this action was the cause, or one of the causes, which forced the company into liquidation. Nor is their second circumstance—the use of diligence before the presentation of the petition—a ground on which what they claim can be conceded. It is true, no doubt, as the respondents say, that decrees for these debts were granted on the 18th April, that charges for payment were given on the 24th April, and that on the 2d May the poindings in question were executed, while the petition in which the order for supervision is asked was not presented till the 14th of May. But the Court was not sitting during any part of this period. The case of the respondents therefore is hardly stronger than it would have been if the order had been applied for the day after the decrees obtained by the respondents were pronounced, and that as a reason for giving the privilege claimed could never be sustained. If the diligence had been used before the voluntary liquidation commenced, the case would have been different. But in this case the liquidation was begun before the poinding, and as there was no avoidable delay in applying for the order for supervision now asked, what is urged is not a reason for granting the privilege claimed.

Every case of the kind is a case of circumstances, and there have been conflicting decisions in the English Courts; but the last and most authoritative—*Vron Colliery Company*, 20 Chan. Div. 442—is a direct authority against the respondents' contention.

Though not urged in the answers, it was suggested in the course of the argument at the bar that the respondents should be put in the same position as they would have occupied if the poinded goods had been sold on the 14th of May, which would have happened but for the sist of diligence granted in the Bill Chamber on the 12th. But I am not disposed to yield to this demand. In the first place, the interlocutor in the Bill Chamber cannot be reviewed on this application, and must be taken meantime to have been well pronounced. But, in the second place, the application for interdict was in my opinion reasonable in the circumstances—certainly there is nothing to show it was unreasonable. Its purpose was to preserve the *status quo* until by the meeting of the Court the statutory application could be presented, and as that was necessary to prevent the policy and purpose of the liquidation under supervision from being frustrated, the occasion was one on which the *nobile officium* was legitimately exercised by the Lord Ordinary in the Bill Chamber. Let it be borne in mind that the order for supervision is to be qualified, and consequently the diligence of individual creditors is, despite the liquidation, to be allowed only if the Court shall think this "just." Such is the provision in sec. 147 of the Companies Act of 1862, and I am of opinion that it would not be just to the company, and would be more than just to the respondents, were the order prayed for by the petitioners to be qualified by a permission given to the respondents to follow forth their diligence as they propose. My opinion is that the order for supervision prayed for should be granted. This would be enough for the end the petitioners have in view, according to my reading of the statute, but as both parties desire an express deliverance on the matter of the diligence begun by the respondents, and this may competently be given, decree in terms of the remainder of the prayer may be, and I think ought to be, pronounced.

Lord Young—I am of the same opinion.

Lord Rutherfurd Clark—In considering this application I am to assume that the decision in the case of *Sdeuard* v. *Gardner* was right, and therefore that we have no statutory power to stay proceedings at the instance of creditors. The creditors here have completed their security by poinding, and the funds were about to be realised by sale which was to take place on a date fixed. In the ordinary case nothing can be done to stop the diligence of creditors which they are in the course of carrying through. The petitioners, however, stopped the realisation of the funds of the company by the creditors by applying in the Bill Chamber for interdict, which they obtained. I have grave doubts of the propriety of granting that application, for I do not see any propriety in stopping creditors from realising the securities which they have obtained by their diligence. These are my doubts, and I confess that, while granting the first part of the prayer, I should be disposed to allow the creditors of the company to proceed with their diligence.

Lord Justice-Clerk—I concur entirely in the opinion of Lord Craighill, and in doing so I do not propose to indicate any opinion as to the effects of a voluntary winding-up in stopping the race of diligence of creditors. The English rule is apparently entirely the reverse of that laid down in the case of *Sdeuard*, and that would raise important considerations did the question arise here. In the present case, however, the matter is one entirely in our discretion, and I think the result of Lord Craighill's opinion is just and equitable.

The Court ordained "the voluntary winding-up of the company to continue subject to the supervision of the Court."

