in the Court below was untrustworthy, and that new and material matters were in his possession which should show that it could not be relied upon. For this, and it may be for other reasons, he was successful in contending that he should be allowed to amend the proceedings, and that further proof should be admitted. This took place, and the further proof proceeded before Lord Salvesen, and after his report the learned Lords of the Second Division heard the case and pronounced the interlocutor which is the subject of the present appeal.

Now that interlocutor is admitted frankly by Mr Sandeman to be an interlocutor which as far as it contains a finding of law is nothing but a statement of the irresistible conclusion to be drawn from the findings of fact. In order therefore to maintain the appeal it is necessary that the findings of fact should be open to review. Now the statute to which I have referred provides this—"When in causes commenced in any of the Courts of the Sheriffs, or of the magistrates of burghs or other inferior courts, matter of fact shall be disputed, and a proof shall be allowed and taken according to the present practice, the Court of Session shall, in reviewing the judgment proceeding on such proof, distinctly specify in their interlocutor the several facts material to the case which they find to be established by the proof, and express how far their judgment proceeds on the matter of fact so found, or on matter of law, and the several points of law which they mean to decide; and the judgment on the cause thus pronounced shall be subject to appeal to the House of Lords in so far only as the same depends on or is affected by matter of law, but shall, in so far as relates to the facts be held to have the force and effect of a special verdict of a jury finally and conclusively fixing the several facts specified in the interlocutor." The Court of Session have followed in all respects the direction of the statute, and the only question that arises for decision is whether they have found those facts in reviewing a judgment that proceeded upon the proof before the Sheriff's Court. I entertain no doubt that they were reviewing such a judgment. They did review it—in fact they recalled it—and I cannot think that they the less reviewed it because in order to make things more certain, and to give the appellant every possible opportunity, they permitted further evidence to be called. If once it be conceded that what they did was done in the course of reviewing a judgment which proceeded upon proof before the Sheriff's Court, then it necessarily follows that an appeal to this House upon a question of fact is incompetent and the appeal must fail.

LORD KINNEAR—I entirely agree with the noble and learned Lord on the Woolsack. The one question seems to me to be whether the interlocutor brought before this House is an interlocutor pronounced in reviewing a judgment of the Sheriff's Court pronounced after proof. There is no question that it is. There is nothing before the House except an interlocutor which was pronounced in the course of the review of such a judgment.

LORD ATKINSON—I concur.

LORD SHAW—I agree.

Their Lordships dismissed the appeal.

Counsel for the Appellant—Sandeman, K.C.—Macphail, K.C.—Wardlaw Burnet. Agents—James Scott, S.S.C., Edinburgh—Tredgolds, London.

Counsel for the Respondent—Constable, K.C.—MacRobert. Agents — MacRobert, Son, & Hutchinson, Paisley—Fyfe, Ireland, & Company, W.S., Edinburgh—Marchant & Newington, London.

COURT OF SESSION.

Tuesday, January 18.

SEVEN JUDGES.

[Lord Dewar, Ordinary.

MOSS' EMPIRES, LIMITED *v.* WALKER AND OTHERS.

Valuation Cases—Valuation Roll—Conclusiveness—Review by Court of Session—Failure to Send Notice of Increase of Valuation—Valuation of Land (Scotland) Act 1854 (17 *and* 18 *Vict. cap.* 91), *secs.* 4, 5, *and* 30.

Where it was averred that an assessor while increasing the valuation of certain subjects had omitted to send the usual statutory notice to the proprietors, and the latter had thereby lost their right of appeal to the Lands Valuation Appeal Court, *held* by a majority of Seven Judges, *rev.* judgment of Lord Dewar, Ordinary (the Lord President, Lord Justice-Clerk, and Lord Dundas *diss.*), that an action at the instance of the proprietors against the assessor for reduction of the entry in the valuation roll, and for declarator that the proprietors were liable to be rated and assessed on the former value, was competent.

The Lands Valuation (Scotland) Act 1854 (17 and 18 Vict. cap. 91) enacts:—Section 4—"In every county and burgh . . . a new valuation roll shall be annually made up by the assessors on or before the 15th day of August in every . . . year." Section 5—"On or before the 25th day of August, and 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 . . . a copy of every entry in such valuation roll . . . along with a notice to such person that if he considers himself aggrieved by such valuation he may appeal against the same . . . : 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 30—"No valua-

tion of any lands or heritages contained in any valuation roll under this Act shall be rendered void or be affected by reason of any mistake or variance in the names of such lands or heritages, or in the christian or surname or designation of any proprietor or tenant or occupier thereof; and no valuation roll which shall be made up and authenticated in terms of this Act, and no valuation which shall be contained therein, shall be challengeable, or be capable of being set aside, or rendered ineffectual, by reason of any informality, or of any want of compliance with the provisions of this Act, in the proceedings for making up such valuation or valuation roll."

Moss' Empires, Limited, *pursuers*, brought an action against (1) Alexander Walker, Assessor of the City of Glasgow, (2) Sir Daniel Macaulay Stevenson, the Lord Provost of the City, and others, forming the Valuation Committee of the City, and (3) the Corporation of the City of Glasgow, *defenders*, in which they concluded for reduction of "an alleged entry in the valuation roll of the city . . . for the year ending at Whitsunday 1915, wherein the annual rent or value of the subjects known as the Grand Theatre, 190 Cowcaddens Street, Glasgow, of which the pursuers are the proprietors and occupiers, is stated at £1300," and for declarator that "the sum which ought to be entered in the said roll as the annual rent or value of the said subjects for the year to Whitsunday 1915 is £950, and in the event of it being necessary to give effect to the foregoing the said Alexander Walker ought and should be decerned and ordained . . . to enter in the said roll the sum of £950 as the said annual rent or value. And further . . . that the pursuers are liable to be rated or assessed as proprietors and occupiers of said subjects on the basis that the annual rent or value of the said subjects for the said year is £950 and not £1300."

The pursuers averred—"(Cond. 11) In terms of the said section, before the annual rent or value of the said Grand Theatre could be entered in the valuation roll of the said city at a figure higher than it was entered for the year to Whitsunday 1914 the assessor was bound to transmit to the pursuers a copy of the entry showing the proposed increase, and also a notice relating to appeals. *This he failed to do.* The pursuers received no such copy of entry or notice, and the first intimation given to them regarding a proposed change in the said valuation was the assessor's remark at the aforesaid meeting on 23rd September. At the date of said meeting the time had elapsed within which appeals thereagainst could by statute be presented to the Valuation Committee. The position of the pursuers was explained to the Valuation Appeal Court of the City of Glasgow at a meeting held on 30th September last, but that Court refused to give effect to the pursuers' contention, on the ground that no appeal had been lodged in terms of section 9 of 17 and 18 Vict. cap. 91. *The explanation in answer is denied.*" [*The words in italics were added by amendment in the Inner House.*]

The pursuers pleaded—"(1) The entry of the annual rent or value of the said Grand Theatre in the valuation roll of the city and royal burgh of Glasgow at £1300 having been made without transmission to the pursuers of a copy of the proposed entry, was *ultra vires* of the assessor, and the pursuers are entitled to reduction of said entry, as concluded for. (2) The defenders being personally barred in the circumstances condescended on from founding on the absence of an appeal by the pursuers, the defences should be repelled. (3) The pursuers in the absence of notice of alteration of the said roll being entitled to have their former valuation retained, and to be rated and assessed thereon, decree should be pronounced in terms of the conclusions of the summons."

The defenders pleaded—"(1) The action is incompetent as laid. (2) The action is barred by the provisions of section 30 of the Valuation of Lands (Scotland) Act 1854 (17 and 18 Vict. cap. 91)."

The *facts* of the case are sufficiently set forth in the opinion of the Lord Ordinary (DEWAR), who on 5th February 1915 sustained the first plea-in-law for the defenders and dismissed the action.

Opinion.—"In this action the pursuers—Moss' Empires, Limited—sue for reduction of an entry in the valuation roll of the city of Glasgow for the year 1915, wherein the annual rent or value of the Grand Theatre, which belongs to them, is entered at £1300, and for declarator that the annual rent or value ought to be entered at £950, on the ground that the assessor in making said entry of £1300 had failed to comply with the provisions of the Valuation Act of 1854. There is also a conclusion for declarator that the pursuers are only liable to be rated or assessed on £950 in respect of said subjects.

