modified, but that was done in respect of the power to do so contained in the memorandum itself and in the articles.

"Again, in the case of the *Oban and Aultmore Glenlivet Distilleries, Limited* (1902-3, 5 F. 1140, 40 S.L.R. 817) arrears of dividends due to preference shareholders were cancelled, but no doubt was cast by the decision on the case *Ashbury* v. *Watson*, the Court granting the power on the special ground that there was power in the articles of association to modify the memorandum.

"The present company, by resolution passed 16th June 1905 and confirmed 13th July 1905, cancelled the dividend on the preference shares for the year to 31st August 1905, and the resolution to do so was embodied in the petition (already referred to) presented to their Lordships of the First Division on 28th October 1905 (*v.* report 1906, 8 F. 1135, 43 S.L.R. 820).

"The prayer of that petition only asked for confirmation of the reduction of capital, and the interlocutor pronounced in the petition was confined, as your Lordships have seen, to confirming the reduction.

"The Lord President in his opinion nowhere refers in terms at least to the cancellation of the dividend, although Mr Paul in his report raised the question of whether the cancellation was not *ultra vires*. The Lord President refers to the scheme then before the Court as just and equitable, but it is by no means clear that the scheme which his Lordship had in view was not the scheme only in so far as it involved reduction of capital, seeing that in an earlier part of his opinion he does refer to the scheme as one for reduction of capital, and that when referring to the case of *Ashbury* v. *Watson* he distinguished it on the ground that the scheme then under consideration was one involving reduction of capital.

"Subsequent to the above decisions two cases have been decided in England where the rights of preference shareholders in regard to dividends were modified without power to that effect having been contained in the memorandum or articles of association.

"In the case of *in re Palace Hotel, Limited* ([1912] 2 Ch. Div. 438) the Court confirmed a scheme of arrangement involving the cancellation of arrears of dividend on preference shares under section 120 of the Companies Act of 1908, and that decision was approved of *in re Schweppes Limited* ([1914] 1 Ch. Div. 322).

"Stated shortly, it is proposed by the scheme of arrangement before your Lordships (*a*) to give increased control to the preference shareholders as a class in the administration and management of the company by giving them eleven-thirteenths instead of one-half as at present of the total votes of the whole members of the company, and by providing that two out of the proposed three directors shall be qualified by holding preference shares; (*b*) to cancel arrears of dividends on the preference shares for the period to 31st August 1913, and to build up and maintain a reserve fund of £6500 for the benefit of the preference shareholders out of a third-part of any surplus profits which would be otherwise available to the ordinary shareholders; (*c*) to increase the rate of future dividends on the preference shares from 5 to 6 per cent., the increase being about equal to the income to be expected from the proposed investment of the £6500 reserve fund as and when same may be built up; and (*d*) to make the necessary alterations corresponding to these changes in the regulations of the company for the distribution of the surplus assets on a dissolution.

"The reporter does not consider it to be his duty to criticise the merits of the scheme seeing that it has been unanimously approved of, and that if the cancellation of arrears of dividends on the preference shares is not *ultra vires*, the scheme generally appears to the reporter to be *intra vires* of the company and in its interest and for its benefit.

"In the event of your Lordships being of opinion that it is *intra vires* of the company to cancel arrears of dividends on the preference shares, the reporter is of opinion on the whole matter that your Lordships, if satisfied as to its expediency, may be pleased to pronounce an order sanctioning the scheme of arrangement."

When the case appeared in the Single Bills counsel for the petitioners moved the Court to grant the prayer of the petition, and argued—The proposal in the scheme of division for the cancellation of arrears of dividend on the preference shares was within the powers conferred by section 120 of the Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69). Section 120, not section 45, applied to the circumstances of the case —*in re Schweppes Limited*, [1914] 1 Ch. 322, approving *in re Palace Hotel, Limited*, [1912] 2 Ch. 438.

The Court (consisting of the LORD JUSTICE-CLERK, LORDS DUNDAS, SALVESEN, and GUTHRIE) approved of the report and sanctioned the scheme of arrangement.

Counsel for the Petitioners—Chree, K.C. —A. M. Mackay. Agents—Baillie & Gifford, W.S.

Saturday, March 18.

FIRST DIVISION.

EDINBURGH PARISH COUNCIL *v.* NORTH BRITISH RAILWAY COMPANY.

GLASGOW PARISH COUNCIL *v.* GLASGOW CORPORATION.

Poor—Lunacy—Assessments—Exemptions and Deductions—Railways—Water and Gas-Pipes, Electric Mains, &c.—The Mental Deficiency and Lunacy (Scotland) Act 1913 (3 *and* 4 *Geo. V, cap.* 38), *sec.* 65—*The Lunatics (Scotland) Act* 1857 (20 *and* 21 *Vict. cap.* 71), *sec.* 54—*The Prisons (Scotland) Act* 1877 (40 *and* 41 *Vict. cap.* 53), *sec.* 63—*The Edinburgh Municipal and Police Act* 1879 (42 *and* 43 *Vict. cap.*

cxxxii), *sec.* 74—*The City of Glasgow Act* 1891 (54 *and* 55 *Vict. cap. cxxx*), *sec.* 36.

Edinburgh Parish Council, as the District Board of Control under the Mental Deficiency and Lunacy (Scotland) Act 1913, assessed the Caledonian and the North British Railway Companies for the lunacy rate for the years 1914-1915 upon the whole annual values of their respective railways appearing in the valuation roll. Glasgow Parish Council in the same capacity, and for the same period and purpose, assessed the Caledonian Railway Company upon the same basis, and the City of Glasgow on the total value of their pipes, mains, &c., in connection with their water, gas, and electric undertakings as appearing in the valuation roll. *Held*, in special cases, that the Parish Councils were not entitled to assess for lunacy rates upon the total value of these subjects but only on one-fourth thereof.

