well entitled to treat her as a credible witness, and even if there was no corroboration of the second sale her evidence with regard to the second is sufficient in virtue of the statute to warrant the conviction.

On these grounds I am for refusing this bill.

LORD MACKENZIE—I am of the same opinion. There is only one point on which I should say anything and that is in regard to the construction of section 65, sub-section 2, of the statute, which provides—"Any person prosecuted for such trafficking may be legally convicted thereof on his own confession or on proof by the oath of one or more credible witness or witnesses or other legal evidence."

Now we are not here sitting to review the conclusion arrived at by the Magistrate upon facts. We are, in my opinion, only entitled to interfere with the decision he has come to if upon a due consideration of the facts stated there is no evidence upon which as a reasonable man he was entitled to believe the evidence which was adduced.

In this case there are various points upon which the credibility of the witness Adams has been attacked, but the evidence in the case must be taken as a whole. With regard to the sale of the first bottle of whisky there is not only the evidence of Adams, but the evidence of the witness Day, who accompanied Adams on the occasion of her purchase of the first bottle of whisky, and accordingly the evidence as regards the purchase of that bottle does not stand upon the evidence of Adams alone but complies with the ordinary rules of evidence because there is corroboration of the story which Adams tells.

As regards the sale of the second bottle of whisky, for my part, if this was a case to which the ordinary rules of evidence applied, I should be unable to hold that the prosecutor had discharged the *onus* that is upon him. I do not think that as regards the sale of the second bottle there is legal evidence in the ordinary sense. But then, in consequence of the provisions of sub-section 2 of section 65 the evidence of one credible witness is sufficient, and inasmuch as *ex hypothesi* the Magistrate treated Adams as a credible witness in regard to the sale of the first bottle, then I think she is put into such a position by the evidence led in regard to the first charge that the Magistrate was entitled to treat her as a credible witness when he came to deal with the second.

LORD SKERRINGTON—I concur.

The Court refused the bill of suspension.

Counsel for the Complainer—Sandeman, K.C.—W. H. Stevenson. Agent—Thomas J. Connolly, Solicitor.

Counsel for the Respondent—Mitchell, A.-D. Agent—R. H. Miller, S.S.C.

COURT OF SESSION.

Saturday, March 16.

SECOND DIVISION.

[Lord Hunter, Ordinary.

AYRSHIRE COUNTY COUNCIL *v.* W. & J. KNOX, LIMITED.

Local Administration—Rates and Assessments—Water—County Council—Premises Occupied by Owner and Supplied with Water by Meter—Owner's Portion of Rate—Public Health (Scotland) Act 1897 (60 *and* 61 *Vict. cap.* 38), *sec.* 126.

A local authority which had agreed to supply manufacturers, who were both owners and occupiers of their premises, with water, supplied them by meter with the water consumed both for domestic and for trade purposes there. The local authority proposed, in addition to the charge by meter, to assess them for the owner's portion of the special water assessment applicable to the premises. *Held* that the manufacturers were not chargeable with the owner's portion of the water assessment.

Motherwell Burgh v. *Colville & Sons, Limited*, 1907, 44 S. L.R. 857, *followed*. *Dickson* v. *Lanarkshire Upper Ward District Committee*, 1916 S.C. 940, 53 S.L.R. 710, *distinguished*.

The Public Health (Scotland) Act 1897 (60 and 61 Vict. cap. 38), section 126, enacts—"With respect to districts other than burghs the following provisions shall have effect:—. . . (2) The local authority, if they have any surplus water after fully supplying what is required for domestic and sanitary purposes, may supply water from such surplus to any public baths and wash-houses or for trading or manufacturing and all other than domestic purposes, on such terms and conditions as may be agreed on between the local authority and the persons desirous of being so supplied: Provided that when water is thus supplied from such surplus it shall not be lawful for the local authority to charge the persons so supplied both with the portion of the special water assessment applicable to the buildings or premises supplied and also for the supply of water obtained; but the local authority may either charge the said assessment leviable on such buildings or premises, or charge for the supply of water furnished to the same, as they shall think fit, and the local authority shall have the same remedies and powers of recovering payment of such water rents or payments as are hereinafter provided with regard to the special water assessment. . . ."

