the most probable result of a set of conjectures that death was caused by the accident. That would not be enough.

I am unable from the statements in the case to hold that there was any insufficiency of evidence upon which the arbitrator could reach that conclusion, and I form that opinion discarding altogether what is said in the last part of the fifth statement, viz., "That it is the opinion of the medical assessor that the death is explicable on the evidence of the accident, and that said accident was inferentially a contributory cause of the death." I discard that as having no proper place in the findings in fact at all, because the province of the medical assessor when consulted by the arbitrator is merely to give his opinion upon the medical aspects of the case. But without that I think there was sufficient evidence to justify the arbitrator's conclusion in the facts which your Lordship has already detailed, viz., that there was an accident on 13th January, when the man's left foot was struck by a slate which fell from the building; that his wife observed that the sock was sticking into a wound on the foot; then that the deceased did certain things on the two following days; that on the Monday night he was brought home unwell; that on the morning of Tuesday, the 18th of January 1916, he seemed to be ill and shivering, and swelling was observed on his foot, which was put under a cage although no external wound was visible; and that he died on 23rd January from blood-poisoning.

As I followed the argument of the Solicitor-General, his point was this—that as there was no evidence of there having been suppuration, it was impossible for any medical man to advise the arbitrator that in this state of affairs the blood-poisoning could have been occasioned by the wound on the foot. Well, that is asking one to make an assumption which one is entirely unable to do. The history of the case leaves the matter in such a position that one can well understand the learned arbitrator, who of course is a layman in medical matters, coming to a conclusion for himself and then appealing for the opinion of the medical assessor—"Is there anything in the circumstances of this case which renders it impossible from a medical point of view that I should draw the conclusion that I think I can legitimately come to from the facts which have been proved in the case?"

That is the way in which I think the arbitrator ought to have gone about the matter, and I am unable to see any ground for holding that he did not. Accordingly I agree with your Lordship that the proper course is to answer the second question and not the first.

LORD ANDERSON concurred.

LORD JOHNSTON and LORD SKERRINGTON were absent.

The Court refused to answer the first question of law, and answered the second question in the affirmative.

Counsel for the Appellants — Solicitor-General (Morison, K.C.) — MacRobert. Agent—R. S. Rutherford, Solicitor.

Counsel for the Respondents—Sandeman, K.C.—A. M. Mackay. Agents—Manson & Turner Macfarlane, W.S.

Tuesday, December 5.

FIRST DIVISION.

[Lord Hunter, Ordinary.

THOMSON *v.* GLASGOW AND SOUTH-WESTERN RAILWAY COMPANY.

Railway — Statute — Dividend — Ascertainment—Half-Yearly or Yearly Calculation —Railway Companies (Accounts and Returns) Act 1911 (1 *and* 2 *Geo. V, cap.* 34), *secs.* 1 (1) *and* (2) *and* 4 (1) *and* (2)—*The Glasgow and South-Western Railway Act* 1897 (60 *and* 61 *Vict. cap. clxxii*), *sec.* 28 (2)—*The Glasgow and South-Western Railway Act* 1876 (39 *and* 40 *Vict. cap. liii*), *sec.* 37.

Deferred stock in a railway company was entitled to participate rateably with the ordinary stock in any excess of dividend paid on the latter over 5 per cent. per annum. Prior to 1st January 1913, when the Railway Companies (Accounts and Returns) Act 1911 came into operation, the ordinary meetings of the company were held half-yearly, the books were balanced half-yearly, and the balance-sheets were prepared half-yearly and submitted to the shareholders at the ordinary meetings, and at those meetings half-yearly dividends were declared. Thereafter the company, in conformity with that Act, balanced their books annually, held ordinary general meetings annually, and submitted the balance-sheets to the shareholders then. In September 1914, for the half-year ending 30th June, the company paid an interim dividend on the ordinary stock at the rate of 3 per cent. per annum. In February 1915 the company in its report, which was approved, recommended payment of a dividend on the ordinary stock at the rate of 4½ per cent. per annum for the year ending 31st December 1914, and after referring to the fact that an interim dividend on the ordinary stock had already been paid stated that for the remaining half-year from 30th June the rate would be *in cumulo* at 6 per cent. on the ordinary stock. A holder of deferred stock sued the company, concluding for decree that (1) he was entitled to participate rateably with the holders of ordinary stock in any dividend paid thereon in excess of a rate of 5 per cent. per annum, (2) that the dividend declared in February 1915 was a dividend in excess of 5 per cent. per annum on the ordinary stock, (3) that in any event he was entitled to payment of a dividend upon his stock for the half-year ending 31st December 1914 at the rate representing