Counsel for Petitioners — Graham Murray. Agents—J. & A. Hastie, S.S.C.
Counsel for Respondents—Ure. Agents—Dove & Lockhart, S.S.C.

Thursday, July 12.

SECOND DIVISION.

[Lord Kinnear.

SHARP *v.* PAROCHIAL BOARD OF LATHERON.

Valuation of Lands Act 1854 (17 *and* 18 *Vict. c.* 91), *secs.* 5 *and* 33—*Assessment—Erroneous Entry in Valuation Roll—Duplicate Entry in Valuation Roll—Poor Law Act* 1845 (8 *and* 9 *Vict. c.* 83), *sec.* 40.

A change of tenancy having occurred in certain subjects assessed for poor-rates according to the valuation roll made up for the year 1880-1, the subjects were entered in the valuation roll for 1881-2 as occupied by the new tenants, the former entry being also continued in that valuation roll.

The proprietor did not receive any notice from the assessor that the old entry was to be repeated. The roll for assessment for relief of the poor having been made up from the valuation roll, he was thus charged with poor-rates twice over for the same subjects. In a suspension brought by him of a charge to pay the excess, *held* that the question was one not of valuation but of assessment, and that he was not prevented from having his remedy by the statutory finality of the valuation roll.

Section 40 of the Poor Law Act 1845 enacts, *inter alia*—" . . . The parochial board of every parish or combination shall fix and determine the amount of assessment for the year or half-year then next ensuing, and shall make up, or cause to be made up, a book containing a roll of the persons liable in payment of such assessment, and of the sums to be levied from each of such persons, and the roll so made up shall be the rule for levying the assessment for the year or half-year then next ensuing; and the collector shall forthwith intimate to each person the amount of the sum to be levied from him, and the time when the same is payable: Provided always, that it shall be lawful for the parochial board of any such parish or combination, if there shall have been found to exist any error in the sum or sums to be levied by way of assessment, or any omissions or overcharges in respect of the persons liable to pay the same, to cause such error, omission, or overcharge to be corrected at their next or any subsequent meeting after such error, omission, or overcharge shall have been discovered."

Section 5 of the Lands Valuation Act enacts, *inter alia*—"On or before the 25th day of August, or not earlier than the 15th day of July in each year, the assessor shall transmit, or cause to be transmitted, to each person included in his valuation, whether as proprietor or tenant or occupier, a copy of every entry in such valuation roll wherein such person shall be set forth either as proprietor or tenant or occupier, along with a notice to such person that if he considers himself aggrieved by such valuation he may appeal against the same to the commissioners of supply of the county: . . . Provided always, that where, in making up his valuation as aforesaid, the assessor is merely to repeat an entry which occurred in the valuation of the immediately preceding year, it shall not be necessary for the assessor to transmit such copy and notice as aforesaid to the person or persons specified in such merely repeated entry."

Section 33—"Where in any county . . . any . . . parochial, or other public assessment, or any assessment, rate, or tax under any Act of Parliament, is authorised to be imposed or made upon or according to the real rent of lands and heritages, the yearly rent or value of such lands and heritages as appearing from the valuation roll in force for the time under this Act in such county . . . shall, from and after the establishment of such valuation therein, be always deemed and taken to be the just amount of real rent for the purposes of such . . . assessment, rate or tax, and the same shall be assessed and levied according to such yearly rent or value accordingly, any law or usage to the contrary notwithstanding."

Adam Sharp, proprietor of the estate of Clyth, in the parishes of Latheron and Wick, in the county of Caithness, being threatened with a distraint warrant at the instance of the Collector of Poor-rates of Latheron for alleged arrears of assessment, presented this note of suspension and interdict against the Inspector of Poor and the Collector of Poor-Rates to have them interdicted from proceeding under or executing a distress warrant obtained from the Sheriff at the instance of the latter for payment of £5, 7s. 2d. as poor-rates, alleged to be due for the year from Whitsunday 1881 to Whitsunday 1882, by attaching his goods and those of his tenants, or in any other manner. He complained of certain entries in the valuation roll for that parish for the year 1881–1882, on which he was assessed for that year, as erroneous, and averred—"Before the completion of the valuation roll the assessor sent the complainer the three schedules herewith produced, showing the alterations and additions on his rental which were to be entered in the valuation roll of the year, and which appeared to the complainer to be correct. The complainer, while on a visit to Clyth in July of that year, had an interview with the assessor, but the errors which are hereafter referred to were not spoken of by the assessor. The complainer got no copy from the assessor of the entries complained of, and he was therefore under the impression that the valuation roll as completed by the assessor would contain only the entries which he had seen and approved of. The complainer had thus no opportunity of offering any explanation, or of appealing against the entries objected to."