The County Council of the County of Ayr, *pursuers*, brought an action against W. & J. Knox, Limited, thread manufacturers, Kilbirnie, *defenders*, whereby they sought to recover the sum of £117, 12s. 9d., being the owner's portion of water assessments for premises owned and occupied by the defenders,

The pursuers averred—"(Cond. 1) The pursuers are the County Council of the County of Ayr, and under the Local Government (Scotland) Act 1889 fall to impose annually upon all lands and heritages within the county the rates and assessments necessary to meet the deficiency for County Council purposes for each year. The defenders are thread manufacturers at Kilbirnie in said county, and are heritable proprietors and occupiers of the subjects after mentioned situated within Kilbirnie and Glengarnock water supply district in the town and parish of Kilbirnie. (Cond. 2) The pursuers, as the rating authority foresaid, served upon the defenders assessment notices for the owner's proportion of the said Kilbirnie and Glengarnock special water supply district assessment for the year from 15th May 1916 to 15th May 1917, duly imposed upon and payable in respect of the following heritable subjects belonging to them, amounting said assessment to the sum of £117, 12s. 9d.

Subject.	Valuation.	Rate per £	Assessment.
Dennyholm Mills and works	£1442	9d.	£54 1 6
New dining hall and wood store	90		3 7 6
Garnock Mills	157		5 17 9
Stoneyholm Mill and flax stores	770		28 17 6
Do. net work	161		6 0 9
Gas-works	120		4 10 0
New flax stores and additions to net work	197		7 7 9
New net work	200		7 10 0
	£3137		£117 12 9

This sum became due and payable to the pursuers on 16th January 1917, and is the sum now sued for."

In a statement of facts the pursuers averred—"(Stat. 4) By minute of agreement dated 11th and 19th July 1901, and entered into between the said Northern District Committee [of Ayrshire County Council] of the first part and the defenders and others of the second part, the parties thereto agreed, *inter alia*, as to the terms upon which the local authority should supply surplus water for other than domestic purposes to all consumers in the said district who might apply for the same. The said agreement as narrated therein followed upon disputes and legal proceedings between the said Northern District Committee and the defenders as to their claim for compensation water as riparian proprietors on the river Garnock and its tributaries, and embodied an arrangement between the said Northern District Committee and the defenders for the compromise of such disputes and proceedings. Briefly stated, the said Northern District Committee undertook to obtain parliamentary powers in connection with a scheme for new works for the supply of water to the Special Water Supply Districts of Kilbirnie and Glengarnock, and for compensation water to the defenders as riparian owners. The said agreement also regulated the terms and conditions for the supply of surplus water for other than domestic purposes as narrated in article sixth hereof as an alternative and optional mode of charging for the same in place of a special water assessment. The said agreement has been adopted by the pursuers and has all along been acted upon by them, and is binding upon them. (Stat. 6) By the fifth purpose of the said minute of agreement it is provided as follows:—'*Fifth*—Water for other than domestic purposes shall be supplied by the first parties to all consumers who apply for the same, in so far as the first parties have any surplus water beyond what is required for domestic purposes; where these supplies are by meter the rates to be charged shall be as follows:—(*First*) Under two hundred and fifty thousand gallons per annum, sixpence per thousand gallons; (*Second*) Two hundred and fifty thousand gallons and under five hundred thousand, fivepence halfpenny per thousand gallons; (*Third*) Five hundred thousand gallons and under one million, fivepence per thousand gallons; (*Fourth*) One million gallons and under two millions, fourpence per thousand gallons; (*Fifth*) Two million gallons per annum and upwards, threepence halfpenny per thousand gallons. The existing meter rates in the water districts shall continue to be charged until the new works referred to in article first hereof have been constructed, and if after their construction it shall be found that the cost price of water delivered in Kilbirnie and Glengarnock does not exceed threepence per thousand gallons, then in that case the minimum rate for water supplied by meter in quantities of two million gallons per annum and upwards shall be threepence per thousand gallons instead of threepence halfpenny as in above table.'"