The Mental Deficiency and Lunacy (Scotland) Act 1913 (3 and 4 Geo. V, cap. 38) enacts — Section 65 — "(1) As from the fifteenth day of May in the year Nineteen hundred and fourteen the expenses declared by this Act to be chargeable to the assessment authorised under the Lunacy Acts and this Act shall be ascertained and apportioned within the lunacy district upon the landward parts of counties and upon burghs respectively, as provided in the Act of 1857 as amended by any subsequent Act, with respect to the assessments for the purposes of the Act of 1857, and shall be assessed, levied, and collected as provided in the said Acts. (2) This section shall apply to the case where the district board of control is the parish council, with the substitution of the parish for the landward parts of counties and for burghs, and with any other necessary variations: Provided that the assessment leviable under the Acts aforesaid within the parish shall be separately set forth and demanded in the demand note, and shall be levied by the parish council acting as a district board upon the like valuation in all respects, and subject to the like deductions and exemptions, as the assessment hitherto leviable within the parish under the Lunacy Acts by the town or county council, but shall be collected along with the poor-rate and with the same remedies and modes of recovery, and provided also that the consent of the board shall be required to any assessment levied by the parish council acting as a district board; and provided further that moneys levied and collected by a parish council acting as a district board shall be kept separate and distinct from moneys levied and collected by the parish council for other purposes; and for purposes of audit the accounts of the parish council shall be deemed to include the accounts of such moneys and of the expenditure thereof." Section 75 (2)—"Part II and Part V of this Act and the Lunacy (Scotland) Acts 1857 to 1887, the Lunacy Board (Scotland) Act 1864 (27 and 28 Vict. cap. 59), secs. 61 to 63, inclusive of the Prisons (Scotland) Act 1877 (40 and 41 Vict. cap. 53), and the Lunacy Board (Scotland) Salaries and Clerks Act 1900 (63 and 64 Vict. cap. 54), may be cited collectively as the Lunacy (Scotland) Acts 1857 to 1913 (in this Act referred to as the Lunacy Acts)."

The Lunatics (Scotland) Act 1857 (20 and 21 Vict. cap. 71) enacts—Section 54—"*Expense of District Asylum: How to be Raised.*—The expense of providing, building, altering, enlarging and repairing, and fitting up and furnishing district asylums, and the whole expense of maintaining the establishment for the first year after the opening of the same, and also the after expense of altering, repairing, and keeping in repair such district asylums, and of the surveys, plans, and investigations in relation thereto, shall be ascertained by the board from the estimates or reports to be made thereof by the district boards; and the gross amount of such expense shall be apportioned by the board upon the landward parts of counties and upon the burghs respectively within such districts, according to the real rent of the lands and heritages, in terms of the Act of the seventeenth and eighteenth of Her Majesty, chapter ninety-one, within such landward parts of counties and burghs respectively; and the board shall give notice . . . to the chief magistrate or administrator of the affairs of each burgh for such burgh of the whole sum or proportion to be levied on such burgh and the landward part of such county respectively; . . . and the portion thereof which shall be apportioned as aforesaid on the several burghs shall, together with such further sum as may be necessary to cover expenses of assessment, collection, and remittance, and any arrears where such shall occur of preceding years, be assessed, laid on, and collected by or under the authority of the magistrates of each burgh respectively in the same way and manner in all respects, and upon such and the like property according to the real rent of such property, and from such persons, and by such and the like process and means of recovery, and under the like deductions and exemptions, and with and under the same powers and provisions as to any disputed matter and otherwise, and generally in all respects as if such portions of the said gross amount apportioned under this Act were portions of a gross amount of sums estimated in terms of the fortieth section of the said Act of the second and third years of Her Majesty, chapter forty-two, and directed by that Act to be assessed on the said counties and burghs respectively. . . ."

The Prisons (Scotland) Act 1877 (40 and 41 Vict. cap. 53) enacts—Section 63—"Where assessments under any Act of Parliament may be imposed, levied, and recovered in the same way and manner as the assessments imposed and levied under the Prisons (Scotland) Administration Act 1860, such assessments may be imposed, levied, and recovered in the same way and manner and with the like powers as any other assessment which may be leviable by the commissioners of supply within any county or the magistrates within any burgh upon the lands and heritages within the

same as appearing on the valuation roll thereof: Provided that in a county such assessments shall be payable wholly by the owner of lands and heritages within the county, and that in a burgh such assessments shall be payable one-half by the owner and one-half by the tenant or occupier of the lands or heritages within the burgh, but the whole of such last-mentioned assessments may be levied on and recovered from the tenant or occupier who, on production of a receipt by the collector therefor, shall be entitled to deduct one-half of the amount from the rent payable to the owner: Provided also . . . that it shall be lawful for such magistrates to exempt from the whole or any part of such assessment in any burgh the tenant or occupier of any lands and heritages the annual value of which, as appearing from the valuation roll, shall not exceed five pounds sterling, on account of the poverty of such occupier. . . . Nothing herein contained shall prejudice the power of levying any assessments in any other way or manner not affected by the repeal of certain provisions of the Prisons (Scotland) Administration Act 1860."

The Edinburgh Municipal and Police Act 1879 (42 and 43 Vict. cap. cxxxii) enacts —Section 66—"The Magistrates and Council shall annually . . . estimate and fix the sums of money necessary to be levied for the year . . . under the provisions of this Act, viz.—. . . (5) For the sums required for carrying out the provisions of any other local or any public general Act in operation within the city or burgh for the time being, . . . payable by the persons and in the proportions mentioned in such Acts respectively; . . . for which purpose of estimating the sums required under such other local or public general Act the persons charged with the execution of the same shall timeously in each year intimate to the Magistrates and Council the sums for which provision must be made." Section 67—". . . The Magistrates and Council . . . shall . . . lay on an assessment sufficient to provide the sums of money estimated as aforesaid; . . . provided also that such aggregate assessment shall be imposed as from the fifteenth day of May in any one year to the fifteenth day of May in the following year, and shall be called the burgh assessments. . . ." Section 74—"The yearly value of the lands and heritages, after specified, shall, for the purpose of the burgh assessments, be held to be the nearest aggregate sum of pounds sterling to one-fourth of the yearly value thereof, viz.—(1) All lands and works used as a canal or basin of a canal, or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, excepting stations, depots, wharves, and buildings connected therewith, which shall be assessable to the same extent as other lands and heritages. (2) All underground gas and water pipes and underground works connected therewith. (3) All woodland, arable, meadow, and pasture land, and other land used for agricultural purposes." Section 79 —"The treasurer shall from time to time transfer and pay over to the proper accounts from the produce of the burgh assessments the proportions thereof applicable to the heads of estimate for the purposes . . . of the Public General Acts under which the Magistrates and Council are or may be authorised to levy assessments. . . ."