In December 1881 he received a notice of assessment from the collector of poor-rates for the parish, and on examining the value of the property stated as belonging to him in the parish he found that he had been overcharged, and accordingly he wrote to the inspector to that effect that he had been charged in excess of his gross rental, and that he would send the collector particulars when he got a copy of the valuation roll. He again wrote, pointing out the overcharges, and appealing against them, and explaining that he did not know that they had been entered on the valuation roll until he had examined it. In answer he received intimation from the inspector that the board refused to entertain the appeal as he had been assessed in accordance with the valuation roll.

The entries to which the complainer objected were entered in the valuation roll as follows, viz.:—No. 880, William Waugh, for land at Roster, £4, 10s.; No. 881, Donald Sinclair, for land at Roster, £18, 15s.; No. 882, Vacant, for land at Roster, £12; No. 947, Christina Mackay, for house at Occumster, £4; No. 1051, Robert Gunn, for land at East Clyth, £6; No. 1052, William Cormack, for land at East Clyth, £4—in all, £49, 5s. With regard to these entries he averred—"To this extent the complainer's rental is overcharged, and he is assessed on that sum. The entry No. 880, for land at Roster, in name of William Waugh, at a rent of £4, 10s., was at the time occupied by Donald Sinclair, mason, and is included in the return made by the complainer in Sinclair's name, and appears in the valuation roll at No. 877. No. 881 is erroneous, the complainer having only one tenant of that name in the district, and the land occupied by Donald

Sinclair appears in the valuation roll at No. 877. No. 882 is erroneously stated as vacant, the lot being let to James Mackay, and appears in the valuation roll at No. 874. No. 947, charged to Christina Mackay, was let to and included in the subjects let to James Forbes jr., and appear in valuation roll at No. 948. Nos. 1051 and 1052, entered respectively to Robert Gunn and William Cormack, were let to, and formed part of the land returned for, James and Alexander Doull, and are included in their name at No. 967 in the valuation roll."

The return for 1880–81 contained all the entries complained of except the first one, No. 880, and they appeared in the valuation roll for that year. The last time No. 880 was returned by the complainer was for 1879–80, and it appeared in the valuation roll for that year. The return for 1881–82 contained none of the entries complained of. The subjects mentioned in these erroneous entries were then occupied by new tenants, and were inserted in the return and in the valuation roll for 1881–82 as occupied by these new tenants. The entries complained of were thus all duplicate entries of subjects which appeared otherwise in the valuation roll for 1881–82, and in respect of which the complainer had already paid. The amount complained of as overcharged was £5, 17s. 2d., which the complainer refused to pay. He then received intimation that the Sheriff's distraint warrant was to be enforced against him. He thereupon made the present application for interdict.

He pleaded—"(2) The valuation roll founded on by the respondents, so far as regards the entries complained of, not having been made up in terms of the Statute 17 and 18 Vict. cap. 91, and particularly section 5 thereof, the complainer was not and is not barred from calling the same in question. (3) The complainer having duly pointed out to the Parochial Board of Latheron the errors in the assessment proposed to be levied from him, it was their duty under the Poor Law Act (8 and 9 Vict. cap. 33), and particularly section 40 thereof, to have caused the errors complained of to be corrected, especially as it was explained to them that the valuation roll had been improperly made up, and that the complainer had not been afforded the opportunity provided by statute for having the same corrected."

