remuneration. I think it has no application to the case, and no necessary relation whatever to the fairness of the remuneration. It seems to me that unless the calculation is purely fortuitous it really involves a preliminary estimate in a general way of what would be a fair fee, and then the application to that of an amount per cent. which will come near it in the result. I prefer to negative that method of calculation, and to sustain the Railway Company's contention that the proper way of arriving at a sum in this case is by considering what a man of business, having knowledge of the question, would fix as fair remuneration. In this view the sum allowed by the Auditor is too high, and I agree with your Lordships that a fee of three hundred guineas would be a fair remuneration to the pursuers.

LORD KINNEAR was absent.

The Court recalled the Lord Ordinary's interlocutor and gave decree for £394, 10s. with interest thereon at 5 per cent. from 9th May 1905, the date of the summons, in full of the conclusions thereof, and allowed no expenses due to or by either party.

Counsel for the Pursuers and Respondents — Solicitor-General (Ure, K.C.) — Cullen, K.C.—Spens. Agent—F. J. Martin, W.S.

Counsel for the Defenders and Reclaimers —Clyde, K.C.—Blackburn, K.C.—Hon. W. Watson. Agents—Hope, Todd, & Kirk, W.S.

Thursday, March 7.

FIRST DIVISION.

[Lord Salvesen, Ordinary.

BRUCE *v.* THE SCOTTISH AMICABLE LIFE ASSURANCE SOCIETY.

Right in Security—Bond and Disposition in Security—Assignation by Heritable Creditor in Possession under Decree of Maills and Duties—Obligation of Creditor to Assign—Assignation without a Clause Acknowledging that Amount Due is Correctly Stated on a Settlement of Accounts—Scope of Penalty Clause in Bond.

A heritable creditor in possession under a decree of maills and duties was tendered the amount of the principal sum and also the amount of interest which he alleged to be still due under his bond; but the debtor did not admit that the amount of interest was correctly stated, reserved his right to challenge the creditor's intromissions, and refused to allow the insertion in the assignation of the bond in favour of a third party which he demanded, of a clause stating that the amount of interest was acknowledged to be correctly stated after a settlement of accounts. The creditor refused to grant the assignation without the clause, maintaining that the expenses to be incurred in defending the threatened action as to his intromissions fell within the usual penalty clause of his bond and disposition in security, and that he was entitled to retain the security subjects as security therefor if he were successful and until he had a final clearing-up of accounts.

Held, in an action of declarator brought by the debtor, that the expenses of the threatened action would fall within the penalty clause of the bond and disposition in security, and consequently that the creditor was not bound to grant an assignation without a final settlement of accounts.

Orr v. *Mackenzie*, June 20, 1839, 1 D. 1046, *followed.*

Right in Security—Bond and Disposition in Security—Discharge—Discharge by Consignation—Conveyancing (Scotland) Act 1874 (37 *and* 38 *Vict. cap.* 94), *sec.* 49.

The Conveyancing (Scotland) Act 1874, section 49, enacts—"Where the debtor in any heritable security, whether granted before or after the commencement of this Act, shall have exercised the power or right of redemption contained therein, but where, from the death or absence of the creditor, or any other cause, the debtor cannot obtain a discharge of the incumbrance created by the security, it shall be competent to him to consign the amount, principal and interest, due, and thereupon it shall be competent to any notary-public to expede a certificate in, or as nearly as may be, the terms of Schedule L, No. 2, hereto annexed, and the recording of the said certificate in the appropriate register of sasines shall, provided the principal debt and all interest due thereon in terms of the security shall have been so consigned, have the effect of completely disencumbering the lands contained in such heritable security of the debt and of all interest and penalties corresponding thereto."

Opinion per the Lord President that the above section is applicable only in cases where the debtor cannot get a discharge, and does not apply to a case where the difficulty is that the parties cannot agree as to the terms of an assignation of the bond and disposition in security.