"The material facts set forth on record are as follows:—The pursuers are proprietors of three theatres in Glasgow, the Empire, the Coliseum, and the Grand. In the valuation roll of 1913 the annual rents of these three theatres respectively were entered at £1800, £2100, and £950. By notice dated 15th August 1914 the assessor intimated to the pursuers, conform to section 5 of the Valuation Act, that he proposed to increase the valuation of the first two theatres to £2200 and £2500 respectively. The pursuers at once intimated an appeal against these increased valuations, and after negotiations and correspondence they satisfied the assessor, and he agreed to depart and did depart from his proposal. After these negotiations had been completed the assessor happened to mention that the pursuers had lodged no appeal in connection with the valuation of the Grand Theatre, which had been increased from £950 to £1300. He was informed that the pursuers had received no intimation and were not aware that any increase was proposed. This was on the 24th September, and as the last day for intimating appeals was 4th September they asked the assessor to alter the valuation as he had done in the other two cases, but he declined to do so, on the ground that he had no power to alter

entries on the valuation roll at his own hand after the 8th day of September. The pursuers then instructed their solicitor to appear before the Valuation Committee and state the facts on their behalf. He did so, but the pursuers say that the Committee refused to hear him on the ground that no appeal had been lodged.

"The 5th section of the Valuation Act provides that when the assessor proposes to alter an entry on the valuation roll he shall on or before the 25th day of August transmit a copy of the entry to the proprietor or tenant of the premises, along with a notice that if he considers himself aggrieved by such valuation he may appeal against the same, or may obtain redress without appeal by satisfying the assessor on or before 8th September that he has well-founded ground of complaint; and it is further provided that such copy and notice may be served personally, or by leaving it at the person's residence, or sending it through the post office.

"The pursuers aver on record that they received no notice in terms of this section, and were consequently deprived of the opportunity of appealing against the increased valuation. The defender denies this averment, and stated that he 'sent a copy of the said entry and notice to the pursuers, all in terms of the said statute.' And he also denies that the Valuation Committee refused to hear the pursuers' solicitor on 30th September.

"The pursuers moved for a proof of their averments, and the defender resists this motion and pleads that the action is incompetent on the ground that the valuation roll is conclusive as to the value of the subjects entered in it for the year; that its accuracy cannot now be impugned or an inquiry held as to whether the assessor in making it up failed to comply with the provisions of the statute; and I was referred to section 30, and to the case of *The Magistrates of Glasgow* v. *Hall*, 14 R. 319, 24 S.L.R. 241. I am of opinion that this plea is well founded.

"Section 30 provides that '. . . no valuation roll which shall be made up and authenticated in terms of this Act, and no valuation which shall be contained therein, shall be challengeable by reason of any informality, or of any want of compliance with the provisions of this Act, in the proceedings for making such valuation or valuation roll.'

"That clause appears to me to have been designed to meet such a case as the pursuers now raise. Their complaint is that the assessor failed to comply with the provisions of section 5; but even if he did it is expressly provided that the roll shall not be challengeable on that account. It is said that the clause was only intended to cover minor errors or informalities, and that it does not bar challenge in a case like this where the assessor has disregarded an important provision designed to protect the owner of property. I cannot so read it. The words 'any want of compliance with the provisions of this Act' are very clear and comprehensive, and so far as I can see there is nothing in the context to restrict their meaning. I think they were intended to protect the roll against all challenge, and to prevent any inquiry into what the assessor did or failed to do in making up the roll. It is a drastic provision, and probably individuals occasionally suffer. But when one considers the difficult and responsible duties which the assessor has to perform it is not difficult to understand why such a provision was considered necessary. He has to ascertain the yearly rent or value of all lands and heritages in order that public burdens may be fairly distributed among the owners or occupiers of them. It is by no means easy to perform that duty to everybody's satisfaction. I daresay that most people consider that they pay more than their fair share of the rates, and if the door were not firmly barred against all challenge there would probably be an embarrassing number of attacks upon the roll and upon the proceedings of the assessor, whose duty it is to make it up. So far as I am aware there is no precedent for correcting the roll by an action of reduction, and I am of opinion that the conclusions for reduction and correction are incompetent.

"But the pursuers have also a conclusion to the effect that they are not liable to be assessed on the value entered on the roll, and this requires separate consideration.

"I was referred to the case of *Sharp* v. *Latheron Parochial Board*, 10 R. 1163, 20 S.L.R. 771, and *Abercromby and Others* v. *Badenoch and Others*, (1909) 47 S.L.R. 18, where the Court interfered to give relief, not by correcting the roll, but by restraining the collector from levying assessment. But both these cases were very special. There was no dispute regarding the figures on the roll. The only question was whether an entry should be there at all. In *Sharp's* case the complainer's property had by mistake been twice entered in the roll. The Court did not alter the roll—it was declared to be final, but in the special circumstances it restrained the assessor from levying more than one assessment. In *Abercromby's* case, which was an Outer House judgment, this precedent was followed. In that case mid-superiors of sea fishings who were entered on the roll as proprietors, tenants, or occupiers, brought an action of reduction of the entry, and for declarator that they were not liable to be assessed, and for interdict against proceedings for recovery of the rates, on the ground that they were not liable to be entered on the roll as they did not draw revenue from the estate and had conveyed the beneficial occupation of it to others. The Lord Ordinary dismissed the conclusion for reduction, but granted decree in terms of the declaratory conclusion and the conclusion for interdict. In both cases the Court interfered in exceptional circumstances to prevent obvious injustice, just as it would interfere, I have no doubt, if a person were placed upon the roll as a proprietor of property with which he had no connection. But neither case involved—as this case does—the substitution of one set of figures for another. The assessor here has valued the premises at £1300. That may be the correct

figure, and although the pursuers have been deprived of the benefit of an appeal, that would not justify me holding that the true figure was £950. For aught I know the Appeal Court might have sustained the assessor's valuation. And further, the cases cited did not involve an inquiry into the assessor's proceedings when making up the roll. In *Abercromby's* case there was no inquiry at all, and in *Sharp* the only question was whether in fact the property had been twice entered on the roll. There was no investigation into the working of the machinery of the Valuation Act. This case is very different. The pursuers challenge the assessor's valuation, and propose to review his proceedings. They do not definitely aver that he did not 'transmit' the entry and notice, but they say that they did not *receive* them, and they call upon the assessor to prove that he transmitted them in terms of section 5. And Mr Sandeman argued that if he proved that the pursuers did not receive the notice, the *onus* would fall upon the assessor to prove that he either delivered it or placed it in the post office. But I do not see how a public official who has thousands of such documents to transmit could reasonably be expected to prove what happened months before in each individual case, and that is probably one of the reasons why section 30 provides that no entry shall be challengeable or rendered ineffectual although he may have failed to comply with the provisions of the Act in making up the roll.

"On the whole matter I am of opinion that the first plea-in-law for the defenders should be sustained and the action dismissed."

The pursuers reclaimed, and after being argued before the Second Division, their Lordships, in respect of the importance of the case, appointed the case to be heard by a Bench of Seven Judges.

Argued for the pursuers—Failure to send notice was not a mere step of procedure which might be homologated under section 30 of the Act—Lands Valuation (Scotland) Act 1854 (17 and 18 Vict. cap. 91), sections 5 and 30. Section 30 dealt with errors in the compilation of the roll provided for in section 4, such as mistakes in names, also with informalities in the "proceedings," &c. It did not cover failure to give notice. There could not be proceedings in the sense of section 30 unless both parties were convened. If section 30 were read as the defenders wished to read it, section 5 would cease to have statutory force. Moreover, intentional breach would be protected under it just as much as unintentional irregularity. The case of *The Magistrates of Glasgow* v. *Hall*, 1887, 14 R. 319, 24 S.L.R. 241, founded on by the defenders, did not apply, because the present case dealt with a fundamental nullity. There was a fundamental right given by section 5 which was not taken away by section 30. There was here no proper valuation under the statute, because the assessor had failed to comply with the statutory condition of making a valuation —*Sharp* v. *Latheron Parochial Board*, 1883, 10 R. 1163, *per* Lord Kinnear (Ordinary), 20 S.L.R. 771.

