being the terms which I have mentioned. The relation was not one of debtor and creditor—the relation was one of seller and buyer of these annuities—and that being so, the presumptions which seem to have weighed in the minds of the learned Judges of the Extra Division do not seem to me to apply to these transactions. Reading the words quite simply, as I have stated them, they are consistent, and I think only properly consistent, with the view I have stated, which is, that "redemption" merely means optional repurchase.

The Act to which I have referred is by no means perfectly drawn, and section 21 in particular, which refers to stock "issued for the whole term limited for the continuance of any loan" or issued "for part only of that term" is a section which does not seem to fit in well with the earlier sections of the Act. But the learned counsel for the appellants drew our attention to the circumstance that this section had been jettisoned by the draughtsman out of a quite different Act—the Local Authorities Loans (Scotland) Act 1891, of which it constitutes section 22—into the middle of this one, and that the reason why it seemed to fit ill was that its language belonged properly to a statute of another structure and dealing with a different kind of security. It may, I think, be possible to give a meaning to these words by reading them as applying to a case where part of the issue (all of which is to be redeemed at one time if redeemed at all by the Corporation in the exercise of its option) has been issued late, and has not got the whole term to run. It is possible in that case that there may have to be reborrowing, and the not very happy wording of the section may be said to cover that case. But whether the section is properly worded or not, in my opinion there is nothing in the section which is sufficient to cut down what to my mind is the plain effect of the previous section—section 5—and I am confirmed in this view when I turn to section 41, which relates to the appointment of a judicial factor. In section 41 of the Act of 1894 a judicial factor is only appointed to recover the dividends—there is not a word about capital or any suggestion that it is contemplated that there should be a capital sum due to the creditor which might have to be recovered—whereas if you turn to the Act of 1879, and equally if you turn to the general Act just referred to of 1891, which regulates borrowing in Scotland by local authorities, you find the power of the judicial factor there applied to the recovery of capital.

Having said so much, it seems to me that the question resolves itself into a very simple one. When I turn to the Act of 1896, section 83, which I have already read, and on which this question turns, it becomes, in the state of things which I have indicated, quite natural that the language should be what it is, and that the appellants should be able legitimately to rely upon it in support of their contention. If the relation is not one of debtor and creditor, but one of the seller and the buyer of annuities, then the words "and all stock of such class shall be redeemable at the option of the Corporation at one and the same period, to be fixed by the Corporation, not exceeding sixty years," would naturally import "repurchaseable at the option of the Corporation."

I have come to the conclusion that this is the true view of the statute, and that under the circumstances the only conclusion to which I can properly come is that the view of the Lord Ordinary was the correct view, and that this action ought to have been dismissed. This appeal must therefore be allowed, and I move your Lordships accordingly.

EARL OF HALSBURY — I hesitate very much to add a single word to a discussion which has now proceeded practically for two days on the construction of three words. I speak with most unfeigned respect for the very distinguished Judges from whom this appeal comes, but I say that I have been unable to feel the difficulty with which some of them seem to have been possessed. So far as I am concerned, I am contented with a single sentence in the Lord Ordinary's judgment, which seems to me to comprehend the whole case and upon which the whole case turns. "Anyone," he says, "who alleges that a redeemable stock must be redeemed is bound, in my opinion, to show the existence of the obligation upon which he founds, and this the pursuers have failed to do." I believe that that sentence comprehends the whole that it is necessary to say upon the matter, and I entirely concur with the motion which the Lord Chancellor has proposed.

LORD ATKINSON—I concur.

LORD SHAW—I agree.

Their Lordships reversed the interlocutor appealed from and dismissed the action.

Counsel for the Pursuers (Respondents) — Buckmaster, K.C. — Macmillan, K.C. Agents — Mackenzie & Kermack, W.S., Edinburgh—W. A. Crump & Son, London.

Counsel for the Defenders (Appellants)— Clyde, K.C.—Cooper, K.C.—Harold Beveridge. Agents—Sir Thomas Hunter, W.S., Town-Clerk, Edinburgh—Beveridge, Greig, & Co., Westminster.