The respondents maintained that the collector had made up his assessment roll, under the 40th section of the Poor Law Act and the 33d of the Lands Valuation Act, from the valuation roll. They admitted that the complainer had objected to certain entries in the valuation roll as erroneous, but denied that he had been overcharged.

They pleaded — "(1) The statements of the complainer are not relevant or sufficient in law to support the prayer of the note. (2) The assessment roll being properly made up in accordance with the statutory provisions thereanent, more particularly by 17 and 18 Vict. cap. 91, sec. 33, the note should be refused with expenses."

The note having been passed *interim*, and interdict granted, the Lord Ordinary (Kinnear) allowed a proof.

"*Note.*—This case was delayed in order to give the parties an opportunity of adjusting a minute of admissions, so as to avoid unnecessary expense in a case where the sum at stake is so small, and in which the parties should have little difficulty in satisfying themselves as to the true state of the fact. But the counsel for the respondents having stated, after taking time for inquiry, that he is not in a position to admit any averments that are not already admitted on record, there is no alternative but to allow the complainer a proof.

"The respondents maintain that the complainer's statements are irrelevant, because under the statute the valuation roll is conclusive. If the roll had been made up in terms of the statute, and the complainer had neglected the statutory method for correcting errors to his prejudice, the contention would have been sound. But the averment is that the assessor failed to comply with the provisions of section 5th of the Valuation Act, which requires him 'to transmit, or cause to be transmitted, to each person included in his valuation, whether as proprietor or tenant or occupier, a copy of every entry in such valuation roll wherein such person shall be set forth either as proprietor or tenant or occupier, along with a notice to such person that if he considers himself aggrieved he may appeal to the commissioners of supply,' or obtain redress by satisfying the assessor that he has ground of complaint. The complainer alleges that the assessor failed to transmit to him in terms of the statute any copy of the entries of which he now complains, and therefore that he had no opportunity of obtaining redress either by satisfying the assessor himself of his error or by appealing to the commissioners.

"It is said that the entries in question appeared in the valuation roll of 1880–81, and therefore that since they are mere repetitions of entries in the valuation of the immediately preceding year, it was unnecessary, under the concluding proviso of section 5, to transmit the statutory copy and notice to the complainer. But if the complainer's statement is correct it is manifest that they are not 'mere repetitions' in the sense of that proviso. For a change of tenancy having taken place since the roll of 1880–81 was completed, the assessor has entered the subjects in question in the roll of 1881–82 as occupied by the new tenants, and has at the same time continued the old entries as if no change had been made. The consequence is that the complainer has been twice assessed, and will require to pay a double poor-rate for the subjects in question unless he can obtain redress in this process. If his statement is correct, he was, in my opinion, entitled to rely upon the assessor having followed the course prescribed by the statute, and to assume that no entry affecting him would appear in the valuation roll except those which had been sent to him, and of which he had approved. As he had no notice of the entries he had no opportunity of appealing against them. But he cannot be precluded by the statutory finality of the valuation roll if the conditions upon which it is made conclusive have not been satisfied."

The evidence established the truth of the pursuer's averments as to the return, and in particular that none of the six entries complained of were contained in the return made in June 1881, and that the valuation exceeded the gross rental returned by the amount averred, £49. It was proved that five of the six entries were duplicate entries of the same subjects.

The Lord Ordinary suspended the proceedings

complained of, and declared the interdict perpetual.

"*Note.*—The respondents' counsel maintained that the complainer had failed to prove his case with regard to the other entries specified in his statement, but he conceded that the entries Nos. 1051 and 1052 were erroneous, these parcels being included in the subjects entered under No. 967. It was also admitted that the complainer was justified in reading the notices transmitted to him as representing that these two parcels would be entered in accordance with the rental he had furnished under No. 967, and in that respect the old valuation roll would be altered. It follows that the assessor failed to transmit the complainer 'a copy' of two entries affecting him, which are admittedly erroneous, and that appears to be conclusive of the case, because it was further conceded that if one of the entries is erroneous the charge must be suspended, notwithstanding that the others are accurate, unless the respondents are right in maintaining that all challenge of the valuation roll is barred by the statute, even although the notices which the statute prescribes have not been given to the complainer. I may say, however, that in my opinion the complainer's averments have been proved with regard to all the entries in question excepting No. 881. With regard to that subject there is admittedly an erroneous entry, but the error is one of mere description, and there is no double entry for which the complainer can be prejudiced.