Argued for the defenders—The action as laid was incompetent, and was based on a misconception of what the valuation roll was. The roll was made up every year, and the valuation of one year was not carried forward to the succeeding year. The assessor in theory made a fresh valuation each year. It was therefore impossible to reduce an entry in the roll and put something else in its place. The question here was solely one of value. The only Court competent to deal with a question of this character was the Lands Valuation Appeal Court—*British Linen Company* v. *Assessor for Aberdeen*, 1906, 8 F. 508, 43 S.L.R. 442; *Assessor for Kincardineshire* v. *Heritors of St Cyrus*, 1915 S.C. 823, 52 S.L.R. 268. Apart from it the Court of Session could only interfere by declarator or interdict against assessments —*Hope* v. *Edinburgh Corporation*, 1897 (O.H.), 5 S.L.T. 195; Armour on Valuation for Rating, pp. 175 and 176. In any event the action was barred by section 30 of the Act. If the assessor had erroneously arrived at a particular valuation, that was final. Intentional non-compliance with the provisions for making up the roll and fraud were not covered by the phrase "want of compliance with the provisions of the Act," but negligence or error were covered. The process of making up the roll was only completed by authentication in terms of section 12 of the Act, and section 30 protected all informalities down to the final authentication. There was no reason for restricting its action as the pursuers proposed. Reference was also made to *Watson, Gow, & Company, Limited* v. *Assessor for Glasgow*, 1910 S.C. 807, 47 S.L.R. 374.

At advising—

LORD PRESIDENT—The assessor of the city of Glasgow has increased the valuation of the Grand Theatre, Glasgow, from £950 to £1300 for the year 1914-15. In this action this Court is asked to alter that valuation by declaring that £950 should be substituted for £1300, that the assessor should be ordained to make that change, and that the pursuers ought to be assessed on that footing. In my opinion that is an incompetent demand. This Court cannot interfere with the valuation; it is final and unalterable for the year in question.

That I take to be the meaning and effect of the decision of the First Division in the case of *The Magistrates of Glasgow* v. *Hall*, 14 R. 319—a decision which we were expressly asked not to reconsider—for as the Lord President there says, at p. 330—"It is impossible for anyone here [the Court of Session] in this process to impugn the entry in the valuation roll for the year in question. It is conclusive, and it does not matter whether it was rightly arrived at or not, because the statute says it shall be held to be right—there shall be no review of it—it is final and conclusive."

The ground on which the conclusions of this summons rest is that the assessor failed to comply with a provision of the Valuation

Act 1854 (17 and 18 Vict. cap. 91). It appears that he was minded to raise the valuation of the theatre from £950 to £1300, and consequently it is argued it was incumbent upon him in terms of the statute to transmit to the pursuers a copy of the entry he proposed to insert in the roll, accompanied by a notice that if they felt themselves aggrieved they were at liberty to appeal to the magistrates. This statutory requirement, the pursuers aver, the assessor failed to observe, and the question for our consideration is, Has a relevant ground been stated on this record on which this Court can be asked to alter the valuation? That question I answer in the negative. The statute, as I read it, compels me so to do, for by the 30th section it is provided that a valuation contained in the valuation roll made up in terms of the statute cannot be challenged by reason of any want of compliance with the provisions of the Act in the proceedings for making up the valuation.

On three separate and distinct grounds it was argued that the 30th section was not applicable to the case in hand. It was contended that this valuation was not made up in terms of the statute, as the assessor failed to give the statutory notice, and that failure, so it is said, is vital. If so, section 30 is meaningless, for no valuation can be made up in terms of the statute if there is a failure to comply with the statutory requirements. This valuation roll, as I think the statute means, does purport or bear to be made up in terms of the statute. So far as we know, every statutory requisite has been complied with except the giving of notice.

Secondly, it was contended that the 30th section did not apply to the case of the transmission of notice, because the transmission of notice was not a proceeding in the making up of the roll. I cannot agree, What are the steps of procedure in the making up of the roll which the statute declares to be imperative? They are as follows:—The magistrates must appoint a fit and proper person to be assessor. That fit and proper person before entering upon his duty must appear and make a declaration that he will honestly and faithfully perform it. The assessor must yearly ascertain the value of certain lands and heritages in the burgh. He must in performing that duty observe the rules prescribed by the 6th section. He must perform that duty on or before 15th August. He must on or before 25th August give the notice referred to in this case. He must retain the roll till the 8th September, when he must transmit it to the town clerk, in whose office it must lie open to all concerned. The magistrates must hold an Appeal Court on or before 15th September. They must give ten days' notice of the sitting of that Court, and they must complete the appeals by the 30th September. An appellant must give notice in writing to the assessor of his appeal six days before the hearing, and the assessor must appear in Court and give evidence on oath if required. And then when all the appeals have been disposed of, and the valuation roll has thereby, as the statute expressly says, been completed, it must be duly authenticated, but until it is duly authenticated it is not a completed valuation roll, and it is only when it has been duly completed by the disposal of all the appeals and authenticated that it becomes and remains the valuation roll of the burgh for that year. Every statutory step I have recited, in short, is a step taken in the making up of the roll. If that be so, it is plain that the transmission of the notice is a proceeding in the making up of the valuation roll. Accordingly this objection also falls to the ground.

Thirdly and lastly, it was argued that the application of the 30th section is confined exclusively to unimportant proceedings in the making up of the roll, and is not applicable to important proceedings in the making up of the roll. Undeniably the proceedings in the making up of the roll do vary in degrees of importance, and it might very well have been that the statute might have drawn this distinction. But the statute draws no distinction amongst the imperative steps of procedure in the making up of the roll. It does not differentiate, and it affords, as I think, no warrant to us to pick and choose among the different steps and to say that to one section 30 is applicable and to the other it is not applicable. This third and last objection also I think falls to the ground; and if that be so the question raised by the reclaimers is foreclosed by the operation of the statute and the remedy which they here seek cannot be given.

LORD JUSTICE-CLERK—I agree with your Lordship. In my opinion the interlocutor of the Lord Ordinary is right and ought to be affirmed.

This case, in my opinion, raises a pure question of valuation. What was the valuation of the Grand Theatre for the year which ended last Whitsunday? It has stood in the valuation roll for that year at £1300. It is now said that after the year is closed it must be reduced to £950, and we are asked by the pursuers to reduce the existing entry *in integrum*, and to declare that the pursuers ought to be assessed for last year not on £1300 but on £950. It was, I understood, conceded by the pursuers that the intermediate conclusion as to altering the actual figures in the roll could not be granted.

I am of opinion that no Court—other than the Valuation Court—has jurisdiction to deal with any question of valuation. The Valuation Court is a supreme court of exclusive jurisdiction alone entitled to deal with questions of valuation and the making up and the contents of the valuation roll so far as valuation is concerned, and the Court of Session has no more right or power to deal with such questions than it has to deal with matters reserved to the Court of Justiciary or the Court of Teinds. The valuation roll is entirely the creature of statute, and the various statutes dealing with it created tribunals subordinate and supreme to dispose of all questions relating to valuation in the valuation roll, and vested in them an exclusive jurisdiction in regard thereto.