Right in Security—Bond and Disposition in Security—Discharge—Premonition—Necessity of Premonition where Creditor in Possession under Decree of Maills and Duties.

Held per Lord Salvesen, Ordinary, that a creditor's having obtained decree in an action of maills and duties on a bond and disposition in security, and being in possession thereunder, does not dispense with the necessity of premonition if the debtor desires to pay the debt.

On September 11, 1906, John Wilson Bruce, accountant and property agent, Glasgow, brought an action against the Scottish

Amicable Life Assurance Society, in which he sought declarator that the defenders were bound to execute and deliver, on receipt of the considerations therein mentioned, two assignations of certain bonds and dispositions in security for the principal sum of £28,000, over his property fronting Renfield Street in Glasgow, the first in favour of the Refuge Assurance Company, Limited, and the second in favour of Thomas Richard Canch, 45 East Trinity Road, Edinburgh. The first assignation was of the principal sum contained in the said bonds, and no question arose as to its terms. The second was of the sum of £773, 11s. 9d., which was the amount of arrears of interest, &c. on the bonds said by the defenders to be still due, and as to its terms a question had arisen whether the defenders were entitled to have inserted a certain clause.

The clause desired by the defenders was—"Which interest the said John Wilson Bruce (*the pursuer*) and the said Scottish Amicable Life Assurance Society (*the defenders*) hereby acknowledge and declare to be correctly stated at the said sum of £773, 11s. 9d. after settlement of accounts between them."

The *facts* are given in the opinion of the Lord Ordinary (SALVESEN), who, on 24th January 1907, pronounced an interlocutor finding the defenders bound to deliver the assignations as craved on having first received due premonition.

Opinion.—"The pursuer in this action is the proprietor of certain heritable subjects in Glasgow which have been disponed to the defenders in security of a *cumulo* sum of £28,000, under bond and disposition in security granted by the previous proprietor, and relative bond of corroboration by the pursuer.

"On 8th November 1901 the defenders raised an action of maills and duties in the Sheriff Court of Lanarkshire, at Glasgow, in the ordinary form, and under a decree which they obtained in that action they have since been in possession of the subjects and drawn the rents. A second action of the same nature was raised on 25th January 1905 by the defenders against the pursuer, in which they obtained decree on 2nd November 1905. This decree was extracted on 18th November.

"As might be inferred from the defenders requiring to take legal proceedings to enforce their rights, they were at that time desirous of obtaining payment of the principal sums and interest due to them. With this object they, on 12th August 1904, served the usual schedule of intimation, giving notice to the pursuer that payment was required at the ensuing term of Martinmas. This demand was subsequently departed from, but as it might at any time have been renewed, the pursuer appears to have looked about for some lender who would take their place.

"Ultimately the pursuer was successful in arranging with the Refuge Assurance Company to advance the principal sum of £28,000, and with Mr Thomas Richard Canch to advance the balance of interest and expenses, and the present action has now been brought to obtain declarator that the defenders are bound to execute and deliver assignations in favour of these two lenders on being paid the considerations specified in the draft assignations produced. The terms of the proposed assignation in favour of the Refuge Assurance Company have been settled, and the only dispute as regards the assignation in favour of Mr Canch is whether the defenders are entitled to insert a clause referring to the arrears of interest in the following terms:—" . . . [*quotes clause supra*] . . ."

"The defenders maintain their right to have this clause inserted before they are asked to denude of their security. They say that unless they have a final clearing up of accounts now, the pursuer may at any time raise an action against them to obtain a count and reckoning as to their intromissions with his property while they were in possession as heritable creditors, and that he has intimated that his reason for objecting to the clause is that he reserves his right to bring such an action. In the event of his doing so and being unsuccessful, they will only have his personal security for payment of the expenses, whereas if the action is raised while they are still in possession under their bond they will be entitled to charge their expenses in the action against the real estate disponed to them in security. This consequence is said to follow from the fact that the bond contains the usual penalty clause, which, according to their contention, entitles them to charge expenses in connection with such an action, to an extent not exceeding £3600 (one-fifth of the principal sum) against the property in preference to subsequent bondholders.