The pursuers *pleaded*, *inter alia*—"1. The defenders being justly indebted and restingowing to the pursuers as condescended on in the said sum in respect of water assessment, the pursuers are entitled to decree as concluded for, with expenses. 2. The pursuers being the local authority charged with the duty of levying and collecting rates and assessments for the county of Ayr, are entitled to decree as concluded for."

The defenders pleaded, *inter alia*—"2. Upon a sound construction of the 126th section (and particularly of sub-section 2 thereof) of the Public Health (Scotland) Act 1897, and of the fifth clause of the said minute of agreement, the pursuers are not entitled in the circumstances condescended upon to impose upon the defenders as proprietors the assessment in question in addition to charging them for the supply of water to their premises at the meter rate under the said minute of agreement, and the defenders are accordingly entitled to decree of absolvitor."

On 30th November 1917 the Lord Ordinary (HUNTER) assoilzied the defenders.

Opinion.—"In this action the County Council of the County of Ayr seek to recover from W. & J. Knox, Limited, thread manufacturers in the county, the sum of £117, 12s. 9d. as the owner's proportion of water assessments for premises owned and occupied by them.

"By minute of agreement dated 11th and 19th July 1901 an agreement was entered into between the Northern District Committee of the County Council of Ayrshire and the defenders and others under which the local authority should supply surplus water for other than domestic purposes to

all consumers in the district who might apply for the same. This agreement compromised certain questions in dispute between the parties. The defenders have always paid to the pursuers the amount payable in terms of said agreement for the water supplied to them. The rate by which said amount is determined is a meter rate which applies to all the water consumed by the defenders both for domestic and trade purposes. The pursuers have now for the first time demanded payment from the defenders of the portion of the water assessment applicable to their premises payable by the owners in addition to the amount determined by meter. Liability is disputed by the defenders.

"The Public Health (Scotland) Act 1897, section 126 (2), enacts—'. . . [*quotes, v. sup.*] . . .' In interpreting a similar clause in a local Act in *Burgh of Motherwell* v. *David Colville & Sons, Limited*, 1907 S.C. 1203, 44 S.L.R. 851, the First Division of the Court held that it was not competent for a local authority to charge an occupying owner not merely with an agreed meter rate but also with the owner's portion of the assessment upon the buildings. Lord Dunedin said—'I think the fair reading of the section is, as counsel put it, that it settles that when water is wanted for more than merely domestic purposes a supply may be arranged in respect of the premises for which the supply is wanted, and then the burgh is entitled to get a rate per gallon for the water so supplied. In that way every gallon is paid for, including in the quantity the gallons that would be used for domestic supply.'

"In interpreting the proviso in section 126 of the Act it has to be kept in view that the assessment upon premises is one and indivisible although it is recoverable one-half from the owner and the other half from the occupier. The 'portion of the water assessment applicable to the buildings' refers to both parts of the assessment payable by owner and occupier. The alternative given at the close of the section is to charge water either at meter rate or to levy an assessment in respect of the buildings. If water is paid for at agreed-on meter rate the local authority cannot charge any part of the assessment against anyone, and that whether the owner is occupier or not.

"A difficulty is said to have been created by the decision in *Dickson* v. *District Committee of Upper Ward of Lanarkshire*, 1916 S.C. 940, 53 S.L.R. 710. In that case a local authority were in the habit of assessing non-occupying owners for the owner's half of the water assessment leviable against premises that were supplied with surplus water at meter rate. No one challenged their right to do this, though on a fuller consideration of the provisions of the statute and of the decision in the *Motherwell* case I do not think they were entitled to do so. In order to put occupying owners in the same position as non-occupying owners they supplied them with surplus water only on their undertaking to pay annually in addition to certain special rates set forth in a schedule a sum equal to the amount of owner's assessments that would have been exigible from the said subjects had there been no agreement. As the case was argued to me the pursuer maintained that he had an agreement to get water at these schedule rates, and that he was therefore entitled to certain general declaratory conclusions. He founded on the *Motherwell* case, but I held that the cases were distinguishable in respect that he had no agreement with the local authority to get water at any meter rate, and I dismissed the action as irrelevant. As the case was presented to me it appeared that the pursuer's object was to gain a preference for his premises in the matter of water supply over premises where the owner was not also occupier. I do not think that the general question as to the right of the local authority to charge any owner, occupier, or non-occupier the portion of water assessment leviable against premises that are supplied with surplus water at meter rate was raised before me. In the Inner House some passages in the opinions of the Judges may appear inconsistent with the decision in the *Motherwell* case, but the soundness of that decision is not even doubted. It appears to me to govern the present case, and I shall therefore assoilzie the defenders."