The Glasgow Police Act 1866 (29 and 30 Vict. cap. cclxxiii) enacts — Section 6 — "The general power and duty of carrying into effect the objects and purposes of this Act . . . are hereby vested in and shall be performed by *a Board* . . . who shall be a body corporate under the name and style of the *Board of Police of Glasgow*, . . . and who may, in pursuance and subject to the provisions of this Act, do any of the following acts:—They shall estimate, assess, levy, and apply the moneys by this Act authorised to be raised or received."

The City of Glasgow Act 1891 (54 and 55 Vict. cap. 130) enacts—Section 36—"In imposing or levying all rates and assessments within the city — (1) The yearly rent or value of any land or heritage which is used as arable, meadow, or pasture ground only, or as woodland, market garden, or nursery ground, or as the line of any canal, or as a towing-path for the same, or as the line of any railway constructed under the powers of an Act of Parliament for public conveyance, shall be deemed to be one-fourth of the amount entered as the yearly rent or value thereof in the valuation roll of the city and royal burgh made up under the Valuation Acts. (2) The yearly rent or value of all the underground pipes or underground works of the Water Commissioners and Gas Trustees shall be deemed to be one-fourth of the amount entered as the yearly rent or value thereof in such valuation roll. (3) . . . (4) The yearly rent or value of all other lands or heritages shall be deemed to be the total amount entered as the yearly rent or value thereof in such valuation roll. . . ."

Edinburgh Parish Council, *parties of the first part*, and the North British Railway Company and the Caledonian Railway Company, *parties of the second part*, brought a Special Case in the Court of Session. Glasgow Parish Council, *parties of the first part*, the Corporation of the City of Glasgow, *parties of the second part*, and the Caledonian Railway Company, *parties of the third part*, also brought a Special Case in the Court of Session. The matter in dispute was as to the value upon which the first parties were entitled to assess the mental deficiency and lunacy rate, upon the value appearing in the valuation roll or upon one-fourth thereof of the properties belonging to the other parties; the questions for the opinion of the Court were similar in both cases; and the two cases were heard together.

The *Edinburgh* Case stated—". . . 2. By the 4th section of the Lunatics (Scotland) Act 1857 (20 and 21 Vict. cap. 71) a General Board of Commissioners in Lunacy for Scotland was constituted. By the 49th section of the said Act, and for the purposes of the said Act, Scotland was divided into eight

lunacy districts, one of which was called the Edinburgh District, which at the date of the passing of that Act comprised the counties of Edinburgh, Haddington, Berwick, Linlithgow, Roxburgh, Selkirk, Peebles, and Orkney. By section 61 of the Prisons (Scotland) Act 1877 it is provided that for each of the districts into which Scotland is or might thereafter be divided for the purposes of the said Lunatics (Scotland) Act 1857 there should be chosen a board to be called the District Board of Lunacy.

"3. In 1897, by virtue of the powers conferred upon it by section 1 of the Lunacy Districts (Scotland) Act 1887 (50 and 51 Vict. cap. 39), the said General Board of Commissioners in Lunacy for Scotland, on the application of the first parties, erected the City Parish of Edinburgh into a separate lunacy district to be called the Edinburgh Lunacy District.

"4. In virtue of the 54th section of the said Lunatics (Scotland) Act 1857 the said General Board of Commissioners in Lunacy for Scotland from and after the passing of that Act ascertained annually the gross amount of expenditure required to carry out the provisions of that Act from estimates or reports made to them by district boards, and apportioned the same upon the landward parts of counties and upon burghs within these lunacy districts in terms of the said Act.

"5. Prior to 15th May 1914 the gross amount required to meet the necessary expenditure under the said Lunatics (Scotland) Act and Amending Acts was ascertained and apportioned by the said General Board of Commissioners in Lunacy for Scotland upon the landward parts of counties and upon burghs within the lunacy districts. The lunacy rate was assessed, levied, and collected by the Town Council of Edinburgh within the burgh of Edinburgh as part of a lunacy district prior to 1897, and thereafter down to 15th May 1914 within the burgh as a lunacy district. The lunacy rate so collected was paid over by the Town Council to the Edinburgh District Lunacy Board. Neither the General Board of Commissioners in Lunacy nor the said Edinburgh District Lunacy Board took any part in the assessment of or the levying of said lunacy rate by the Town Council of Edinburgh.

"6. The said lunacy rate so assessed, levied, and collected by the Town Council of Edinburgh was levied from the second parties on one-fourth of the annual value of their railways as entered in the valuation roll. . . .

"7. On the 15th May 1914 the Mental Deficiency and Lunacy (Scotland) Act 1913 came into operation, and the power and authority of the Town Council to assess, levy, and collect the lunacy rate then terminated, and since that date the power to assess, levy, and collect the lunacy rate has been transferred to the first parties as the District Board of Control for the Edinburgh Lunacy District in terms of section 65 (2) of the statute.

"By the 19th section of the statute it is provided also that the said General Board of Commissioners in Lunacy for Scotland should be reconstructed subject to the provisions of the statute, and from and after the 15th day of May 1914 should be designated the General Board of Control for Scotland. By section 22 it is provided that as and from the 15th day of May 1914 District Boards of Lunacy should cease to be so called, and should be designated District Boards of Control.

"8. For the year 1914-15 the first parties have assessed the second parties for the lunacy rate on the annual value of their railways respectively as appearing in the valuation roll. . . .

"9. The second parties have declined to pay the said assessments as levied by the first parties. . . ."

"The first parties *contend* that on the just construction of the Lunacy (Scotland) Act 1857 and amending Acts and the Mental Deficiency and Lunacy (Scotland) Act 1913 they are entitled to assess, levy, and collect the said lunacy rate upon the second parties in respect of the annual value of the railways which they respectively own as appearing in the valuation roll in force for the time. They further contend that their powers of assessment are in no way affected by any of the provisions of the Edinburgh Municipal and Police Act 1879 or by any of the proceedings taken by the Town Council of the city of Edinburgh in regard to the collection of the lunacy rate prior to 1915.