Questions cognate to the present have been considered by this Court in various cases, *e.g.*, in *Stirling* v. *Holm*, (1873) 11 Macph. 480, 10 S.L.R. 296; *Earl of Camperdown* v. *Presbytery of Auchterarder*, (1902) 5 F. 61, 40 S.L.R. 45, and in the cases referred to by the Lord Ordinary. No doubt in some of these cases the supreme appellate Valuation Court had pronounced judgment, and from that judgment it was sought to appeal to the Court of Session, whereas in the present case the question was never carried to the supreme Valuation Court. But that cannot, in my opinion, give this Court right to step in and value the Grand Theatre at a figure different from that fixed by the assessor and the Valuation Committee, and so to take a part, and an overruling part, on a question of valuation in making up the valuation roll for the year in question. If there was any error or neglect, especially in procedure, which could be cured by any court it must be by the supreme Valuation Court and not by this Court. In *Stirling's* case, 11 Macph. 480, at p. 487, the Lord President said—"I am quite clear of one thing—that we have nothing to do with the matter any more than if this were a complaint that the Court of Justiciary had pronounced a wrong judgment, or had gone out of their way and violated their own form of process or their acts of adjournal. I think these two Judges sitting under this statute are just as much a supreme court as we are sitting here, that their jurisdiction is absolutely privative, and that no other judge or court in the realm can interfere with questions arising under the Valuation Act, or rather, I should more properly say, with questions relating to valuations. It is to these two Judges and to nobody else that the whole jurisdiction in this matter is committed, and I think we have no jurisdiction to interfere with the way in which they conduct their business." And Lord Deas in the same case stated (at p. 488)—"The constitution of every supreme court implies a power to make and regulate the forms of procedure in that court; and it is very difficult to say that that power does not extend to such matters as were dealt with here. . . . It belongs to that supreme court to whom the jurisdiction is confided to construe the statute, and to construe their own powers for the regulation of the mode of procedure." Accordingly it was decided that the Valuation Appeal Court is the supreme court, and its proceedings cannot be set aside by the Court of Session even on the ground that they are *ultra vires* and incompetent. In *Lord Camperdown's* case, which was a Teind Court case, Lord M'Laren said—"As I read the statute the Lord Ordinary on Teinds is just exercising the powers of the Court of Session under this Act of Parliament. It very seldom happens that the whole thirteen Judges of the Court sit together to dispose of business. It is only in exceptional cases of importance and of difficulty that this is necessary, but in all ordinary business a limited number of the Court deal with the case—it may be four as in reclaiming notes, it may be two as in certain statutory matters, and it may be one in cases where a statutory finality is given to a Lord Ordinary's judgment. In any case, whatever the number be, it is the Court of Session that pronounces the decree, and as there is no provision in the statute for any process of review or recal of the Lord Ordinary's judgments, I fail to see how this Court could entertain an appeal." That view is to my mind emphasised by the fact that the Valuation Judges are appointed by Act of Sederunt. And Lord Kinnear, after quoting the Lord President in *Stirling's* case, added—"Applying these observations to the position of the Lord Ordinary under the present statute, his Lordship is just as much a supreme court in matters arising under the statute as this Court is in matters which come under our jurisdiction. The question which has been argued as to the power of the supreme court to restrain any special statutory tribunal within the limits of its statutory jurisdiction, even although no appeal lies against an erroneous judgment within the jurisdiction, does not appear to me to arise. The Sheriff has a special jurisdiction conferred upon him by the statute. But it is not a privative jurisdiction. An appeal lies to this Court. But the statute prescribes that this appellate jurisdiction shall be exercised by the Lord Ordinary and that his judgment shall be final." If therefore there is any court which can set the matter complained of here right it is the Valuation Appeal Court and not the Court of Session or House of Lords. I refer further to the opinions of the Judges of the First Division, without quoting from them, in the case of the *Magistrates of Glasgow* v. *Hall*, 14 R. 319, as really disposing of the points raised in this case.

Reference was made in the course of the argument before us as to what are called "the principles of eternal justice," or "the fundamental principles of justice." What these principles are I confess I have some difficulty in exactly defining. As Selden said of equity, they seem to me apt to make law and justice depend on the measure of the Chancellor's foot. But whether or how far they can be applied in cases under the common law, it is very difficult to give effect to them in dealing with statutory law, especially when that law is of a highly artificial and empirical character. It would, I suppose, be considered a principle of eternal justice that no man should have his case decided against him except in open court or without his being heard. That, indeed, is one of the arguments urged in the present case. But by the Valuation Act of 1879 (42 and 43 Vict. cap. 42) it is provided by section 7 that valuation appeals taken under that section or the recited Acts may be disposed of by the Judges (two Judges of the Court of Session) in Court or chambers, and after hearing parties or not at the Judges' discretion.

Confessedly there is no precedent for such a decree as is asked for here. The case of *Sharp*, 10 R. 1163, was almost identical with the present, but there the Second Division refused to adopt Lord Kinnear's reasoning, and on the contrary the Lord Justice-Clerk,

who delivered the judgment of the Second Division, expressly said—"I entirely agree that the valuation roll is conclusive as to the value of the subjects entered in it for the year, and that in each year the value stated in the roll is final."

I am of opinion that the proceedings for making up such valuation or valuation roll do not end when the assessor has made up his initiating roll, but that what ought to be done under section 5 occurs in these proceedings. I think that the expression "any want of compliance with the provisions of this Act" means exactly what it says, and if the initial words of the second part of section 30 conflict with the words I am now considering the latter must prevail over the former, and also, if necessary, over section 5 —*posteriora* must prevail over *priora*.

Some extreme cases were put in argument, *e.g.*, a fraudulent or a forceful assessor acting *vi et armis*. Parliament in such a matter as we are now dealing with does not legislate for such extreme and, to my mind, fantastic cases.

The meaning of section 33 is, I think, too clear for argument or construction, and in my opinion has been finally interpreted in *Hall's* case.

LORD DUNDAS—I think the Lord Ordinary's interlocutor is right, and I agree substantially with the grounds of judgment stated in his Lordship's carefully reasoned opinion.

The summons concludes, in the first place, for reduction of an entry in the valuation roll for the year ending at Whitsunday 1915, wherein the annual rent or value of the Grand Theatre belonging to the pursuers is stated at £1300; for declarator that the sum which ought to be entered in the said roll as the rent or value for the said year is £950; and "in the event of it being necessary to give effect to the foregoing" the pursuers ask that the assessor should be ordained to enter in the roll the sum of £950 as the said annual rent or value. Declarator is sought, further, that "the pursuers are liable to be rated and assessed as proprietors and occupiers of said subjects on the basis that the annual rent or value of the said subjects for the said year is £950 and not £1300."

I shall begin by dealing with the declaratory conclusion last quoted, which at first sight seemed to me to have more plausibility than the earlier conclusions. It must, I take it, be dealt with upon the same footing as if the pursuers had presented a note of suspension and interdict following upon a charge for payment of an assessment based upon the valuation at £1300. On this footing I think the pursuers must fail. The declarator sought seems to me to be directly in the teeth of the provision of section 33 of the Act of 1854 that "the yearly rent or value of . . . heritages as appearing from the valuation roll . . . shall . . . be always deemed and taken to be the just amount of real rent for the purposes of . . . assessment . . . and the same shall be assessed and levied according to such yearly rent or value accordingly, any law or usage to the contrary notwithstanding." The rubric in the important case of *Magistrates of Glasgow* v. *Hall*, 14 R. 319, in which the meaning and effect of section 33 were explained, bears, *inter alia*, "that the valuation roll . . . was conclusive as to the yearly rent or value of lands and heritages entered therein, and that the Court of Session had no jurisdiction to review the process by which the entry there made was reached." Lord President Inglis in the course of his opinion at p. 328 pointed out that "wherever the value of lands and heritages has been thus ascertained," *i.e.*, by the assessor's entry in the valuation roll, subject to review as provided by the valuation statutes, "it is final and not subject to appeal, and the entry in the valuation roll necessarily remains for a year and is the ruling estimate for that period. The matter cannot be carried any further." And in a later passage at p. 330 his Lordship says that "it is impossible for anyone here in this process to impugn the entry in the valuation roll for the year in question. It is conclusive, and it does not matter whether it was rightly arrived at or not, because the statute says it shall be held to be right—there shall be no review of it—it is final and conclusive." *Hall's* case has been followed in later decisions, *e.g.*, *Pumpherston Oil Company* v. *Wilson*, (1901) 3 F. 1099, 38 S.L.R. 830, where Lord Kinnear delivered the opinion of the First Division. I see no reason to doubt that these cases were correctly decided, and I did not understand the pursuers' counsel to contend otherwise. The declaratory conclusion with which I have been dealing seems to me therefore to fail entirely.