The pursuers reclaimed, and at the hearing counsel referred to the following authorities — *Govan Commissioners* v. *Armour*, (1887) 14 R. 461, 24 S.L.R. 324; *Burgh of Motherwell* v. *David Colville & Sons, Limited*, 1907 S.C. 1203, 44 S.L.R. 851; *Dickson* v. *District Committee of Upper Ward of Lanarkshire*, 1916 S.C. 940, 53 S.L.R. 710; Public Health (Scotland) Act 1897 (60 and 61 Vict. cap. 38), sections 126 and 135.

At advising—

LORD JUSTICE-CLERK — The decision of this case depends on the legal effect and construction of the agreement between the parties dated in 1901 and of section 126 of the Public Health (Scotland) Act 1897. Somewhat similar questions have been determined by the other Division in the cases of *Motherwell* (*Burgh of Motherwell* v. *David Colville & Sons*, 1907 S.C. 1203), and *Dickson* (*Dickson* v. *District Committee of Upper Ward of Lanarkshire*, 1916 S.C. 940), referred to by the Lord Ordinary in his note, and the pursuers and reclaimers strongly maintained that the present case was ruled by the case of *Dickson*.

I cannot agree with that contention. In *Dickson's* case the pursuer had no agreement, and I think the Lord Ordinary is right when he says of that case that the pursuer's object was to gain a preference for his premises in the matter of water supply over premises "where the owner was not also occupier," no general question being raised.

The present summons asks decree for £117, 12s. 9d., being the amount of the owners' proportion of the water assessment on the defenders' mills for 1916-17.

The defenders are both owners and occupiers of the mills. The defenders have paid for the water supplied to the mills at the meter rate authorised by the agreement,

and until the year now in dispute no water assessment was imposed by the pursuers on the defenders' mills, or exacted from or asked for from the defenders. I think there is no warrant for the charge which the pursuers now propose to make, or for the demand that, in addition to the meter rate which they say has been paid by the defenders as occupiers, the defenders as owners should pay the owners' proportion of the ordinary water rate.

Under and in terms of the agreement the pursuers in 1902 got a Provisional Order as arranged thereby. The agreement was between the pursuers on the one hand, and the defenders, who were then as they have been all along since both owners and occupiers of the mills in question, on the other hand. No distinction is taken or hinted at in the agreement between the defenders as owners and as occupiers. The agreement provides that "water for other than domestic purposes shall be supplied by the first parties to all consumers who apply for same" on the scale and terms therein set forth. The said scale and terms, subject to the provisions of section 126 of the Public Health Act 1897, have been in force and acted on since 1902, and are still operative.

The defenders have been consumers of water for other than domestic purposes supplied by the pursuers since 1902, and in particular they were so for the year in question 1916-17. The defenders submit that as matter of contract between them and the pursuers they are entitled to get water at meter rates without being liable to any further charge therefor, the whole water supplied to their premises being included in the meter charge. I think this contention is sound, and I can find no room under the agreement or otherwise for taking any distinction between the liability of the defenders as owners and as occupiers.