"The second parties maintain that in view of the provisions relating to assessments contained in the Edinburgh Municipal and Police Acts, and particularly the 66th and 74th sections of the Edinburgh Municipal and Police Act 1879, the Town Council of Edinburgh were bound to assess said railways for the said lunacy rate on one-fourth of the annual value, and were not entitled to assess said railways on the full annual value. The second parties contend that on a sound construction of the Mental Deficiency and Lunacy (Scotland) Act 1913 the first parties can only assess the railways of the second parties for the lunacy rate upon the nearest aggregate sum of pounds sterling to one-fourth of the yearly value thereof as appearing in the valuation roll in force for the time."

The *questions* for the opinion of the Court were—"1. Are the first parties entitled under section 65 of the Mental Deficiency and Lunacy (Scotland) Act 1913, and the provisions of the statutes therein mentioned, to assess the second parties on the annual value of the railways owned and occupied by the second parties respectively within the Edinburgh Lunacy District? or 2. Are the second parties entitled to be assessed on one-fourth only of the annual value of the railways owned and occupied by them respectively within the Edinburgh Lunacy District?"

The *Glasgow* Case stated—"2. The parish of Glasgow forms the Glasgow Lunacy District and is composed of a burghal portion which lies north of the Clyde and east of the Kelvin within the boundaries of the city of Glasgow, and of a landward portion

which lies in the county of Lanark north and east of the northern and eastern boundaries of the city. Prior to the passing of the said Mental Deficiency and Lunacy Act the lunacy rate payable by owners and occupiers was assessed, levied, and collected for the county portions of lunacy districts by county councils, and the lunacy rate for the landward portion of the parish of Glasgow was assessed, levied, and collected by the County Council of the county of Lanark under the Lunacy Act 1857 and amending Acts, and paid over to the first parties, then designated the Glasgow District Lunacy Board. Under the said Lunacy Act and amending Acts the rate was assessed, levied, and collected by town councils in the burghal portions of lunacy districts, and the second parties assessed, levied, and collected the said rate in the burghal portion of the parish of Glasgow and paid over the same to the said Glasgow District Lunacy Board. . . . Since the said Mental Deficiency and Lunacy (Scotland) Act 1913 came into operation on 15th May 1914 the power to assess, levy, and collect the said rate, now called the mental deficiency and lunacy rate, has been by section 65, subsection (2), of that Act transferred to the first parties as the Board of Control for the area of the parish of Glasgow as a lunacy district.

"3. The second parties are the owners and occupiers of gas, water, and electric lighting undertakings, with underground pipes, mains, lines, cables, and works, within the parish of Glasgow. The third parties are the owners and occupiers of lines of railways and of the Forth and Clyde Canal and towing path for the same, also lying within the said parish.

"4. On receipt by the first parties from the Town Clerk of the second parties in each year of the valuation roll made up by them and the valuation rolls made up by the County Assessor and the Assessor of Railways and Canals, the first parties forthwith make up a parish assessment roll or book under section 40 of the Poor Law Amendment Act 1845, which roll or book contains a note of the persons liable in payment of the parish council assessments, including the mental deficiency and lunacy rate, and of the sums to be levied from each of such persons, a description of the subjects in respect of which said rates are leviable and the valuation thereof, and the roll so made up is the rule for levying the said assessments for the year then current throughout the area of the parish of Glasgow. . . . .

"9. As regards lunacy assessment upon the said underground works and others of the second parties and the third parties, being the gas, water, and electric lighting undertakings, and the lines of railways, canal, and towing path after specified, the second parties, prior to the said Mental Deficiency and Lunacy Act 1913 coming into operation, dealt with the matter in the city of Glasgow, including the burghal portion of the parish — that is, of the lunacy district of Glasgow—as follows:— Up to and including the year ended Whitsunday 1908 they assessed upon the full annual value of the said subjects, and for the year ended Whitsunday 1909 and the following years they assessed on one-fourth of the said annual value of the said subjects. The County Council of the county of Lanark have always assessed upon the full annual value of the similar subjects in the county of Lanark, including the landward portion of the said parish—that is, of the said lunacy district.

"10. For the year 1914-15 the first parties have assessed the second parties and the third parties under the said Lunacy Acts, and particularly the said Mental Deficiency and Lunacy Act 1913, on the full annual value of the said underground pipes, mains, lines, cables, and works, and lines of railway, canal, and towing path, as appearing from the valuation roll in force at the time. The said subjects, the amount of the mental deficiency and lunacy rate, and the sums payable, are shown in the following table:—

YEAR 1914-15.

THE GLASGOW DISTRICT BOARD OF CONTROL.

Mental Deficiency and Lunacy Rate per £ in the Parish of Glasgow.

Owner's proportion .	2·391d.
Occupier's proportion .	2·391d.
Total .	4·782d.

PIPES, MAINS, &c.

Glasgow Corporation Undertakings.

	BURGH.		LANDWARD.	
	Gross Value.	Owners' and Occupiers' Assessment.	Gross Value.	Owners' and Occupiers' Assessment.
Water .	£30,130 0 0	£ 600 6 8	£1915 0 0	£38 3 2
Electricity	50,767 0 0	1011 10 8	..	..
Gas .	25,423 0 0	506 11 0	768 0 0	15 6 1
	£106,320 0 0	£2118 8 4		

LINES OF RAILWAY, CANAL, &c.

Caledonian Railway Company.

Lines of Railway, &c.	£12,857 0 0	£256 3 6	£3896 0 0	£77 12 7

"11. The second parties and the third parties have refused to pay the foregoing assessments assessed and levied by the first parties upon them respectively for the portion of the lunacy district within the burgh of Glasgow, and have claimed in virtue of the foregoing provisions of the Acts of Parliament relating to the burgh of Glasgow that they are entitled to be rated upon one-fourth only of the annual value of the said subjects appearing on the burgh valuation roll. If the contention of the second parties is correct, the valuation and the sum payable by them in the burgh of Glasgow are—value, £26,580, and assessment, £529, 12s. 1d. If the contention of the third parties is correct, the valuation and the sum payable by them in the burgh of Glasgow are—value, £3214, 5s., and assessment, £64, 0s. 10d. A question has thus arisen between the first parties on the one hand, and the second parties and the third parties on the other hand, as to the value upon which the first parties are entitled to assess and levy the mental deficiency and lunacy rate upon the second parties and the third parties in respect of the said subjects."