the extent to which a dividend had been paid to the holders of ordinary stock for the said half-year in excess of 5 per cent. per annum, and (4) that the company was bound to make up accounts each half-year, and to calculate the dividend, if any, payable to the deferred shareholders on the basis of those accounts, and to make payment thereof. *Held* (1) that the pursuer since 1st January 1913 had no right to have the profits of the railway company calculated and divided half-yearly, to the effect of entitling him to share in the excess if the profits so calculated yielded a dividend in any half-year exceeding 5 per cent. per annum on the ordinary stock, and *per* Lord Johnston, that the pursuer had prior to 1st January 1913 no such right; (2) that the only dividend declared in February 1915 was a dividend at 4½ per cent. per annum on the ordinary stock for the whole year ending December 1914; and (3) *per* Lord Johnston and Lord Mackenzie, that the pursuer was not a holder of stock the dividend of which was guaranteed in the sense of the Railway Companies (Accounts and Returns) Act 1911, sec. 4 (1).

North British Railway Company v. *Wingate*, 1913 S.C. 1092, 50 S.L.R. 857, *distinguished.*

The Railway Companies (Accounts and Returns) Act 1911 (1 and 2 Geo. V, cap. 34) enacts—Section 1—"(1) Every railway company shall annually prepare accounts and returns in accordance with the form set out in the First Schedule to this Act, and shall submit their accounts to their auditors in that form. (2) The accounts and returns shall be signed by the officer of the company responsible for the correctness of the accounts or returns, or any part thereof, and in the case of an incorporated railway company, by the chairman or deputy chairman of the directors of the company, and shall be made up for the year ending the thirty-first day of December, or such other day as the Board of Trade may fix in the case of any company or class of companies to meet the special circumstances of that company or class of companies. . . ." Section 4—"(1) A railway company shall not be under any obligation to prepare or to submit to their shareholders or auditors statements of accounts or balance-sheets, or to hold ordinary general meetings more than once a year, and anything which under any special Act is authorised or required to be done at a general meeting of a railway company to be held at any specified time may be done at the annual general meeting of the company at whatever time held: Provided that nothing in this provision shall relieve a railway company of any obligation to prepare half-yearly accounts in cases where those accounts are required in connection with any guarantee of dividend under any such statutory provisions. (2) The directors of an incorporated railway company may, if it appears to them that the profits of the company are sufficient, declare and pay an interim dividend for the first half of any year, notwithstanding that the accounts are not audited for the half-year, and that a statement of accounts and balance-sheet for the half-year is not submitted to the shareholders, and may close their register and books of transfer before the date on which the interim dividend is declared in the same manner and for the same time and subject to the same provisions as they may close their register or books before the date on which their ordinary dividend is declared or before the date of their ordinary meeting. (3) Any statutory provisions affecting the railway company shall be read with the modifications necessary to bring them into conformity with this section. . . ."

William Thomson junior, stock and share broker, Glasgow, *pursuer*, brought an action against the Glasgow and South-Western Railway Company, *defenders*, concluding for decree "(first) that the holders of deferred stock of the defenders issued under a duly approved scheme for consolidation of the defenders' stocks, dated 1st March 1881, and authorised by section 37 of the Glasgow and South-Western Railway Act 1876, are entitled to participate rateably with the holders of the ordinary stock of the defenders in any excess of dividend paid by the defenders on the said ordinary stock over 5 per cent.; (second) that the defenders on 6th March 1915, in pursuance of the report of the directors of the defenders submitted to and approved at the annual general meeting held on 23rd February 1915, and of the relative resolution passed at the said meeting, made payment to the holders of the ordinary stock of the defenders of a dividend in excess of 5 per cent. on the said ordinary stock within the meaning of the said scheme and statute for the half-year ending 31st December 1914; (*third*) and whether or not decree be pronounced in terms of the second declaratory conclusion hereof, it ought and should be found and declared by decree of our said Lords that the pursuer as a holder of deferred stock of the defenders is entitled to payment of a dividend upon the amount of the said deferred stock held by him for the half-year ending 31st December 1914 at the rate representing the extent to which a dividend has been paid to the holders of the said ordinary stock for the said half-year in excess of 5 per cent."