I am further of opinion that section 126 not only does not authorise the assessment which the pursuers now seek to make but prohibits it. Neither the word "owner" nor "occupier" occurs in the section. The main enacting portion of the section says that the water is to be supplied "on such terms and conditions as may be agreed on between the local authority and the persons desirous of being so supplied." These persons are the defenders, and the terms and conditions agreed on between them and the pursuers, and the only terms agreed on, are those set out in article 5 of the agreement. These are the terms which have been all along asked for and accepted as full implement of the bargain between the parties, and in my opinion they are the only terms of the contract, and the only terms which can be demanded by the pursuers.

The proviso to section 126 in its first part says that when water is thus supplied it "shall not be lawful to charge the persons so supplied both with the portion of the special water assessment applicable to the buildings or premises supplied and also for the supply of water obtained." There is nothing here about owners or occupiers, and I know of nothing to suggest that "the persons so supplied" were the defenders as occupiers rather than as owners, or were other than the defenders in all the capacities they possessed when they were "consumers" of the water, or "desirous of being so supplied" with the water, or were "the persons so supplied."

Moreover, the proviso in the second part thereof says that "the local authority may either charge the said assessment leviable on such buildings or premises, or charge for the supply of water furnished to the same, as they shall think fit," this latter being the meter charge. In my opinion these alternatives exhaust the possibilities of charge open to the pursuers. What they now propose to do is, in my opinion, not authorised, and is not an alternative open to them. It is a combination or partial combination of the only two legal alternatives, and is, in my opinion, illegal. I think what was said in the *Motherwell* case really laid down principles which apply to the present controversy, and the soundness of the *Motherwell* case was in no way assailed by what was said or decided in *Dickson's* case.

The pursuers, in my opinion, have misread and seek to misapply the decision in *Dickson's* case. The present Lord Ordinary, who was also the Lord Ordinary in *Dickson's* case, has in his note explained his view of the difference between the two cases, and I agree with him. I have also consulted the Lord President, some sentences of whose opinion in *Dickson's* case were specially founded on by the pursuers, and am authorised by him to say that to divorce them from the facts in *Dickson's* case and to apply them to the facts in the present case would, in his opinion, be to misapply them.

I am of opinion that the Lord Ordinary's opinion is sound, and that the reclaiming note should be refused.

LORD DUNDAS—I agree with your Lordship and the Lord Ordinary. Apart from authority I should have come to a conclusion in favour of the defenders upon a construction of the statute and the agreement, for the reasons summarised by the Lord Ordinary in the penultimate paragraph of his opinion. Turning to authorities, I think this case is ruled in principle by that of *Motherwell* (*Burgh of Motherwell* v. *David Colville & Sons*, 1907 S.C. 1203). The subsequent decision in *Dickson's* case (*Dickson* v. *District Committee of Upper Ward of Lanarkshire*, 1916 S.C. 940) creates at first sight some difficulty, for there are dicta by the learned judges who there formed the majority adverse to the contention of the present defenders. But it is clear that the First Division were neither in a position nor intended to reverse the previous decision of their own Court in *Motherwell*. I think that *Dickson's* case may be distinguished from that now before us, because in that case there was not, as here, and also in *Motherwell*, an agreement with the local authority. Lord Hunter, who was Lord Ordinary in *Dickson's* case and in this one, explains that owing to the basis on which *Dickson's* case was conducted before him the general question now raised was not presented for decision, and with the added

explanation which your Lordship has been able to give I do not think *Dickson's* case need cause any difficulty here. I am for adhering to the interlocutor reclaimed against.

LORD SALVESEN—This case raises a very important question of absolutely general application under section 126 of the Public Health Act of 1897, and for my own part I should have been better pleased in view of the conflicting views that have been expressed by judges of high authority in the other Division if the case had been remitted to a larger tribunal for determination, so that it might be definitely decided so far as this Court is concerned.