"The first parties *contend* as follows—that in terms of the Mental Deficiency and Lunacy (Scotland) Act 1913 they are entitled and bound to assess and levy the mental deficiency and lunacy rate upon the second and

third parties in respect of the whole of the said subjects according to the full yearly rent or value of the said subjects as appearing from the valuation roll in force for the time, and that their powers of assessment under the said Act are not affected by any of the provisions of the Glasgow Police Act 1866 or the City of Glasgow Act 1891 or the Glasgow Boundaries Act 1912, and that no deduction or exemption from the said rate is allowable in respect of any of the said subjects.

"The second and third parties *contend* as follows—(1) that under sub-section 2 of section 65 of the Mental Deficiency and Lunacy (Scotland) Act 1913 the second and third parties are entitled to have the underground worksof the gas, water, and electric lighting undertakings of the second parties and the lines of railway of the third parties assessed on a fourth of the value, being the valuation for lunacy assessment purposes as regards these subjects immediately prior to the passing of said Act of 1913; and (2) that section 36 of the City of Glasgow Act 1891 applies not only to municipal assessments but to all rates and assessments imposed in the city, whether by the second parties or by any other authorities."

The *questions* for the opinion of the Court were — "1. Are the first parties entitled under section 65 of the Mental Deficiency and Lunacy (Scotland) Act 1913, and the provisions of the statutes therein mentioned, to assess the second parties and the third parties for mental deficiency and lunacy purposes on the full annual value of the said subjects respectively owned and occupied by them? 2. Are the second and third parties entitled to be assessed on one-fourth only of the full annual value of the said subjects respectively owned and occupied by them?"

Argued for the second parties—The Mental Deficiency and Lunacy (Scotland) Act 1913 (3 and 4 Geo. V, cap. 38) merely made an administrative change, transferring to the parish council as the district board of control the duty of collecting the lunacy assessment but without altering the incidence of that assessment—sections 65 (1) and (2). The deductions and exemptions formerly allowed were to subsist. Prior to 1913 the lunacy assessment was by the Lunatics (Scotland) Act 1857 (20 and 21 Vict. cap. 71), section 54, assimilated to the assessment under the Prisons (Scotland) Act 1839 (2 and 3 Vict. cap. 42), and was to be subject to the like deductions and exemptions as that assessment. The assessment under the Prisons (Scotland) Act 1839 was to be laid on and collected in every respect in the same way as any municipal or police or general assessment the magistrates might choose. Its incidence and the incidence of the lunacy assessment depended on what assessment was chosen, and that was within the discretion of the magistrates. Further, so long as the money was provided the lunacy authorities had no concern with the means adopted to raise it. The Prisons (Scotland) Amendment Act 1860 (23 and 24 Vict. cap. 105), repealing the Prisons (Scotland) Act 1839, adopted the valuation roll as the basis of assessment (section 36), but continued the same system of collecting the lunacy assessment in the same way as any municipal, police, or general assessment as the magistrates might choose, and it again provided for exemptions. In 1877 the prisons assessment ceased to be raised locally, and by the Prisons (Scotland) Act 1877 (40 and 41 Vict. cap. 53), secs. 62 and 63, the lunacy assessment became a charge on any half-and-half assessment levied within a burgh. That still remained the machinery for raising the lunacy assessment. That assessment was a charge upon a burgh rate, and consequently the lunacy authorities were not concerned with the incidence of the assessment. *In Edinburgh* the prisons assessments had been collected from 1867 to 1877 in the same way as the assessments under the Edinburgh Act 1867 (30 and 31 Vict. cap. 58), and in the case of railways only upon a quarter of the value of the railway. Prior to 1897 the lunacy assessment was rarely collected, but when collected was collected in the same way as the prison assessment. Since 1897 it had been collected under the Edinburgh Municipal and Police Act 1879 (42 and 43 Vict. cap. cxxxii), sec. 66 (5), which assessment was a burgh assessment (section 67), and was to be transferred to the proper authority to receive it by the treasurer (section 79), and in the case of railways their value for the purpose of assessment was to be taken at a quarter (section 74). *In Glasgow* the only difference was that the parish contained a burghal and a landward portion. That, however, only raised the question of the proportion leviable from each part, and made no difference in this case where the burghal part alone was in question. In Glasgow the lunacy assessment was collected in the same way as the assessments under the Glasgow Police Act 1866 (29 and 30 Vict. cap. cclxxiii), secs. 6, 39, and 42, and the assessment was on a quarter of the value of railways and of the underground pipes and works of the Glasgow Gas Companies. This exemption was extended by the Glasgow Corporation Water-works Act 1885 (48 and 49 Vict. cap. cxxxvi), sec. 35, to the underground works of the Water-works Commissioners. These exemptions were applied to all rates and assessments leviable within the city by the City of Glasgow Act 1891 (54 and 55 Vict. cap. cxxx), sec. 36, and these rates and assessments included the lunacy assessment. Consequently both in Edinburgh and Glasgow prior to 1913 the lunacy assessment was legally leviable only on a quarter of the value of the subjects referred to owned by the Railway Companies and the Corporation, and the Mental Deficiency and Lunacy (Scotland) Act 1913 did not alter that, but made it obligatory on the collector it introduced to allow that exemption. If the contrary were decided subjects of this kind relieved to the extent of three-fourths from all other rates would have to pay on the full value in respect of lunacy assessment. Further, the argument for the first parties necessarily came to this, that there never could be any deduction, exemption, or limitation with regard to the lunacy assess-

ment. But the Edinburgh Municipal and Police Act 1879 made the assessments according to the yearly value (section 75), yet it allowed remissions, limitations, and deductions (sections 71, 72, and 73).