"The validity of this argument depends upon whether the penalty clause gives security for the expenses of such an action as that which the defenders apprehend. I was referred to a number of institutional writers, but as they are all to the same effect I need only note 1 Bell's Coms. 701 (M'Laren's edn.), and the authorities on which that learned author relies. It seems now to be quite settled that the penalty in a bond covers all expenses that may be incurred in making the debt effectual, as, for instance, the expense of diligence and even the expense of a litigation collaterally arising in making effectual the claims. The strongest illustration of this doctrine is to be found in the case of *Orr* v. *Mackenzie*, 1 D. 1046, where it was stated by Lord President Hope that the penalty in a bond covers the necessary expense of obtaining payment, whoever may be the party who has resisted payment. The question here is whether this rule applies to the defenders' possible expenses in the action which they anticipate, but which has not yet been raised. In my opinion they do not.

"In the first place, it falls to be noted that the defenders have been tendered full payment of all the sums, whether of principal, interest, or expenses, which they claim. Secondly, the proposed action will not lie

against them as heritable creditors only, but as heritable creditors who chose to enter into possession, and thereby constituted themselves trustees for the administration of the estate. Such expenses are not expenses necessary to render the security effectual, or in defending the security, but expenses which may be incurred in justifying their administration, and I think it would be unjust to apply the principle laid down in *Orr's* case to such expenses. The owner of property over which there are bonds, and the reversionary value of which is small, is already, according to our law, in a very unenviable position. Not merely may the heritable creditor, after three months' intimation, sell the heritable subjects, but he is also entitled under the personal obligation in the bond at any moment to obtain full payment on giving a fourteen days' charge under the compulsitor of making the debtor bankrupt if he does not find the money within that time. If in addition the creditor is entitled to hold the property and prevent the debtor from arranging with other lenders to enable him to pay up the sum due under the bond until the debtor admits the accuracy of his accounts, a powerful lever will be conferred upon him of forcing the debtor to acknowledge what may be quite unfounded claims. An action of accounting against a heritable creditor, who has been in possession for several years, may conceivably be one which may not be finally determined until the litigation has run the whole gamut of the law courts; and all this time, if the defenders' contention be sound, the debtor must submit to having his estate administered by heritable creditors in whom he has no confidence, and of whose maladministration in the past he may be complaining. From the point of view of subsequent bondholders, of whom I was informed there are several in the present case, the injustice of having their security diminished by a reckless litigation in which the debtor may involve himself is even more obvious. On the other hand, the only inconvenience which the opposite view involves is that the heritable creditor who enters into possession of his debtors' subjects may have to run the risk of having no recourse for the expenses of an unfounded action against him except against the personal estate of his opponent, a risk which most litigating defenders are already exposed to. I am accordingly of opinion that the defenders are not entitled to have the clause in dispute inserted as a condition of their granting the assignation in favour of the parties who are willing to take their place as bondholders.

"This view seems also to be alone consistent with section 49 of the 1874 Act, although this section was not referred to at the debate.

"It was further argued that apart from the penalty clause the defenders are in the position of trustees, who, it is said, are not bound to denude until they have got a final settlement of their accounts with the beneficiaries. I do not think the analogy holds; the relation between the pursuer and defenders under the bond and disposition in security which they are asked to assign is that of debtor and creditor; and I am not aware of any case where a creditor who has a security can refuse to part with it when he is offered full payment of the sums for which he claims to hold it, even although a right is reserved to challenge the amount of his claim in a subsequent process.

"The defenders also maintained a subsidiary argument to the effect that they were only bound to receive payment of the principal sum on getting three months' premonition. It was not disputed that this was their right under the Act of 1868, the plain object being that the bondholder should have a reasonable time within which to look out for another investment. The only question therefore is whether in point of fact such a premonition has been given. In my opinion the correspondence discloses that it has not. . . .