COURT OF SESSION.

Friday, October 18.

FIRST DIVISION.

[Sheriff Court at Alloa.

ALLOA MAGISTRATES *v.* WILSON AND OTHERS.

Burgh—Street—Public or Private Street—Private Street Opened brevi manu to Public Use by Town Council—Right of Town Council thereafter to Call upon Feuars to Make up Street—Bar—Burgh Police (Scotland) Act 1903 (3 *Edw. VII, cap.* 33), *section* 103 (5) *and* 104 (2) (*d*) *and* (*e*).

A private street in a burgh which debouched at each end upon a public street had, since the date of its existence, been protected against throughgoing traffic by a barricade put across it by the feuars on each side of the street. The town council having requested the feuars to remove the barricade, so as to permit of throughgoing traffic, the feuars replied that they were willing to do so on the condition that they should not be called upon to form the street so long as they kept it in proper repair. The town council refused to give any such undertaking, and in 1892 removed the barricade at their own hand, with the result that the street was thereafter used by the public for throughgoing traffic. In 1911 the town council served upon the feuars a notice in terms of the Burgh Police Acts calling upon them to make up the street.

Held that as the street had never become "vested in or maintainable by" the town council, it still remained a private street in the sense of the Burgh Police Act, and that the feuars were bound to make it up.

Held further that the town council were not barred by their actings in 1892 from now calling upon the feuars to causeway the street—their position not having been rendered any the worse by the removal of the barricade.

The Burgh Police (Scotland) Act 1903 (3 Edw. VII, cap. 33), enacts—Section 103—"(5) 'Public street' shall, in the principal Act and this Act, mean (*a*) any street which has been or shall at any time hereafter be taken over as a public street under any general or local Police Act by the town council or commissioners; (*b*) any highway within the meanings of the Roads and Bridges (Scotland) Act 1878 vested in the town council; (*c*) any road or street which has in any other way become, or shall at any time hereafter become, vested in or maintainable by the town council; and (*d*) any street entered as a public street in the register of streets made up under this Act. (6) 'Private street' shall, in the principal Act and in this Act, mean any street other than a public street." Section 104—"(2) In addition to the scheduled amendments the principal Act shall be amended or extended in the following particulars—. . . (*d*) For section one hundred and thirty-three shall be substituted the following section — 'Where any private street or part of such street has not, together with the footways thereof, been sufficiently levelled, paved, causewayed or macadamised and flagged to the satisfaction of the council, it shall be lawful for the council to cause any such street or part thereof and the footways, to be freed from obstructions and to be properly levelled, paved, causewayed or macadamised, and flagged and channelled in such way and with such materials as to them shall seem most expedient, and completed with fences, posts, crossings, kerbstones, and gutters and street gratings or gullies and drains for carrying off the surface water and thereafter to be maintained, all to the satisfaction of the council.' (*e*) For section one-hundred and thirty four shall be substituted the following section—'If any private street or part thereof, together with the footways thereof, shall at any time be made, paved, causewayed or macadamised and flagged and otherwise completed as aforesaid, and put in good order and condition to the satisfaction of the council, then, and on application of any one or more of the owners of premises fronting or abutting upon such street or part thereof, or of the superior or owner of the ground on which such street or part thereof has been formed, it shall be lawful for the council to declare, and if such street or part thereof has been paved and put in good order and condition as hereinbefore mentioned, and if the owners of one-half or more of the frontage of such street or part concur in the application, the council shall declare the same to be vested in the council, and it shall be thenceforward vested in and maintained by the council.'"

This was a Stated Case on appeal under the Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55), section 339, as amended by the Burgh Police (Scotland) Act 1903, section 104, sub-section 2 (8), between the Town Council of Alloa, *appellants*, and James Wilson and others, *respondents*.

The Case stated:—"In this cause the respondents and John Ure are the whole proprietors of the properties fronting the