Argued for the first parties in both cases —The word used in the Mental Deficiency and Lunacy (Scotland) Act 1913, sec. 65 (2), was "leviable," not levied, and the assessment leviable prior to that Act was by the Lunatics (Scotland) Act 1857, sec. 54, to be upon the real rent of the lands and heritages. The Prisons Acts merely provided a machinery to recover the assessments the incidence of which was fixed by the Lunatics (Scotland) Act 1857. The real rent was explained by the Prisons (Scotland) Act 1839, sec. 48, and that section also set out the exemptions allowable. The deductions allowable were the deductions allowable under the Lunacy Acts as defined by section 75 of the Mental Deficiency and Lunacy (Scotland) Act 1913, and were the deductions referred to in the Lunatics (Scotland) Act 1857, secs. 57 and 58. The deductions, &c., here claimed did not fall within the deductions, &c., in the Lunacy Acts. The Lunacy Acts did not refer to the Municipal Acts, and the lunacy assessment had nothing to do with the assessments under the special Edinburgh and Glasgow Acts. In Edinburgh it was not a burghal assessment. It differed from the other assessments authorised by the Edinburgh Municipal and Police Act 1879. No doubt it was collected by the burgh collector, but it was not like the other assessments for a burgh purpose, for the burgh did not expend it, which it did with all burgh rates; neither did the burgh estimate the amount required. The result was, it was not subject to the deductions, &c., which affected the burgh rates. In Glasgow the same considerations applied. The lunacy assessment was not estimated for under, nor authorised to be raised for the purposes of, the Special Acts, nor was it levied within the city. Further, if the contention of the other parties was given effect to within the burghal part of the parish, the railway, *e.g.*, would be assessed on a quarter, while in the landward part it would be assessed on the whole. To give effect to the contention of the other parties would produce want of uniformity.

At advising—

LORD PRESIDENT—In this case the North British Railway Company and the Caledonian Railway Company contend that within the Edinburgh Lunacy District they are liable to assessment under the Lunacy Acts and Mental Deficiency Act only on one-fourth of the yearly value of their railway lines as appearing in the valuation roll. I am of opinion that this contention is sound.

Whether it is so or not depends upon the just construction of section 63 of the Prisons (Scotland) Act of 1877, for to the Parish Council of the city of Edinburgh there is, by section 65 (2) of the Mental Deficiency Act, confided, as District Board of Control, a duty of imposing the assessments under the Lunacy Acts within the city of Edinburgh. And this assessment, it is expressly declared, is to be imposed "upon the like valuation in all respects and subject to the like deductions and exemptions as the assessment hitherto leviable within the parish" under the Lunacy Acts by the Town Council.

Now the assessment under the Lunacy Acts "hitherto leviable within the parish" by the Town Council was levied in terms of section 63 of the Prisons (Scotland) Act of 1877. That section is expressly embraced within the expression "Lunacy Acts" as used in the Mental Deficiency Act of 1913. The expression is so expressly defined in section 75 (2) of the Mental Deficiency Act. I turn, therefore, to section 63 of the Prisons (Scotland) Act to ascertain how the assessments under the Lunacy Acts were hitherto leviable, and there I find it provided that they may be imposed, levied, and recovered in the same way and manner and with the like powers as any other assessment which may be leviable by the magistrates within the burgh upon the lands and heritages within the same, as appearing in the valuation roll thereof.

In what way, then, in the city of Edinburgh, were the assessments under the Lunacy Acts leviable? They were leviable on railway companies in respect of their railway lines by taking as the basis of assessment one-fourth of the yearly value of the lands as appearing in the valuation roll, for it is expressly declared by section 74 of the Edinburgh Municipal Act of 1879 that the yearly value of the railway lines is to be deemed to be one-fourth of the yearly value of these lines as appearing in the valuation roll. So that when we turn to the statute to find in what way the railway companies were assessed for the other burgh assessments in respect of their railway lines, we find it in the Edinburgh Municipal Act of 1879, and we find it nowhere else.

But the Parish Council of the city of Edinburgh contends—and this indeed was their only contention as set out in the Special Case—that their powers of assessment are in no way affected by any provisions of the Edinburgh Municipal and Police Act of 1879. How it is possible so to maintain I am at a loss to understand, because the assessments hitherto leviable have been levied under the Lunacy Acts in the way expressly provided in the Edinburgh Municipal Act of 1879, and in no other way. And inasmuch, therefore, as this is the sole ground upon which the contention is advanced by the Parish Council of the city of Edinburgh that the railway companies are to be assessed upon the full yearly value of their railway lines as appearing in the valuation roll, it appears to me that that claim must be repelled, and that we ought to answer the first question put to us in the negative and the second in the affirmative.

The case from the city of Glasgow differs in no material respect from the case for the Parish Council of Edinburgh. For there, too, the sole ground upon which the Parish Council of Glasgow contends that the Corporation are to be assessed on the full value

of their underground works and the Caledonian Railway Company are to be assessed upon the full value of their railway lines under the Lunacy Acts and Mental Deficiency Act, is stated thus, because "their powers of assessment"—that is to say, the powers of assessment of the Parish Council of Glasgow—"under the said Act"—under the Mental Deficiency Act—"are not affected by any of the provisions . . . of the City of Glasgow Act 1891." Are they or are they not? When I turn to the City of Glasgow Act of 1891 I find that "In imposing or levying all rates and assessments within the city (1) The yearly rent or value of any land or heritage which is used as . . . line of any canal, or as a towing-path for the same, or as the line of any railway . . . shall be deemed to be one-fourth of the amount entered as the yearly rent or value thereof in the valuation roll of the city and royal burgh made up under the Valuation Acts." And that "(4) The yearly rent or value of all other lands or heritages shall be deemed to be the total amount entered as the yearly rent or value thereof in such valuation roll."

Now the assessing clause under the Lunacy Acts, which is section 63 of the Prisons (Scotland) Act of 1877, expressly indicates that the assessments under the Lunacy Acts are to be levied in the same way as any other assessments imposed by the Magistrates of Glasgow. All the other assessments imposed by the Magistrates of Glasgow are assessed by taking one-fourth of the yearly value of these subjects as set out in the valuation roll as the yearly value when you come to assess under the Lunacy Acts; and accordingly I am wholly unable to see how it is possible to sustain the sole contention put forward by the Parish Council of Glasgow to the effect that we have nothing to do in this question with the City of Glasgow Act of 1891. That appears to me to be a direct contradiction of the distinct provision of section 63 of the Prisons (Scotland) Act of 1877, which bids us go to the Municipal Act for the purpose of finding out in what way these assessments are to be levied.