If this be so, the pursuers must resort, if they are to succeed, to the earlier conclusions of their summons. But here they are in my judgment faced with insuperable difficulties. If we were to reduce the valuation of £1300 contained in the entry objected to the result would seem to be that the Grand Theatre would be undervalued for the year in question. It was, I think, conceded—it is at all events to my mind clear—that it would be impossible for us to ordain the assessor to substitute the figure £950 for that of £1300. Nor do I see how we could competently make such substitution at our own hand by way of declarator or otherwise. If the figure £1300 be deleted, we have, so far as I see, neither warrant nor material for inserting £950 or any other figure in its place. The fact that £950 appeared in the valuation roll for the preceding year will not suffice; the roll for each year must be made up by the competent authorities as a new and independent entity, and the pursuers' offer to consent to the entry of £950 as the valuation for the year in question does not appear to me to advance the matter. But apart from these practical difficulties the whole of the conclusions with which I am now dealing seem to me to be absolutely displaced by the terms of section 30 of the Act of 1854. It enacts, *inter alia*, that "no valuation roll which shall be made up and authenticated in terms of this Act, and no valuation which shall be contained therein, shall be challengeable or be capable

of being set aside or rendered ineffectual by reason of any informality, or of any want of compliance with the provisions of this Act in the proceedings for making up such valuation or valuation roll." I do not see how the pursuers can get the better of this enactment. What they desire is precisely to set aside or render ineffectual a valuation contained in the roll, by reason of an alleged want of compliance (viz., omission to transmit a notice to the pursuers) with the provisions of the Act in the proceedings for making up the valuation or the roll. The "proceedings" appear to me to refer to and embrace everything that is done by the assessor or the magistrates prior to the completion and authentication of the valuation roll as provided by section 12 of the Act. But the pursuers argued in the first place that the "want of compliance" must mean one *ejusdem generis* with the sort of "mistake or variance" indicated at the outset of section 30, or a mere "informality" of some sort, and cannot extend to so grave an error or omission as that here alleged to have occurred, which amounts they say to a "fundamental nullity" in the proceedings and not to a mere "want of compliance with the provisions of this Act." I cannot so read the enactment; its words (above quoted) are clear and comprehensive, and I find nothing in the context to limit or restrict their natural meaning. But the pursuers proceed to fasten upon the words "valuation roll which shall be made up and authenticated in terms of this Act," and say that this roll, so far as the valuation contained in the offending entry is construed, was never so made up and authenticated because an essential condition of the making up of a roll in terms of the Act had been omitted, viz., the transmission of a notice as prescribed by section 5. I cannot accept this reading of the words. It would, in my judgment, stultify and deprive of all meaning the whole passage in which the words occur. If a roll has been made up strictly in terms of the Act, it could require no protection in respect of non-compliance with its provisions. I think the words plainly refer to a roll bearing or professing to be made up in terms of the Act, but not in fact strictly so made up by reason of some informality or want of compliance with the statutory provisions. The only difficulty I have felt about this matter arises from the opinions delivered by Lord Kinnear as Lord Ordinary in the case of *Sharp* v. *Latheron Parochial Board*, 10 R. 1163. The existence of these opinions was only brought to light by the vigilance of the Lord Justice-Clerk in sending for the session papers in the case; they do not appear in the report in 10 R., though I find that they are contained in the report in 20 S.L.R. 771. Lord Kinnear's view certainly favours the present pursuers' case. His Lordship seems to have thought that as the assessor had failed to transmit to the suspender a notice in terms of section 5, and as the latter was entitled to rely upon the assessor having followed the course prescribed by the statute, "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." I need hardly say I regard Lord Kinnear's opinion with unfeigned respect, but it is not binding upon us, and I venture to differ from him in this matter of construction. I humbly think, as already said, that to read section 30 in the manner contended for by the pursuers would go far towards depriving that section of any meaning. It seems to me further that Lord Kinnear's opinion cannot stand along with that expressed by the Second Division, before whom the *Latheron* case came by way of reclaiming note. That Court adhered, it is true, to the interlocutor of the Lord Ordinary, which suspended the proceedings and declared the interdict perpetual, and they did not expressly—though I think they did by clear implication—repudiate the views stated in his Lordship's opinion. The Lord Justice-Clerk (Moncreiff), who seems to have delivered the only opinion in the Inner House—Lords Young and Rutherfurd Clark concurring—does not indicate any measure of agreement with the view put forward by the Lord Ordinary. On the contrary, he expressly asserts the finality of the valuation roll on all questions of valuation, notwithstanding that the terms of section 5 had not been complied with. His Lordship begins by saying —"I entirely agree that the valuation roll is conclusive as to the value of the subjects entered in it for the year, and that in each year the value stated in the roll is final." Later he says—"It is unnecessary, however, in any way to impugn the accuracy of the roll in this case, as the real answer to the collector's contention here is that the rectification of such a mistake is not a question of valuation but one of assessment. . . . I think that if we deal with the entry as a double one we get rid of that difficulty and will be doing real justice in the case. I am therefore of opinion that we should adhere to the Lord Ordinary's judgment." Now in the case before us it seems to me that the pursuers' success would necessarily involve that we did "impugn the accuracy of the roll," and that upon a direct matter of value, for it cannot be said here, as Lord Moncreiff said in the *Latheron* case, that "the rectification of such a mistake is not a question of valuation but of assessment." I think the *Latheron* case is an authority against the pursuers.

It seems to me therefore that the Lord Ordinary was right in holding the action to be incompetent; and the secondary question—as to the pursuers' motion for "a proof of their averments, excluding all questions of value"—does not arise. A great deal was said during the arguments about hardship. It was urged that if the Lord Ordinary's view be right hard cases would arise. It may be so, but that cannot alter one's view as to the meaning and effect of the statute, though it might be matter for consideration by the Legislature. It was urged in particular that the present pursuers' case would be one of great hardship, but the assertion involves postulates which I do not think we are in a position

to accept, viz., that if a notice had been duly transmitted by the assessor to the pursuers they would have been able to satisfy him, or failing that to satisfy the Appeal Committee or the judges of the Valuation Appeal Court, that £950 and not £1300 was the proper figure to enter as against these subjects for the year in question. I think that whether the result be hard or not the valuation roll is final and conclusive, and the pursuers must accept it as such for the year 1914-15. The policy of the Legislature, as I gather from the provisions of the Act of 1854, was to prefer the possibility of occasional hardship arising to individuals from some want of compliance with the statutory provisions to the risk of grave general inconvenience which might arise if any item of valuation appearing in the roll for a given year were left open to challenge, by way of reduction or otherwise, on the ground of alleged non-compliance with the Act. If that was what the Legislature intended, it is not for this Court to consider the policy involved. What is said to have occurred in the present case seems to me to be a typical instance of the sort of "want of compliance" which section 30 declares shall not afford a ground of challenge. It is unnecessary and I do not propose to decide here whether or not different considerations might arise if fraud, for example, were alleged, or if by some mere *error calculi* a wrong figure made its way into the roll as the value of a certain heritage.

On the whole matter I am for adhering to the interlocutor reclaimed against.

LORD SALVESEN—Since this case left the Outer House the record has been amended, and it is now matter of distinct averment that the assessor failed to comply with the provisions of section 5 of the Valuation of Lands (Scotland) Act 1854 (17 and 18 Vict. cap. 91), by causing to be transmitted to the pursuers a copy of the entry in the valuation roll with regard to the Grand Theatre, 190 Cowcaddens Street, Glasgow. This provision is imperative where the entry in the valuation roll is not merely a repeated entry, but increases, as in this case it substantially did, the valuation of the subjects. The result of the assessor's failure to comply with the statutory duty was that the pursuers, although aggrieved by the increase in the valuation of their property, were deprived of their statutory right of appeal.

There are various conclusions in the summons, but the first three appear to me to be ancillary to the leading conclusion, which is to the effect that the pursuers are liable to be rated as the proprietors and occupiers of the subjects on the basis that their annual rent or value for the year in question is £950 and not £1300. If the pursuers obtain declarator in these terms they are not seriously interested—and no other person that I can see is—in the accuracy of the valuation roll, which has now ceased to be of any importance.