"I ought to notice one argument that was pressed by the pursuer's counsel to the effect that no premonition was required where the creditor was doing diligence to recover payment of the principal sum.

"No doubt, where a personal charge has been given, the bondholder cannot refuse to take payment of his claim, but I do not think the stereotyped conclusion in an action of maills and duties under which a creditor who enters into possession may draw the rents not merely to pay the interest due from time to time, but also to extinguish *pro tanto* the principal sum, is in the same category. Such a diligence is a real diligence attaching only the revenue. In the present case, as in most instances, it was really a mere form, since the interest was largely in arrear, and I see no reason why a heritable creditor who has entered into possession because his interest has fallen into arrear is entitled to less favourable consideration than one whose interest has always been regularly paid. I have, accordingly, pronounced findings embodying the results at which I have arrived; and I have given either party leave to reclaim so that there may be a prospect of the case being disposed of before the Whitsunday term."

The defenders reclaimed, and argued— 1. The defenders, while bound to grant an assignation instead of a discharge, were not bound to do so if they were put in a worse position thereby. Now the tender of payment here was only a qualified one, with a reservation of claims, and they were not bound to accept such a tender and give a discharge, but were entitled to have a full statement of all claims and an unconditional tender—*Bilsborough* v. *Bosomworth*, December 5, 1861, 24 D. 109. Similarly a security-holder was not bound to give up his security-subject on a mere payment of the debt, but was entitled first to be freed from all claims arising out of the transaction —*Will* v. *Elder's Trustees*, November 6, 1867, 6 Macph. 9. A creditor was entitled to demand two things, the payment of his debt and the ascertainment of the exact amount due, before granting a receipt. He was entitled to remain *in petitorio*. The

questions sought to be reserved here were not of counter claims, but were of the amount due under the bond, and any subsequent action would be of the nature of a *condictio indebiti*, to recover part of what had been paid. The creditors *qua* trustees for the debtor were entitled to be freed from all claims before demitting. The interest of the defenders in having this clause inserted was twofold. They were entitled to the benefit of the penalty clause in the bond to cover their expenses in the threatened action of count and reckoning, were they successful—*Orr* v. *Mackenzie*, June 20, 1839, 1 D. 1046—and this benefit they would lose were they to assign the bond without precluding the threatened action. And further, if the clause were omitted, they would warrant *debitum subesse* to the assignee, and would be personally liable if the debtor subsequently challenged it —*Reid* v. *Barclay, &c.*, June 6, 1879, 6 R. 1007, 16 S.L.R. 582. The Lord Ordinary's interlocutor should therefore be recalled. 2. If the assignations without the desiderated clause must be granted, then premonition was necessary, and in this the Lord Ordinary was right, but in its absence he should have dismissed the action. Having possession under a decree of maills and duties did not obviate the necessity of premonition. Such possession was to be ascribed to the clause in the bond assigning the rents. It was contractual. The decree of maills and duties was indefinite, and in no sense a specific demand for payment. But the demand, in order to dispense with the need for premonition, must be specific.