"I must add that the case might have been decided without the expense of a proof if the respondents had thought fit, at an earlier stage, to make the admission, which could not ultimately be withheld, as to Nos. 1051 and 1052."

The defenders reclaimed, and argued—Though the amount at stake in the case was small, the question of law involved was of great importance. The same error might occur with subjects valued at hundreds of pounds, and then the question would be whether the proprietor entered in the roll for this was to pay or the other ratepayers. The only safe rule to go by was that the roll was conclusive for the year, and the corrections of the entries could not be altered or even inquired into. The statute prescribes the standard, and the board have no choice but to go by it.

Authorities—*M'Lauchlan* v. *Tennant*, May 4, 1871, 2 Coup. 45—43 Sc. Jur. 390; Valuation Act, secs. 31 and 32; Poor Law Act 1845, secs. 38 and 40.

The pursuer replied—The result of the pursuer's contention would lead to startling and inequitable results. It would prohibit parochial boards from acting officially as honest men—from repaying what they knew to be an erroneous overcharge. This was not a question of valuation, but of assessment on subjects which did not exist, at least which did not exist twice. The subjects were correctly enough valued, but were charged twice over. The valuation roll was conclusive as to valuation, but not as to assessment—Valuation Act, sec. 34.

At advising—

Lord Justice-Clerk—I entirely agree that the valuation roll is conclusive as to the value of all subjects entered on it for assessment for that year, but then in this case it is alleged that although the value of the subjects are correctly entered they are valued and entered twice over, and it is argued that it is unjust for the proprietor to have to pay twice for the same subjects. This contention bears in principle so much equity that I find it impossible to resist giving it effect; and I think the real answer is that the duplication of subjects here with the same valuation is not a question of valuation at all, but of assessment. The assessor is practically trying to collect the assessments twice over, and this is admitted by the defenders. To hold that he cannot exact his debt twice is not to interfere with the conclusiveness of the valuation roll as to the assessable value of the subjects entered in it.

Lords Young and Rutherfurd Clark concurred.

Lord Craighill was absent.

The Court adhered.

Counsel for Complainer—Jameson—G. Wardlaw Burnet. Agent—William Officer, S.S.C.

Counsel for Respondents (Parochial Board)—Trayner—Baxter. Agent—David Forsyth, S.S.C.

Thursday, July 12.

SECOND DIVISION.

[Sheriff of the Lothians.

GRANT *v.* DRYSDALE.

Reparation—Master and Servant—Culpa—*Contributory Negligence.*

A quarryman while engaged in preparing to blast a piece of rock was injured through the falling upon the powder he was using of a hot cinder from the furnace of a steam-crane used at the edge of the quarry. *Held*, on a proof, that in the circumstances there was fault on the part of the quarrymaster (who personally superintended the working of the quarry) in not having provided the furnace with a fender for catching such cinders, and that the pursuer was not chargeable with contributory negligence in using powder without taking care that the open side of the furnace was at the time so placed that cinders could not fall from it into the quarry.

This was an action of damages for bodily injury raised by a quarryman against his employer. The pursuer claimed, at common law and also under the Employers Liability Act 1880, the sum of £150 as damages for injuries sustained in the following circumstances disclosed by the proof:—

The pursuer was employed in the quarry, under the instructions of John Hill, the defender's foreman, in charging with gunpowder a hole which he had previously drilled in the rock for the purpose of blasting. While he was thus engaged a red-hot cinder fell from the furnace of a steam-crane used for raising stone to the surface, and placed on the edge of the quarry. This cinder, entering the drill hole which the pursuer