The defenders found their claim to have the action dismissed on section 30 of the Act, and the Lord Ordinary has sustained their view. He holds that the effect of that section is "to protect the roll against all challenge, and to prevent any inquiry into what the assessor did or failed to do in making up the roll." I am unable so to construe the section. I think that if that had been the intention it would have been more simply effected by a provision that no valuation contained in the roll should be challengeable on any ground. Instead of this specific provision is made for mistake or variance in the name of lands or heritages, or in the Christian or surname or designation of any proprietor, tenant, or occupier; and provision is also expressly made that the valuation shall not be set aside by reason of any informality in the proceedings in making up the valuation roll. There occurs also the clause which has occasioned the whole difficulty—"or of any want of compliance with the provisions of this Act." I cannot read these words as giving the assessor a statutory dispensation from complying with the provisions of the Act, for that would be the effect if no person who was aggrieved by his failure had any title to complain. I think that these words must be construed along with the particular provisions with regard to mistake or variance or informality, and that they affect form and not substance. Apart from this it is only a roll which is made up in terms of the Act that cannot be challenged. On this point I am in entire agreement with the view of Lord Kinnear, who was Lord Ordinary in the case of *Sharp* v. *Latheron Parochial Board*, 10 R. 1163. [*His Lordship read Lord Kinnear's note attached to his interlocutor of 29th March* 1883, 20 S.L.R. 771.] These observations are precisely in point, and as the judgment of the Lord Ordinary was affirmed by the Inner House I think they are decisive of the present case, although in the only opinion which is reported the judgment was put on a more general ground. If therefore the Lord Ordinary's view were sound that the valuation roll is unchallengeable, that decision could never have been reached. It was followed by me in the case of *Abercromby*, 1909, 47 S.L.R. 18, and the case of *Hope*, (1897) 5 S.L.T. 195, is another instance of a case where the Court has refused to allow an assessing authority to take advantage of an error in the valuation roll. I am not moved at all by the consideration to which the Lord Ordinary adverts as to the difficulty of the assessor showing that he has complied with section 5 of the Act. I do not believe there is any practical difficulty. As I observed during the argument there are few public departments where the work is so carefully done as that which is conducted by the various assessors throughout the country, and the fact that so few cases have occurred of mistakes, in each of which the Court has given a remedy, convinces me that similar mistakes are exceedingly rare. If, however, the view of the Lord Ordinary is sound no redress could ever be given, however gross was the injustice to the individual. The Solicitor-General at the first hearing admitted in argument that if the assessor's clerk had inserted £13,000 by mis-

take as the annual value of the Grand Theatre instead of £1300 his contention would have been the same. To my mind this is practically a *reductio ad absurdum*. The Lord Ordinary indicates that the Court may be entitled to interfere in exceptional circumstances "to prevent obvious injustice." If the valuation roll is unchallengeable as to the amount of the valuation it would seem to me to be equally unchallengeable by the terms of section 30 as regards the names of the persons placed upon it, and the injustice is no more obvious in the one case than in the other. There is no question here of a new valuation, for the entry for the former year represents the valuation unless notice of an increase has been given in terms of section 5. For these reasons I am of opinion that we should recal the interlocutor reclaimed against and allow the pursuers a proof of their averments excepting as regards the annual value of the subjects in question. I may add that no argument was offered in support of the second plea-in-law for the defenders the Corporation of the City of Glasgow, and I think that plea also should now be repelled.

Reference has been made to the case of *The Magistrates of Glasgow* v. *Hall*, 14 R. 319, although it was only mentioned in the course of the debate, and scarcely founded on by the counsel for the respondents. I am not surprised, because it appears to me, after reading the case over carefully, to have no bearing on the question which we have now to decide. The sole question in that case was whether a valuation of subjects which had been reached after all the procedure prescribed by the Act had been duly taken, and which had been fixed by an interlocutor of the final Court of Appeal, could be afterwards challenged on the ground that there had been an error in the mode in which the valuation had been arrived at. In my judgment it scarcely needs authority to answer that question in the negative. The only thing that gave the respondents even a colourable argument was the allegation that a deduction which fell to be made in terms of the Poor Law Amendment Act had been already made in reaching the valuation of the subjects. I think the opinion of Lord M'Laren disposes of this point on the merits, but apart from this there would be no advantage in having a valuation roll at all if the figures could be challenged on the mere ground that they were above or below the true values of any particular subjects. A valuation which has been carried through in terms of the statutory procedure, and is therefore embodied in the valuation roll, must of course have absolute finality whether the assessor has undervalued or overvalued the subjects, and this is exactly what Lord Kinnear says in the opinion to which I have already referred. But such finality cannot, in my opinion, attach to a valuation that has been made by the assessor, and which he has failed, in breach of his statutory duty, to intimate to the owner of the subjects, with the result of cutting off the statutory right of appeal. The opinion of Lord President Inglis gives no countenance to such a suggestion. We are not asked to consider whether the Valuation Court or the Lord Ordinary on the Bills "has been right or wrong in affirming or altering the determination of the assessor," but only whether the determination of the assessor, never communicated to the appellant, and therefore never brought before even the Valuation Committee, is to have the same force as a determination either of the Valuation Committee acquiesced in by the aggrieved party, or of the Valuation Judges, the ultimate Court of Appeal on questions of value.

LORD MACKENZIE—Prior to 1914 one of the pursuers' theatres was entered in the valuation roll at £950. In the roll made up by the assessor for that year it was entered at £1300. The pursuers aver that the assessor failed to send them notice that the valuation was to be raised. They say that under the Act the assessor was bound to give them notice as a condition-precedent to raising the valuation. There is no dispute that this was the duty of the assessor. Nor is there any doubt that if the assessor did not transmit the necessary statutory notice the pursuers were thereby denied the right which the Act of Parliament gives them of endeavouring to obtain redress in the manner pointed out by the statute.

The answer the assessor gives is to point to section 30, which according to his contention shuts the mouth of the pursuers. The Dean of Faculty admitted that he could not maintain that section 30 would have the same effect if the required statutory notice had been fraudulently withheld by the assessor. It seems plain that in that case section 30 would not prevent challenge. It was also conceded that if the notice was not sent owing to wilful breach of duty on the part of the assessor, such "want of compliance with the provisions of this Act in the proceedings for making up the valuation or valuation roll" would not receive protection under the terms of section 30. This concession is important, as it shows that the concluding words of that section can only be construed in a limited sense. The question is, what is the limitation to be put upon them? In my opinion (if the pursuers prove their averment) the assessor's case fails whether the narrower or broader view be taken of the earlier sections of the Act. If, as Mr Sandeman contended, the provisions in regard to "making up" the roll end with section 4, then section 30 cannot apply to something that has to be done subsequent to the "making up" of the roll. Read literally the statutory enactments in regard to "making up" the roll do end with section 4. The new valuation roll is to be annually "made up" by the assessor on or before the 15th day of August. It is in section 5 that the provision is contained on which the pursuers found. That section enacts that unless the entry merely repeats what was in the previous valuation roll the assessor shall (the provision is imperative) transmit a copy of the entry in such valuation roll, *i.e.*, the roll "made up" by him, to every person set forth in it as proprietor, tenant,

or occupier. Section 30 says that no valuation is to be "challengeable or be capable of being set aside or rendered ineffectual by reason of any informality, or of any want of compliance with the provisions of this Act, in the proceedings for making up" the valuation or valuation roll. This does not refer to the safeguards contained in section 5, which deal with the stage after the roll is made up by the assessor. The purpose of transmitting a copy of the new entry is made plain by what follows, because along with the entry there shall be transmitted a notice that a person who considers himself aggrieved may appeal or obtain redress by satisfying the assessor that he has a well-founded ground of complaint. The pursuers in the present case say they could do neither. They got no copy of the entry showing an increase in their valuation of the theatre in question, though they did get notice as regards two of their other theatres.

