really think there can be no arguable question raised. The 60th section of the statute is clear and distinct in its terms and is unqualified. [*His Lordship proceeded to deal with a question with which this report is not concerned.*]

LORD JOHNSTON—I agree in the result which your Lordship has come to, but I desire respectfully to dissociate myself on one point from your Lordship's expression of opinion. Your Lordship indicated that the enactments on this question of rating and assessment were clear. I regret to say I think they are clear. But your Lordship added, as I understood, that the policy was unimpeachable. That I venture to doubt, because, as it seems to me, the result is a perfect *reductio ad absurdum* of rating for a purpose such as that in question. The works authorised by the Order are not under construction, and even if undertaken are certain not to be finished for a considerable time. During that period all the money which is required by the County Council and District Committee for the annual service, in providing what is truly intended to be a water supply for domestic use, will be cast, not upon the shoulders of those for whom that domestic supply is being provided, but upon the shoulders of others who do not now need, and never will need, a domestic supply. The result seems to me to be grotesque. At the same time, owing, I think, to somewhat inconsiderate adoption of provisions from former private Acts and Orders, and inconsiderate introduction of exceptions in this Order, that result cannot be prevented.

Under these circumstances, regret it as much as I may, I am bound to concur with your Lordship in answering the first question as your Lordship proposes. On the second question I have no difficulty whatever, and entirely agree with your Lordship.

LORD SKERRINGTON—I concur with your Lordships in the result at which you have arrived, but I think it my duty to say that I do not discover in any of the clauses of the statute the anomalies which seem to have struck my brother Lord Johnston.

The difficulty in this case, if there be a difficulty, seems to me to arise from the form of the first and second questions, which ask whether the rating authority is entitled to levy from the second parties, in the first place, the domestic water-rate, and in the second place the public water-rate. It appears, however, from the Special Case, that the second parties admit that any special exemptions to which the Provisional Order entitled them have been given effect to. Accordingly the proper form for the first two questions was whether the rating authority was entitled, for the year in question, to impose and levy these assessments?

When one looks at sections 58, 59, and 60 of the Provisional Order, it is plain that only one answer can be made to these questions, namely, in the affirmative. The sole argument to the contrary is that when one reads section 59 one discovers that there are so many exemptions from which particular classes of ratepayers will be entitled to take benefit that in the final result injustice may be done to persons who own canals, railways, tramways, water-works, gas-works, mines, minerals, and quarries.

I am not in the least concerned—nor do I think the Provisional Order was in the least concerned—with the question whether in particular circumstances what may seem to be a heavy incidence of taxation might fall upon particular persons. People must just take their chance of things of that kind. Such considerations throw no light upon the construction of sections 59 and 60, and do not avail to displace their plain meaning. I accordingly agree with your Lordships that the first and second questions must be answered in the affirmative.

LORD MACKENZIE was not present.

The Court answered both questions in the affirmative.

Counsel for First Parties — Constable, K.C.—Cochran-Patrick. Agents — Ronald & Ritchie, W.S.

Counsel for Second Parties — Macmillan, K.C.—W. T. Watson. Agents—Davidson & Syme, W.S.

Friday, July 3.

FIRST DIVISION.

(SINGLE BILLS.)

SPENCE *v.* SPENCE.

Process—Reclaiming Note—Competency—Reclaiming Note prior to Closing of Record.

In an action of declarator of marriage the pursuer, prior to the closing of the record, craved leave to amend the summons by adding an alternative conclusion for damages for breach of promise and seduction. The Lord Ordinary *refused* the amendment and granted leave to reclaim.

Held that a reclaiming note against his interlocutor was competent although the record had not been closed.

Mrs Isabella Gray or Spence, assistant in the Carlton Hotel, Edinburgh, *pursuer*, brought an action against Lockhart James Spence, medical student, 17 Archibald Place, Edinburgh, *defender*, concluding for declarator of marriage. Before the record was closed the pursuer by minute craved leave to amend the summons by adding an alternative conclusion for damages for breach of promise and seduction.

The Lord Ordinary (DEWAR) on 23rd June 1914 pronounced the following interlocutor:—"... Refuses said minute; ... continues the adjustment of record ...; and grants leave to reclaim."

Against this interlocutor the pursuer reclaimed, and on the case appearing in Single Bills counsel for the defender objected to the competency of the reclaiming note.