Accordingly, inasmuch as this is the sole contention advanced by the Parish Council of Glasgow as against the claim put forward by the Corporation and by the Caledonian Railway Company, I am of opinion that it too ought to be repelled, and that in the Special Case for the Parish Council of Glasgow we ought to answer the first question put in the negative and the second in the affirmative.

LORD JOHNSTON—I do not think that it is possible to steer a clear course through this involved series of statutes to which objection—at one point or another, and probably at more than one point—may not be found. The detailed examination of the statutes has not satisfied me, and I am particularly suspicious of all considerations founded upon the Edinburgh local Act of 1879. But I think that the main idea running through the whole course of legislation is to combine the assessment of the sum required, as the quota of any particular area, with its more general assessments and to impose it on parallel lines. On these general grounds I agree with your Lordship.

LORD MACKENZIE—The argument for the first parties in these special cases is that the Mental Deficiency and Lunacy Act of 1913 introduced a new rate, described in their demand note for the year 1914–1915 as "an assessment for carrying out the provisions of the Lunacy (Scotland) Acts 1857 to 1913, levied on the real rent on the lands and heritages"; that section 65 of the 1913 Act provides for a code complete in itself as regards the assessment, levying and collection of this rate, which is to be found in the Lunacy Acts, as defined by section 75 (2); and that the Municipal Acts, in the case of Edinburgh the Act of 1879, and in the case of Glasgow the Act of 1891, have nothing to do with the matter.

In my opinion this contention is unsound. What the Act of 1913 does, by section 65, is to substitute a new collecting body for the old. It provides that when the district board of control is the parish council (which is the case both as regards Edinburgh and Glasgow) the assessment leviable under the Lunacy Acts, *i.e.*, the Act of 1857, as amended by any subsequent Act, shall be levied by the parish council acting as a district board. The words which immediately follow in section 65 (2) are those which give rise to the controversy. They provide that the assessment shall be levied "upon the like valuation in all respects, and subject to the like deductions and exemptions, as the assessment hitherto leviable within the parish under the Lunacy Acts by the town or county council, but shall be collected along with the poor rate and with the same remedies and modes of recovery." The question is, what is the "like valuation"? In order to ascertain this as at 1913 it is necessary to go to the Prisons (Scotland) Act of 1877, section 63. The Lunatics (Scotland) Act 1857 refers to the Prisons (Scotland) Act 1839, and when section 46 is read it is found that it involves the municipal scheme of assessment. The Act of 1839 was repealed by the Act of 1860, which in turn was repealed by the Act of 1877 above referred to, and accordingly the determination of the present question depends on the meaning of section 63 of that Act. This section, so far as relates to the present question, provides that such assessments as those in question may be imposed, levied, and recovered in the same way and manner and with the like powers as any other assessment which may be leviable by the magistrates within any burgh upon the lands and heritages within the same "as appearing on the valuation roll thereof," provided that in a burgh such assessments shall be payable one-half by the owner and one-half by the tenant or occupier. In order to find out how assessments under the Lunacy Acts were imposed, levied, and recovered at the date of the passing of the Act of 1913 it is necessary in the case of Edinburgh to go to the Municipal Act of 1879, which by section 74 provides—"The

yearly value of the lands and heritages after specified, shall, for the purpose of the burgh assessments, be held to be the nearest aggregate sum of pounds sterling to one-fourth of the yearly value thereof, viz., (1) All lands and works used as a canal or basin of a canal, or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament."

The effect of this appears to me to be that the expression the "like valuation" in section 65 (2) of the 1913 Act means that in assessing under the Lunacy Acts the yearly value of railways is to be held to be one-fourth. The contrary view, contended for by the first parties, is that the Lunatics Act of 1857, section 54, provides that the expense is to be assessed, laid on, and collected according to the real rent of the lands and heritages in terms of the Lands Valuation Act of 1854. The expression "real rent" seems to be used as a contradistinction to the old valued rent. The Act of 1857 is not an assessing statute. As, therefore, it is necessary to go to other statutes for the assessing powers, it is necessary, in my opinion, to take those powers with all the qualifications attached to them. The question under section 65 (2) of the 1913 Act is, How were burgh assessments legally leviable at the date of that Act? The answer must be on one-fourth only of the yearly value of lands and heritages used as a railway. The first parties contended that assessments under the Lunacy Acts do not form part of the burgh assessments. But in the memorandum relative to the demand note they are dealt with as falling under the fifth head of section 66 of the Act of 1879. This seems the correct view, especially in view of section 79. If so, then the deduction of 75 per cent. provided in section 74 applies. The practice in Edinburgh, we were informed, has been in conformity with this view of the statute.

In Glasgow, on the other hand, the practice does not appear to have been the same. The City of Glasgow Act of 1891, section 36, enacts that in imposing or levying all rates and assessments within the city the yearly value of railways is to be deemed to be one-fourth of what appears in the valuation roll. The same considerations therefore, in my opinion, apply in the case of Glasgow as in the case of Edinburgh. It was said that this would create anomalies between the burghal and the landward portions of the parish, but unless the first parties can show that the Lunacy Acts provide a uniform scheme of assessment, which, in my opinion, they cannot, the anomaly is just the difference that must necessarily occur in the case of burgh and county assessments. It is, no doubt, true that the Glasgow Act of 1891 was passed for the purpose of extending boundaries, but the terms of section 36 are quite explicit.

LORD SKERRINGTON — The counsel in these Special Cases properly and necessarily directed our attention to a great variety of statutes. But in the end of the day the whole question, as it seems to me, turns upon what is the just construction of the 54th section of the Lunacy (Scotland) Act of 1857, as modified by the 63rd section of the Prisons (Scotland) Act of 1877.