There are two views of the true construction of the section, one of which is presented quite pointedly by Lord Dunedin in the case of *Burgh of Motherwell* v. *David Colville & Sons, Limited*, 1907 S.C. 1203. His Lordship says—"I think the fair reading of the section is . . . that it settles that when water is wanted for more than merely domestic purposes a supply may be arranged in respect of the premises for which the supply is wanted, and then the burgh is entitled to get a rate per gallon for the water so supplied. In that way every gallon is paid for, including in the quantity the gallons that would be used for domestic supply. But the burgh here desire to levy an assessment in addition. Well, if they did that they would be paid over again for the same water, and the ratio of exemption seems to me to be entirely untouched by the fact that instead of being leviable from the occupier entirely the rate is now spread one-half on the owner and one-half on the occupier. I see no reason why the effect should be to allow the burgh to charge twice for the same water."

Now as I read the opinion of Lord Strathclyde in the later case of *Dickson* v. *District Committee of the Upper Ward of Lanarkshire*, 1916 S.C. 940, his view was to an absolutely opposite effect. After describing the provisions of the statute his Lordship says—"It is plain from the statutory enactment that the option does not exist in the case of the owner of the premises; he must pay his full half of the assessment in the ordinary way. The option only exists in relation to the man who is actually supplied with the water. In his case, and in his case alone, have the local authority this optional method of charging. Wherever the premises are owned and occupied by different persons it is plain that the owner must pay the assessment in the usual way. With regard to the occupant the alternative method of charging exists. The local authority may charge according to whichever method they please. In the case, as here, where the premises are owned and occupied by the same person, I am of opinion that the same rule ought to be applied. The local authority ought to charge that person as owner with the owner's assessment, and to charge him as occupier either with the occupier's assessment or with the meter rate for water supplied, as they deem fit."

Now these two views appear to me to be irreconcilable, and they are general views expressed with reference to the construction of this statute. I think the present case raises in pure form a point which is of great importance to local authorities, namely, what is the true construction of the section? Mr Wilson admitted that if he is not entitled to assess the defenders here as owners in respect of their ownership he cannot fairly assess non-resident owners whose premises are let to tenants who are supplied with water at a meter rate. In short, the question is whether the payment of the meter rate by the person who is using the water enfranchises the premises as a whole or whether it only enfranchises or renders immune from further assessment the tenant who is using the water, because if there is a separate tenancy it must be the tenant and not the owner who uses the water. The mere fact that the owner and occupier are one person seems to me to make no distinction at all.

On the construction of the Act I confess that I have very great difficulty in forming an opinion, because I think the considerations are almost equally balanced. In one part of the section it says that "It shall not be lawful for the local authority to charge the persons so supplied both with the portion of the special water assessment applicable to the buildings or premises supplied and also for the supply of water obtained." That part of the section seems to enfranchise merely the persons who are receiving the supply of water and not to enfranchise the premises. But the section proceeds—"But the local authority may either charge the said assessment leviable on such buildings or premises or charge for the supply of water furnished to the same as they shall think fit." This passage seems to point to the rate being leviable upon premises, and to put into the hands of the local authority the alternative of charging a meter rate and allowing the premises to be entirely free from assessment or of refusing to grant a meter rate and assessing the premises equally between owner and occupier.

On the best consideration I can give to this section I incline to the view expressed by Lord Strathclyde. I think the true construction of the provision of exemption is that it is in favour of the person who is desirous of being supplied with water, not necessarily the person by whom the application was made, but the person who is actually using and paying for the water. The application might be made by the owner on behalf of his tenant, but in reality the person who desires the water is the tenant who is going to use it. But the statute is not clearly expressed, and we cannot ascertain the intention of the Legislature except upon the basis of the language that they have used. And here the language appears to me to be absolutely ambiguous. It is on general grounds that I prefer the views of Lord Strathclyde. I do not think it could be intended that an assessment which in the ordinary case is levied upon owner and occupier in equal shares should become non-leviable upon the owner because the occupier made an agreement. On general grounds

I cannot understand how that should be so. Of course, if the statute had expressly provided that an agreement between the occupier and the local authority was to enfranchise the premises—which was the view of Lord Dunedin—that would have to be given effect to. But I can see no ground for the view that one man is to be exempt from taxation because somebody else makes an agreement which enables him to escape from the assessment because he pays a larger sum in another way.