Argued for the pursuer and respondent—(1) The pursuer had tendered the amount of the debt alleged to be due, and was entitled to a discharge, or its equivalent, an assignation. Any subsequent question between the parties could be settled by an accounting which was competent at common law, and by statute—Titles to Land Consolidation Act 1868, sec. 119. The bondholder was not entitled to force a present settlement of all claims by refusing an assignation, and to prevent the owner from dealing with his property if the settlement he proposed were not acceded to. The pursuer had right to an assignation on tendering the full sum claimed—*Fleming* v. *Burgess and Trustee*, June 12, 1867, 5 Macph. 856, Lord Neaves at p. 861, 4 S.L.R. 89; *Smith* v. *Gentle*, June 19, 1844, 6 D. 1164 —and the creditor was not entitled before he would grant an assignation to adject conditions. The penalty clause in the bond only covered the expenses of recovering payment of the debt—Menzies' Lectures on Conveyancing, 1900 ed., p. 227—and these were not in question here. *Orr*, *cit. sup.*, only decided what were such expenses. Practice was entirely against the defenders contention, and hence the lack of authority. Bell's Lectures, 3rd ed., p. 305, and Burns on Conveyancing, 2nd ed., p. 545, were referred to. (2) Premonition was not necessary. The defenders had used one of the recognised methods of doing diligence to recover a debt under a heritable bond, viz., entered into possession under a decree of maills and duties—*Fleming, cit. sup.; Smith, cit. cup.* The interlocutor of the Lord Ordinary should be varied to the extent of declaring premonition unnecessary, or be sustained.

At advising—

LORD PRESIDENT—The pursuer in this case is the proprietor of heritable subjects in Glasgow, which he disponed to the defenders in security of the sum of £28,000 by bond and disposition in security. The interest on this sum not having been duly paid, the defenders raised an action of maills and duties in 1901 in ordinary form in the Sheriff Court of Lanarkshire, and under the decree in that action they entered into possession, and have been in possession and have been drawing the rents ever since. The pursuer, wishing to re-arrange his loan, went to an insurance company and arranged with them that they should advance the money necessary to pay up the present bond. Thereupon he asked the defenders for a statement of how accounts stood between them, and the defenders rendered that account, which showed that the principal was still unpaid, and that the interest due upon the bond amounted to the sum of £700 odds. That sum of interest, of course, was brought out upon the defenders' view of what they had already been paid by their intromissions during the period that they were in possession. The pursuer then intimated to the defenders that he did not consider that the account of their intromissions was correct, and that he had certain objections thereto, but he refused to indicate to the defenders what those objections precisely were. The pursuer then tendered to the defenders the full sum in the bond and the sum which the defenders said was due to them in name of interest, and requested them to grant an assignation of the bond to the insurance company who were advancing the money. A dispute then arose upon the terms of this assignation. The defenders put in a clause by which they made the documents state that the sum of interest to which I have referred was the correct sum which was due under the bond. The pursuer objected to that statement, because he said that he still meant to quarrel that sum in so far as affected by the intromissions of the defenders. Matters having thus been brought to a deadlock the pursuer raised this action, in which he tenders the sum in the bond and the sum of interest which the defenders say is due, and maintains that upon tendering these sums he is entitled *de plano* to the assignation.

I am unable to see that the pursuer is entitled to make this demand, and upon this simple ground, that I think the defenders are entitled to be done with this dispute before they give up the subject of their security. Your Lordships are well aware that the granting of an assignation upon tender of the sum due is not, in one sense, a strictly legal right. All that, in strict law, you have got right to is a discharge, but long ago it was held that in equity and in order to avoid the expense of putting on the securities again if the

sum was properly tendered an assignation should be granted instead of a discharge. But that is always subject to this, that the granting of the assignation shall not in any way prejudice the granter more than he would have been prejudiced if he had granted a discharge. It seems to me that if these parties were to grant an assignation *de plano* they would be prejudiced; because I think it is quite clear that if there is going to be litigation upon the question of the intromissions of the defenders, and if in that litigation the defenders should be successful, then the expenses of vindicating their own conduct while they were intromitting with the lands would be expenses which would clearly fall according to the decisions under the penalty clause in the bond. I think that is the clear result of what was laid down by the Court in the case of *Orr* v. *Mackenzie*, 1 D. 1046; and if that is so, it is perfectly clear that the defenders would if this demand were granted be in the unenviable position that all they might obtain might be a decree which would be worth nothing, whereas at present they have always got the subject of the security.

I think that is a sufficient ground upon which to dispose of the case, but I would also point out that there is really no hardship upon the pursuer in this matter at all. The only person he has to thank for the position in which he is placed is himself for not being explicit enough to say what his true objections were and not fighting the matter at once, because he could perfectly well fight it in this case. If he had done so this matter could have been cleared up at once and the whole thing put an end to for ever.