Argued for the defender—It would have been incompetent for the Lord Ordinary to

grant leave to reclaim before the record was closed. The interlocutor meant therefore leave to reclaim after the closing of the record. There was no case in which a reclaiming note prior to the closing of the record had been held competent. Assuming that it was competent a reclaiming note at that stage was highly inconvenient, and that alone was sufficient ground for refusing it—*Brown* v. *Virtue & Company, Limited*, July 16, 1889, 16 R. 987, 26 S.L.R. 675. Without refusing the reclaiming note as incompetent the Court could supersede consideration of it till the record was closed by the Lord Ordinary—Codifying Act of Sederunt, 1913, D, 1, 3. Reference was also made to the Court of Session Act 1850 (13 and 14 Vict. cap. 36), sec. 5; the Court of Session Act 1868 (31 and 32 Vict. cap. 100), secs. 28 and 54; and the Codifying Act of Sederunt, 1913, D, 1, 2.

Argued for the pursuer—A reclaiming note at the present stage was competent and convenient. It was always the right of a litigant to reclaim unless that right was expressly or by necessary implication excluded—*Harper* v. *Inspector of Rutherglen*, October 29, 1903, 6 F. 23, 41 S.L.R. 16, *per* Lord Trayner. In a suspension a reclaiming note might be presented before the record was closed. Reference was also made to the Court of Session Act 1868 (*cit.*), sec. 54 and the Codifying Act of Sederunt, 1913, D, 1, 2.

Lord President—We think this reclaiming note competent and in the circumstances highly expedient.

Counsel for Pursuer and Reclaimer—Maclaren. Agent—John Robertson, Solicitor.

Counsel for Defender and Respondent—T. G. Robertson. Agent—Allan M'Neill, S.S.C.

Tuesday, July 7.

FIRST DIVISION.

CRAIG *v.* MAIR'S TRUSTEES.

Right in Security — Discharge — Confusio — Ground-Annuals — Acquisition of Ground-Annuals by Owner of Property.

Trustees who were the creditors in certain ground-annuals purchased the subjects over which they were secured, but without incurring personal liability for payment of them.

Held that the ground-annuals were not discharged *confusione*—*per* the Lord President and Lord Johnston, on the ground that ground-annuals from their nature were not extinguishable *confusione*; *per* Lord Skerrington, on the ground that the personal obligation to pay these ground-annuals could not *confusione* have been discharged.

On 13th March 1914 James Craig, C.A., Edinburgh, as trustee under a deed of dissolution of partnership, and trust-disposition and assignation in his favour as such, granted by Messrs Healy & Young, writers, Glasgow, and John Ross Young and Christopher John Healy, the individual partners of the said firm, and as such heritably vest in certain heritable properties, *first party*, and John Mair, 30 Wallfield Crescent, Aberdeen, and another, testamentary trustees of the late Mrs Annie Simpson or Mair, and others, the creditors and disponees in security under certain bonds and dispositions in security affecting the said heritable properties, *second parties*, brought a Special Case to have it determined whether certain ground-annuals which had been created over the said heritable properties had or had not been extinguished *confusione*.

The Case stated, *inter alia*—"2. The first party as trustee under the foresaid deed of dissolution and trust-disposition is now vested in—(*First*) Property, Springburn Road and Albert Street, Paisley, which consists of five plots of ground containing 239⅔, 427, 335, 334, and 296 square yards respectively, with the buildings thereon, conform to disposition in his favour granted by David Strathie, chartered accountant in Glasgow, judicial factor on the trust estate of the deceased John Ross, coppersmith in Glasgow, conform to act and decree after mentioned, dated said disposition 18th and recorded in the foresaid Register of Bookings, &c., kept for the burgh of Paisley on 25th April 1913; and (*Second*) Five ground-annuals of £20, £25, £20, £20, and £15, created over the foresaid five plots of ground respectively, conform to disposition and assignation granted by the said David Strathie as judicial factor foresaid in his favour, dated 18th and recorded in the foresaid Register of Bookings 25th April 1913. The present case relates to the first three of said ground-annuals, being those secured over the first three plots of ground before mentioned.

"3. The circumstances under which the first party so acquired from the said judicial factor on the said John Ross's trust estate the said five plots and the said ground-annuals payable therefrom are as follows:—The said John Ross died on 5th December 1874, and by his trust-disposition and settlement dated the 12th day of August 1868, and relative codicil dated the 20th day of December 1870, and both registered in the Books of Council and Session on the 21st day of December 1874, conveyed his whole estate to the trustees therein named for the purposes therein expressed. In the year 1899 the trustees under said trust-disposition and settlement were the now deceased Mrs Isabella Watson Ross or Young, the daughter, and her children the said John Ross Young and James Gladstone Young and Miss Elizabeth James Young, the grandchildren, all of the said John Ross; and the said Mrs Young as liferentrix, and her said children as fiars, were the sole beneficiaries on the estate of the said John Ross.

"4. In the year 1898 the said five plots of ground were held by the said John Ross Young and James Gladstone Young and by Hugh Wilson, joiner and builder in