The importance of the question may be gauged from the circumstance which was stated at the Bar, and which I think was not disputed, that in circumstances such as we have here the practice has hitherto been to levy the water rate upon owners who are not also occupiers. In view of your Lordship's decision it seems to me that that practice will have to be entirely changed, because I cannot see how the owner who happens to be the occupier of the premises should be in a different position from the owner who is not the occupier.

LORD GUTHRIE—I think the Lord Ordinary has come to a sound conclusion and on the right grounds. There is at least one part of section 126 of the 1897 Act (on the sound construction of which section and not on practice the question turns) which is unambiguous. Referring to the whole assessment, which is payable half by owners and half by occupiers, it is said to be "leviable on such buildings or premises." The buildings or premises get the benefit of increased value even when no water is used. That is in accordance with the defenders' contention that there are not two assessments, but that the assessment itself is one and indivisible, although for purposes of recovery it is divisible. On the other hand, the reference in the earlier part of the section to "the persons desirous of being so supplied" and to "the persons so supplied" is consistent with the pursuers' contention that the persons so designed are the occupiers and not the owners. But if in a clause of a statute one part is unambiguous, and another part which is ambiguous is reasonably capable of construction in accordance with the part that is unambiguous, then the ambiguous part will be so construed, at all events where, as I think is the case here, the result does not conflict with any other clause in the statute or with its general purpose, or with the usefulness or reasonableness of its application. The case seems to me to be ruled by the case of *Motherwell*, which involved consideration of supervening legislation providing that what had been only recoverable under the Special Act from occupiers should be recovered from owner and occupier equally. The soundness of that decision was not questioned in the subsequent case of *Dickson*, although there may be dicta in the case of *Dickson* which are difficult to reconcile with the soundness of the decision and with the opinion of Lord President Dunedin in the previous case. If a meter rate is charged there is no provision for recovery of assessment. In my opinion, under section 126 there cannot co-exist two separate modes of charge. Measurement is alternative with assessment, and payment by meter enfranchises the premises from assessment.

The Court (*dis.* Lord Salvesen) adhered to the interlocutor of the Lord Ordinary.

Counsel for Pursuers and Reclaimers—Wilson, K.C.—M. P. Fraser. Agents—J. & F. Anderson, W.S.

Counsel for Defenders and Respondents—Macmillan, K.C.—Wilton. Agents—Davidson & Syme, W.S.

Wednesday, February 20.

WHOLE COURT.

FIRST DIVISION.

[Scottish Land Court.

DUKE OF HAMILTON'S TRUSTEES *v.* M'NEILL.

Landlord and Tenant—Small Holdings—"Holding"—Contents of Holding—Buildings not Used or Required in Connection with Cultivation of Holding—Small Landholders (Scotland) Act 1911 (1 *and* 2 *Geo. V, cap.* 49), *sec.* 26 (3) (*f*)—*Agricultural Holdings (Scotland) Act* 1908 (8 *Edw. VII, cap.* 64), *sec.* 35 (1).

By section 26 (3) (*f*) of the Small Landholders Act 1911 a person is not to be held an existing yearly tenant or a qualified leaseholder under that Act in respect of any land that is not a holding within the meaning of the Agricultural Holdings Act 1908, which in section 35 (1) defines a holding as "any piece of land held by a tenant which is either wholly agricultural or wholly pastoral or in part agricultural and as to the residue pastoral."

Held by the Whole Court (*dis.* Lord Johnston, Lord Salvesen, Lord Skerrington, Lord Cullen, Lord Ormidale, and Lord Anderson) that when, at the date of the Small Landholders Act 1911 coming into operation, there existed on any land held on such a tenancy that it would otherwise be a statutory holding a dwelling-house forming an integral and material part of the subjects of such tenancy, but not used or useful in connection with the agricultural or pastoral or agricultural and pastoral occupation of the land, the said dwelling-house with its pertinents and site might competently be excised from the land held on such tenancy, leaving the remainder a statutory holding under said Act.

Held by the First Division, applying the judgment of the Whole Court, that a double cottage not used in connection with the farming of the land, but half of which was sublet to a tenant for the