The only other observation I have to make is that I cannot agree with the Lord Ordinary in thinking that the view of immediate payment is alone consistent with the 49th section of the Conveyancing Act of 1874. That section makes provision for disencumbering lands of heritable securities, and is in these terms:—"Where the debtor in any heritable security, whether granted before or after the commencement of this Act, shall have exercised the power or right of redemption contained therein, but where from the death or absence of the creditor, or any other cause, the debtor cannot obtain a discharge of the incumbrance created by the security, it shall be competent to him to consign the amount, principal and interest, due;" and then when he has so consigned it and recorded it in the register of sasines it is to "have the effect of completely disencumbering the lands contained in such heritable security of the debt and of all interest and penalties corresponding thereto." That is a very useful provision in order to get the land clear, and so be able to deal with it in questions with a third person. But it seems to me to leave the question between the debtor and the original creditor entirely where it was, because the section cannot come in at all unless where, from the death or absence of the creditor, or other cause, the debtor cannot obtain a discharge. Now here there is no reason that he should not have a discharge; so it just sends us back again to see whether he is rightfully asking for a discharge, when at the same time he has something to clear up, once for all, on the question of the defenders' intromissions. I point out that I think this must be the true meaning of the section, or otherwise there would be a very easy way of driving a coach and four through the decisions. Take for instance the case I have referred to of *Orr* v. *Mackenzie* (1 D. 1046), where it was held that certain expenses, which the creditor had been put to in fighting with another creditor on a question of preference or priority became a good charge, under the penalty clause in the bond, against the debtor. If the Lord Ordinary's view is right, all a debtor would have to do to escape from this result would be to consign, under section 49, the principal and interest upon the bond, and then, as says the section at the end, the lands would be disencumbered "of the debt and of all interest and penalties corresponding thereto." That is to say, by consigning the principal and interest of the debt you could always get rid of the penalty. That shows, I think, conclusively that my view of the 49th section is correct, namely, that the 49th section does not begin to speak at all unless you are in the position that you cannot obtain a discharge. Now, here the pursuer is not in the position of not being able to obtain a discharge. The creditor has made, as I hold, a perfectly good offer to discharge, provided only that this matter on the intromissions is cleared up. Upon the whole matter, therefore, I think that the Lord Ordinary's judgment falls to be recalled and that the defenders ought to be assoilzied.

LORD M'LAREN—As I understand it, the difficulty in this case has arisen from the circumstance that the debtor in the bond was unable to fulfil his contract obligation for the punctual payment of the interest in the bond. In these circumstances the creditors availed themselves of their legal right to enter into possession, and in the exercise of that undoubted right they drew the rents and incurred certain expenses in the management of the property. They now ask, as a condition of granting a discharge of the bond upon payment, that the pursuer shall either accept their statement, expressed in a sum of money, of the result of their administration, or, as I presume, that he should discuss the claim and come to an agreement with them as to the specific sum that is to enter into the deed of discharge.

I am of course keeping in view that it is not strictly a discharge that is in question, but an assignation. But from the clause that we find in all bonds and dispositions in security in the forms prescribed by statute—"I oblige myself for the expenses of assigning and discharging this security"—I think it is clear that, when the circumstances render it suitable, a creditor must grant an assignation instead of a discharge. But, as your Lordship has pointed out, that is not to be allowed to prejudice the creditor

in any way, and so if you take the clauses of a discharge as the model of those which would have to go into an assignation, there can be no prejudice.