But alternatively, if the "making up" of the roll only ends with its authentication by signature as provided by section 12, then in my opinion it is only in the case where the valuation roll is made up and authenticated "in terms of this Act" that section 30 protects it from challenge. A valuation roll made up substantially in terms of the Act cannot be challenged for want of compliance with what are formalities. But here the failure of the assessor to give notice goes to the root of the matter. It is a condition-precedent which has to be observed, otherwise there cannot be a legal increase in the valuation. It is not the least in the same category as a mistake or variance in the names of lands or heritages, or in the Christian or surname or designation of any proprietor or tenant or occupier. It cannot be said that failure to comply with section 5 is a failure in formality. The defenders' argument is that having carefully provided a safeguard in section 5, the Legislature deleted it by section 30, if the breach of duty on the part of the assessor was due to negligence, though it is left standing if the breach of duty is wilful. In my opinion this distinction ought not to be drawn. In the one case, as in the other, the opportunity of obtaining redress is withheld. To use the language of the Lord Justice-Clerk (Moncreiff) in *Sharp* v. *Latheron Parochial Board*, 10 R., at p. 1165—"I am unwilling to stretch the finality of the valuation roll so as to exclude redress." What the Court did in that case (and it is important in view of the argument here that the valuation roll is final for all purposes) was to hold that there had been a mistake in the valuation roll. One of the entries in it was therefore held to have no effect. This was the practical effect of the judgment, though the Lord Justice-Clerk says—"It is unnecessary, however, in any way to impugn the accuracy of the roll in this case, as the real answer to the collector's contention here is that the rectification of such a mistake is not a question of valuation but one of assessment." For my part I respectfully adopt the language of Lord Kinnear in *Sharp's* case and apply it to the pursuers here—"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 assessor founds on *Hall's* case, 14 R. 319—a decision in which it was held that for purposes of poor law assessment the valuation appearing in the roll was conclusive, and that the Court of Session had no jurisdiction to inquire how the Valuation Judges or the Lord Ordinary on the Bills arrived at the result. The opinion of the Lord President contains the following passage—"Now, taking these sections together, it appears to me that when the valuation has been made, either under the 6th by the ordinary assessor, or under the 22nd or the 23rd section of the statute by the Assessor of Railways and Canals, and where that has been acquiesced in, or taken to appeal and finally determined, in the one case by the Valuation Judges and in the other case by the Lord Ordinary on the Bills, it is impossible to go back in any way on what has been done. The assessment, if acquiesced in, of course puts an end to every such inquiry, and if there is an appeal in the one case or in the other, the judgment of the Court of Appeal is final and cannot be reviewed by any Court." That does not apply to the present case. Here, if the pursuers' averments are substantiated, they were cut out of any opportunity of appeal by failure in duty on the part of the assessor; on the same assumption they cannot be said to have acquiesced in the increase in their valuation, because they were ignorant of the fact that it had been increased, nor had they, prior to the date when they ought to have appealed, any chance of knowing. The Court of Session is the only Court that can in the circumstances of the present case give redress. As has already been pointed out, section 30 would not cover a case of fraud or wilful neglect to comply with section 5. It is the Court of Session that has jurisdiction to deal with such matters. In the recent case of *M'Gilvray* v. *The Assessor for Oban*, *v. infra*, the Valuation Appeal Court had to consider the question whether they would entertain an objection to an entry in the valuation roll on the ground that a brother of the assessor was one of the magistrates who formed the Appeal Committee. The Valuation Appeal Court refused to consider this question upon the ground that it did not fall within their jurisdiction as defined by section 7 of the Valuation Act of 1879. In the case of *Stirling & Sons* v. *Holm and Others*, 11 Macph. 480 (which was cited in argument in *M'Gilvray's* case), it was held that the Court of Session cannot set aside decisions of the Valuation Appeal Court, and has no jurisdiction to interfere with the

way in which they conduct their business. The Lord President says (at p. 487)—"I think these two Judges sitting under this statute are just as much a Supreme Court as we are sitting here, that their jurisdiction is absolutely privative, and that no other Judge or Court in the realm can interfere with questions arising under the Valuation Act, or rather, I should more properly say, with questions relating to valuations. It is to these two Judges, and to nobody else, that the whole jurisdiction in this matter is committed." This is consistent with the view taken in *M'Gilvray*. The function of the Valuation Appeal Court is to give their opinion upon questions of valuation.

The case of *Hall* shows that unless a remedy is given at this stage the pursuers will have no answer when called on to pay their assessments. The remedy ought, in my opinion, to be by partial reduction. If the assessor did not observe the statutory pre-requisite to the valuation being increased, then it should remain at the same figure as in the previous year. I am therefore of opinion that the judgment of the Lord Ordinary should be recalled and that the pursuers should be allowed a proof of their averment that the assessor failed to send them the necessary statutory notice.

LORD SKERRINGTON—Before referring to the merits I think it right to dispose of the defenders' suggestion to the effect that even although the pursuers' case were otherwise well founded, they had lost the right to seek redress in the Court of Session, because they failed to exhaust their remedy before the Valuation Committee and the Lands Valuation Appeal Court. The pursuers were informed on 23rd September 1914 that the valuation of the Grand Theatre had been raised from £950 to £1300. The Valuation Committee had met on 11th September, but the pursuers' solicitor was not heard until 30th September. Accordingly if notice of appeal had been given on 23rd September the six days' notice "before such appeal is heard," required by section 9 of the Lands Valuation Act 1854, would have been given. It has, however, been decided by the Lands Valuation Appeal Court in *Watson, Gow, & Company* v. *Assessor for Glasgow*, 1910 S.C. 807, that upon just construction of this section the notice must be given six days before the date fixed for hearing the appeal, and not six days before the actual hearing. If some notice although a defective one had been timeously given, the pursuers might, on the authority of certain passages in the opinion of Lord Dundas in that case and of the decision of the same Court in *Maitland* v. *Assessor for Midlothian*, (1888) 15 R. 592, 25 S.L.R. 318, have induced the Valuation Committee and the Valuation Appeal Court to treat the requirements of section 9 as directory and not imperative. In the actual circumstances, however, any application for indulgence would have been excluded by section 7 of the Valuation of Lands (Scotland) Amendment Act 1867 (30 and 31 Vict. cap. 80). This section was not cited to us, but it enacts that "all appeals or complaints against any entry in the valuation rolls made up in terms of the said recited Act and of this Act . . . shall, except as after provided, be lodged not later than the 10th day of September in each year." Section 12 of the same statute extends the time allowed to the assessor of railways "for making up his valuation roll" for the year 1867-8 only to 15th September 1867.

As regards the merits of the question upon which we have been asked to give our opinions, the sections of the 1867 Act to which I have referred indicate that the expression "making up the valuation roll," as used in the Valuation Acts, bears its natural and primary meaning, and does not include either appeals or notices given with a view to appealing against entries in the valuation roll after the roll has been made up. By the Act of 1879 the Valuation Acts must be read and construed together, but if one confines one's attention to the Act of 1854 it is equally plain from the first and leading section thereof that when section 30 speaks "of any informality or any want of compliance with the provisions of this Act in the proceedings for making up such valuation or valuation roll," it has in view, so far as regards the first year, informalities and deviations committed prior to 1st August 1855, which is the date by which the commissioners of supply and the magistrates were bound to cause the first valuation roll to be made up. From section 4 it appears that in each subsequent year the valuation roll must be made up on or before the same date. In making up the roll the assessor has, as experience shows, abundant opportunity for failing to comply with the provisions of the Act, *e.g.*, by disregarding a lease which he ought to have treated as conclusive, or *vice versa*. The notices required by section 5 to be given by the assessor to persons whose property has been valued, and the appeals and complaints permitted by section 8 (which have their own separate finality clause in that section) are all subsequent in date to the making up of the roll and are not in any way referred to in section 30. Language similar to that used by sections 1 and 4 occurs throughout the statute (sections 11, 20, 21, 24, 25, and 27), while other sections (12, 18, and 27) recognise that after the roll has been made up in terms of the Act, certain further procedure is necessary before the valuations contained therein can be regarded as having been "completed" and before the roll comes into force. The construction of section 30 contended for by the defenders disregards the reason and purpose of the section, which is to give finality to valuations, which ought to be final, because the parties interested in the property have had an opportunity of appealing but have failed to do so, and have thus acquiesced in the assessor's valuation, It is no answer to this argument to point out that section 5, like all human machinery, is imperfect, and that once in a million times its purpose and intention might be defeated though its directions as to the giving of notice had been literally complied with. I need hardly explain that in my

references to section 30 of the Act of 1854 I have in view solely the second part of that section. The first part in substance enacts that the statutory valuations shall apply *dummodo constat de terris* notwithstanding any misdescription of the lands or their owners.

It follows, in my opinion, that if the pursuers can prove their averments they will be entitled to a decree reducing the entry in the valuation roll in so far as it increases the valuation of the theatre beyond the sum of £950. Upon the principle *quod fieri debet infectum valet*, the valuation of the property will, on that hypothesis, be the same as in the roll of the preceding year.

LORD GUTHRIE—The question in this case seems to me to depend primarily on whether the following words in section 30 of the Valuation Act of 1854 (17 and 18 Vict. cap. 91), which taken by themselves are in terms absolute, are capable of construction, namely, "no valuation roll . . . and no valuation . . . shall be challengeable . . . by reason of any . . . want of compliance with the provisions of this Act." If these words are not open to construction, but cover every possible case of non-compliance with the provisions of the Act, then the interlocutor reclaimed against must be right. But it does not follow that the Lord Ordinary is wrong even if it be found that the words quoted are open to construction, because the sound construction may not be wide enough to cover the present case.