The lunacy assessment took its inception in the Lunacy Act of 1857, section 54 of which provided a complete code for the levying of that assessment, because it incorporated within itself, so far as that was necessary, the provisions of the Prisons (Scotland) Act of 1839. The scheme of section 54 was to establish two assessing bodies —the commissioners of supply in counties and the magistrates in burghs, and by burghs were meant royal burghs and parliamentary burghs. The lunacy assessment was to be levied in these respective areas in the same way in all respects as if it were a prison assessment. It was, however, expressly enacted that the assessment should be levied according to the real rent. Now, it is contended on behalf of the Parish Councils that these words constitute an essential and permanent quality of the lunacy assessment, and that they mean that it must be levied according to the full rental of all heritable property appearing in the valuation roll. I do not so interpret these words. I think that they were intended to exclude any reference to the valued rent, and also to render unnecessary and incompetent a valuation by the assessing authority, it being intended that the values appearing in the valuation roll should be taken. But there is no inconsistency between an assessment being levied according to the valuation in the valuation roll and the properties assessed being classified so that some are assessed at the full valuation appearing in the roll and some only according to a proportion of that valuation. The fact that there is no inconsistency between these two ideas is sufficiently shown when one contrasts sections 33 and 41 of the Lands Valuation Act of 1854. It is, however, clear that an assessing body cannot so classify heritages unless it has statutory power to that effect. There was no such power in the Act of 1857. Accordingly if that Act had contained the whole code which we had to interpret, the second question put to us must have been answered in the negative. But in the year 1877 there was passed a new Prisons Act which, as I interpret it, directed that in the future the lunacy assessment in county areas and in burgh areas should be levied by the rating authorities, namely, the commissioners of supply or the magistrates, in the same way and manner as other county or burgh rates.

It is instructive to follow, in the first place, the course of legislation in regard to county assessments. By the Local Government Act of 1889 the assessing powers of the commissioners of supply were transferred to the county councils, and all the rates which were to be levied by the county councils were consolidated into a single rate. Included among the rates so consolidated was the lunacy rate. The effect of this legislation was to alter the incidence of that tax in counties. Section 63 of the

Statute of 1877 imposed the whole burden upon the owners of heritage within the counties, whereas from and after the passing of the Local Government Act owners were required to pay only the average rate as it stood in 1889, and in the future any increment in the rate was to be divided equally between owners and occupiers. In the year 1896 there was a further alteration in the incidence, because the occupiers of agricultural lands in paying the county rate, which included the lunacy assessment, were required to pay only upon three-eighths of the value in the valuation roll. All these changes were in the case of counties effected by public general statutes. But when one turns to the royal and parliamentary burghs one finds, as was only natural, that in the case of the larger burghs the matter was regulated by private Acts of Parliament. In the Edinburgh Act of 1879 there is language which seems to me to be clear and imperative to the effect that all assessments except the land tax which were levied in the city of Edinburgh were to be levied as part of what the statute describes as the "burgh assessments." The exception of the land tax—a tax no longer leviable in burghs—exemplifies the universality of the rule as to assessments leviable within the burgh of Edinburgh. The statute enacted with reference to the "burgh assessments," including as I think the lunacy assessment, that these were to be levied upon one-fourth only of the yearly value of railways and certain other heritages. In the Glasgow municipal statutes one finds legislation to the same effect.

That carries one down to the year 1913, immediately before the passing of the Mental Deficiency Act of that year. Now it seems to me that there is no doubt as to the meaning of section 65 of that statute. That section deals with two different cases. The first sub-section deals with what I may call the normal case, where the district board of control, or as it used to be called the district board of lunacy, was a separate entity from the parish council. In such cases the assessing authority remained the same as before, namely, the county councils in county areas and the magistrates in burgh areas. Further, the assessment which was to cover the purposes not merely of the Lunacy Acts but of the Mental Deficiency Act was to be levied precisely as the lunacy assessment had been levied prior to 1913. But it was necessary to make provision for an abnormal class of cases with which we have to do in the present litigation, namely, where it so happened that the district board was identical with the parish council. In such cases it was thought desirable that the power of imposing the assessment should be transferred from the county councils and magistrates and vested in the parish council. That is the case provided for in the second sub-section. But that sub-section makes it plain that the incidence of the tax shall be exactly the same as it would have been if the case had been a normal one and the assessment had been levied by the county council or by the magistrates.

For these reasons I agree with your Lordships that the first question put to us in both of these special cases ought to be answered in the negative, and that the second question in each case ought to be answered in the affirmative.

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

Counsel for Edinburgh Parish Council—The Solicitor-General (Morison, K.C.)—Lippe. Agents—R. Addison Smith & Company, W.S.

Counsel for Glasgow Parish Council—Horne, K.C.—T. G. Robertson. Agents—R. Addison Smith & Company, W.S.

Counsel for Glasgow Corporation, the Caledonian Railway Company, and the North British Railway Company—The Dean of Faculty (Clyde, K.C.)—Macmillan, K.C.—Gentles. Agents—Simpson & Marwick, W.S.—James Watson, S.S.C.

Friday, March 17.

SECOND DIVISION.

[Lord Anderson, Ordinary.

MURRAY *v.* FRASER.

(Reported *ante*, 52 S.L.R. 277.)

Reparation — Seduction — Girl under Sixteen—Arts and Wiles.

In an action of damages for seduction at the instance of a girl who was under sixteen at the time, against a man of about thirty, it was proved that the pursuer was but a child at the period in question, that she was ignorant of sexual matters, that the defender was her parents' friend, and that she trusted and liked him. *Held* that these facts, together with proof of intercourse, amounted to seduction and entitled the pursuer to decree.

Observations per curiam on the amount of corroboration necessary to establish the evidence of the pursuer on an incidental point in her case.

Observations per Lord Justice-Clerk on the importance to be attached in a proof to the opinion of the judge who heard the witnesses.

Kilpatrick v. *Dunlop* (H.L.), November 24, 1911, *per* the Lord Chancellor (Loreburn) and Lord Halsbury, reported *infra, followed.*

Miss Kate Murray, daughter of and residing with Alexander Murray, Elgin, *pursuer*, with her father's consent and concurrence as her curator and administrator-in-law, brought an action of damages against David Fraser, Elgin, *defender*, for £750 for seduction.

The pursuer averred—"(Cond. 3) During the summer of 1912 the pursuer was attending the Technical School in Elgin. On one occasion while the pursuer was cycling home from the Technical School the defender overtook her. Defender was cycling. The pursuer cycled with defender for about