What the debtor proposes to do here is to tender the sum asked, but under reservation of his right at some future time—I suppose at any time within the limits of the forty years' prescription—to call the creditor to account for his intromissions. In my opinion that is not a position that any debtor is entitled to take up in settling with his creditor. Such clauses in bonds and relative documents as we have been considering are made in terms suited to the transactions of people who are fulfilling their contract, and if a debtor in a bond has fulfilled his part of the contract by punctually paying the interest, no difficulty would arise, because the amount of outstanding interest is then merely a matter of calculation, But where the debtor in the bond—it may be not through his own fault—has been unable to meet his obligation to pay the interest, and the creditor enters into possession, a different pecuniary question arises. Then I think that, according to sound principle, the creditor is not to suffer in consequence of this failure on the part of the debtor, and is not to have the settlement of a claim kept hanging over his head for an indefinite period. If the parties are unable to settle before the term at which payment is to be made, the inconvenience of delay in having the account cleared up ought to fall upon the debtor, through whose fault or misfortune this difficulty has arisen. I do not think that in such cases there is any real inconvenience; it is merely supposition. Any two men of business, meeting to discuss the matter across a table, would probably be able to fix the sum to be inserted in the discharge in the course of half-an-hour. Therefore I come to the conclusion, agreeing with all that your Lordship has said on the subject, that the debtor in this case has not made a proper tender such as the creditor is bound to accept, and that the creditor is only bound to give an assignation upon getting an unconditional tender of the sum which is due to him in respect of his intromissions under the bond.

LORD PEARSON concurred.

LORD KINNEAR was absent.

The Court recalled the interlocutor reclaimed against, and assoilzied the defenders.

Counsel for the Pursuer and Respondent —Wilson, K.C.—M. P. Fraser, Agent—L. M'Intosh, S.S.C.

Counsel for the Defenders and Reclaimers —The Dean of Faculty (Campbell, K.C.)—Spens. Agents—Thomson, Dickson, & Shaw, W.S.

VALUATION APPEAL COURT.

Friday, February 22.

(Before Lord Low and Lord Dundas.)

ABERDEEN DISTRICT LUNACY BOARD *v.* ASSESSOR FOR ABERDEENSHIRE.

Valuation Cases—Appeal—Form of Case—Omission to Give Statement of Facts—Acceptance of Minute by Parties, Giving Facts Agreed Upon—Valuation of Lands (Scotland) Amendment Act 1879 (42 *and* 43 *Vict. c.* 43), *secs.* 7 *and* 9.

The Valuation of Lands (Scotland) Amendment Act 1879 enacts—Section 7—"In the case of persons entitled to appeal against valuations made by assessors . . . it shall be lawful for such person appealing, or for such assessor . . ., to require the said commissioners or magistrates to state specially and to sign the case upon which the question arose, setting forth the facts proved, together with the determination thereupon, and to transmit such case to the Commissioners of Inland Revenue, to the end that the same may be submitted to any two Judges of the Court of Session. . . ."

Section 9—"In stating any case the commissioners of supply of any county, or the magistrates of any burgh, as the case may be, shall, in addition to the particulars now required to be stated, set forth the grounds of appeal or complaint, and the replies thereto, in such terms as shall be submitted to them by the parties within ten days after the determination appealed against, and a certified copy of any evidence taken as aforesaid shall be submitted, along with the case, to the said Judges, who may, if they think fit to do so, remit the case to the commissioners or magistrates by whom it was stated, with such instructions as the said Judges may consider necessary for having the case more fully stated."

A case for appeal contained no statement of facts proved or admitted or within the personal knowledge of the Valuation Committee. On a motion on behalf of the appellants, who had previously complained of the form of the case, for a remit for re-statement, the Court *granted* the remit, but ultimately *allowed* the parties to put in a minute setting forth the facts on which they were agreed, dispensing with the remit.

Valuation Cases—Asylum—Principle of Valuation - Asylum Built on the "Segregate" or "Villa" System.

Held that in valuing a pauper lunatic asylum which was built on the "segregate" or "villa" system, a sum which when tested by (1) amount of accommodation and (2) cost of construction represented about £5 per bed, or 2 per cent. on the cost, was a fair valuation,