As I read the Lord Ordinary's opinion he appears to hold that the clause is absolute, admitting of no exceptions. He says the door is "firmly barred against all challenge," and this view was maintained by the Solicitor-General in his argument before the Second Division. In the debate before Seven Judges, however, the Dean of Faculty, who then represented the respondents, admitted that any wilful deviation from the provisions of the Act whether fraudulent or not, unless amounting only to a mere informality, would give rise to a challenge on the part of a proprietor or tenant or occupier with sufficient interest to raise the question, although he denied the right of such proprietor, tenant, or occupier even in that case to reduce the valuation roll or any part of it. He accordingly did not maintain, as the Solicitor-General had done, that the words in section 30, "valuation roll which shall be made up and authenticated in terms of this Act," must be read as if they had run "valuation roll which shall [bear to] be made up and authenticated in terms of this Act." Instances were suggested and assented to where the roll would be challengeable, such as if the assessor during the course of the present war, owing to the absence of expert assistants and the necessity for national economy, resolved not to take any steps under section 1 of the Act to make up a new roll, and issued as the new roll a repetition so far as value was concerned of the previous year's roll. That might be effectually challenged, it was admitted, by a sufficiently interested proprietor, tenant, or occupier, and so might a wilful refusal to receive or allow an appeal under section 9 as well as a wilful failure to send notice under section 5. On the other hand, it was maintained that if a figure of, say, £10,000 were inserted as the value of a subject in the new roll by mistake for £1000, the amount in the previous roll, and if the clerk, knowing that no change was intended, and being unaware that any change had been made, sent out no notice under section 5, the assessment for the year must be made and would be payable on the basis of the figure which was admittedly ten times too large. In that case, I suppose, the only remedy would be a special Act of Parliament.

Looking to the fact that the valuation only operates for one year, and that as the reports show cases of failure, wilful or negligent, on the part of assessors to comply with any provisions of the statute involving substantial interests of ratepayers have been very rare, it appears to me that of these two views the more forcible and plausible is the one which seems to have commended itself to the Lord Ordinary. But I am of opinion that the context in section 30 and section 5 show that the words quoted from section 30 are open to construction, and I am further of opinion that the construction cannot be limited as proposed by the Dean of Faculty. By the context in section 30 I mean (1) the words "which shall be made up and authenticated in terms of this Act," (2) the enumeration of unimportant mistakes in the earlier part of the section, and (3) the conjunction of "any informality" with "any want of compliance with the provisions of this Act." I read section 5 as prescribing a requirement, without fulfilment of which no document can be a valuation roll "made up and authenticated in terms of the Act." That section says that if a change is to be made in the valuation of a subject it shall be necessary to transmit a notice to the owner, from which, I think, it follows that if no notice is transmitted the entry of value remains as before.

The Lord Ordinary does not appear to me to have given full weight either to the nature of the pursuers' complaint or to the terms and effect of section 5. His Lordship speaks of the requirement of notice, in the event of proposed change in value, as an "important provision." It appears to me in its nature rather as an essential and universal provision. It is difficult, if not impossible, to imagine that a statute could be passed in any country which would propose to prejudice either the personal status or the property of a subject who was neither a slave nor an outlaw without giving him notice. If ever there was a case in which a court was asked, in the Lord Ordinary's words used in reference to the cases of *Sharp*, 10 R. 1163, and *Abercromby*, 1909, 2 S.L.T. 114, to "interfere in exceptional circumstances to prevent obvious injustice" it is the present. He says that the increased valuation may turn out correct, and that he is asked to say without inquiry that it does not represent the true value. But that is not where the question of transgression of elementary law arises. It is in the State

claiming a right, under a statute, to appropriate the property of one of its subjects without giving notice to that subject that it proposes to do so. And the pursuers do not ask the Court to inquire into the true value, nor would the decree asked have any such effect. They only say that if a figure cannot be altered except on one condition, then it must remain unaltered if that condition is not fulfilled.

But if, contrary to the Lord Ordinary's opinion, the clause in question is open to construction, I am unable to see any sufficient reason why a sound construction should, in one view, admittedly except all cases of want of compliance with the provisions of the Act arising from fraud, or where the whole procedure under the Act has been omitted or the right of appeal has been refused, or where there has been *error calculi*, and in another view should admittedly except all cases of want of compliance with the provisions of the Act which have been wilful whether fraudulent or not, and why a sound construction should not also except the failure to give the notice prescribed in section 5, from whatever cause or motive that failure may have arisen.

Taking this view of the statute, I do not find it necessary to deal with the narrower ground which formed Mr Sandeman's alternative argument. But my impression is, contrary to that argument, that the roll is not made up till it is finally authenticated.

The previous cases, with the exception of *Sharp* v. *Latheron Parochial Board*, do not seem to me to touch the present question. Lord Kinnear, as Lord Ordinary in that case, on the same point as is raised in the present case, decided the question on the merits, apart from the precise remedy to be granted, as I propose it should be decided now. The Second Division, as I read the Lord Justice-Clerk's opinion, were resolved to affirm the result arrived at by Lord Kinnear, but were not prepared to commit themselves to approval of the ground on which his judgment was rested. They gave his reasoned judgment the go-by, and appealed to equity, which is a strange foundation for a judgment in a valuation case.

As to section 33, and the case of the *Magistrates of Glasgow* v. *Hall*, 14 R. 319, if I am right that section 30 is open to construction, section 33 and that case can present no difficulty. Otherwise in the cases in which the Dean of Faculty admitted that an *ex facie* valid valuation roll would be challengeable, section 33 and the case of *Hall* would be just as fatal a barrier as they are alleged to be in the present case.

Nor do I think opinions as to the impossibility of reducing the valuation roll, pronounced in cases where there had been no failure to comply with provisions of the statute, which as I think, are made by the statute itself, essential pre-requisites to the existence of a statutory valuation roll, can be conclusive of the present case.

The proof which I think should be allowed would include evidence that no notice in regard to the Grand Theatre was received by the pursuers, as well as evidence that the assessor did not transmit, in the sense of duly dispatch or send off, any such notice. The latter is now explicitly averred on record, as it was not when the case was before the Lord Ordinary. The first point does not arise for decision at the present stage, but my impression, for what it is worth, is that the pursuers can only succeed, in what may well turn out to be an impossible task, if they prove that no notice in regard to the Grand Theatre was duly dispatched to them by the assessor.

The Court, in conformity with the opinions of the majority of the Consulted Judges, recalled the interlocutor reclaimed against, allowed the parties a proof of their averments on record other than those relating to the value of the subjects in question, and remitted to the Lord Ordinary to take the proof.

Counsel for the Pursuers and Reclaimers —Sandeman, K.C.—W. T. Watson. Agents —Menzies, Bruce-Low, & Thomson, W.S.

Counsel for the Defenders and Respondents—Solicitor-General (Morison, K.C.)—Crawford. Agents—Simpson & Marwick, W.S.

HOUSE OF LORDS.

Monday, March 6.

(Before Viscount Haldane, Lord Kinnear, Lord Shaw, Lord Parmoor, and Lord Wrenbury.)

GLASGOW COAL COMPANY, LIMITED *v.* WELSH.

(In the Court of Session, July 20, 1915, 52 S.L.R. 798, and 1915 S.C. 1020.)

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1)—"*Accident*"—*Rheumatism Caused by Immersion in Water which Workman was Baling out of a Pit in Obedience to Orders.*

The pump of a coal mine having broken down, a miner, a brusher, who had gone down the pit to resume his regular work, was directed to bale the water which had accumulated. He was immersed to the chest, and was in this position for several hours, thereby contracting sub-acute rheumatism, which incapacitated him.

Held that the personal injury was "by accident."

This case is reported *ante ut supra.*

The appellants, the Glasgow Coal Company, Limited, appealed to the House of Lords.

VISCOUNT HALDANE—I do not think that the question raised by this appeal is really a difficult one. The Sheriff-Substitute has found that the rheumatism from which the respondent suffered "was caused by the extreme and exceptional exposure to cold and damp to which he was subjected" by complying with the directions given to him