The pursuer pleaded—"1. The holders of the defenders' deferred stock being entitled to participate rateably with the holders of ordinary stock in any excess of dividend over 5 per cent. on the ordinary stock, the pursuer is entitled to decree in terms of the first conclusion of the summons. 2. In respect of the payment made by the defenders on 6th March 1915 to the holders of their ordinary stock of a dividend in excess of 5 per cent. on said ordinary stock, declarator should be granted in terms of the second conclusion of the summons. 3. A dividend having been paid on the ordinary stock of the defenders for the half-year ending 31st December 1914 at a rate exceeding 5 per cent., decree should be pronounced in terms of the third declaratory conclusion of the summons."

The defenders pleaded—"1. The pursuer's averments being irrelevant to support the conclusions of the summons, the action should be dismissed. 2. The defenders not having declared and paid for the half-year ending 31st December 1914 any dividend on their ordinary stock at a rate exceeding 5 per cent. per annum within the meaning of the Glasgow and South-Western Railway Act 1876 and the scheme of 1881, they should be assoilzied from the first, second, and third conclusions of the summons."

The *facts* are given in the opinion (*infra*) of the Lord Ordinary (HUNTER), who on 13th November 1915 repelled the pleas-in-law for the defenders and decerned in terms of the conclusions of the summons.

Opinion.—"In this action the pursuer, who is a holder of deferred stock of the defenders, the Glasgow and South-Western Railway Company, seeks to have it found and declared—[*His Lordship then referred to the conclusions of the summons*].

"The deferred stock of the defenders' company was issued under a scheme of 1881 carried out in the exercise of powers conferred upon the company by the Glasgow and Sonth-Western Railway Act 1876, which provided that the company might prepare a scheme for the conversion and consolidation of all or any of the classes of shares and stock in the capital of the company — other than ordinary stock and funded debt or debenture stock—into such classes of new shares or stock as should be defined by the scheme—provided always that the amount of dividend payable to the holders of each class of existing stock should not be diminished or increased by such scheme.

"Under the 1881 scheme eleven of the guaranteed and preference stocks and shares of the company were dealt with. Three of these stocks carried a fixed minimum dividend, with right to further participation in the profits of the company, taking dividend rateably with the ordinary consolidated stock when the dividend declared upon the latter exceeded 5 per cent. As explained in the record, the consolidation of the said eleven stocks was carried out by substituting for them two new stocks, bearing a fixed 4 per cent. dividend, without further participation in the profits of the company, and by separating from the three stocks mentioned their contingent and participating rights, and providing that the holders of these stocks should receive an equivalent which would enable them in the future to participate in any dividend in excess of 5 per cent. paid on the ordinary stock. The last-mentioned purpose was effected by the issue to the holders of the said participating stocks of a deferred stock of the same nominal amount as the existing stock to which contingent rights pertained, such deferred stock alone being entitled to participate rateably with the ordinary stock in any excess of dividend paid on the latter over 5 per cent.

"In 1897, by the Glasgow and South-Western Railway Act of that year, the ordinary stock of the company was split into two forms of stock—each holder of the ordinary stock receiving, in substitution for every £100 held by him of that stock, £100 preferred ordinary stock and £100 deferred ordinary stock, and so in proportion for every fraction of £100 of ordinary stock held by him. This splitting-up of the ordinary stock did not affect the rights of the deferred stockholders under the scheme of 1881, section 31 of the Act of 1897 providing that notwithstanding the conversion effected under the powers of the Act the company should continue to ascertain and declare their dividends on the amount of ordinary stock which would have been entitled to dividend if no such conversion had taken place. Section 28 (2) of the same Act was in these terms—'The preferred ordinary stock and the deferred ordinary stock shall together be entitled in each half-year to the same dividend as that to which the consolidated ordinary stock, in substitution for which such preferred ordinary stock and deferred ordinary stock were issued, would but for the conversion have been entitled, and such dividend shall be apportioned between the preferred ordinary stock and the deferred ordinary stock in the following manner, in so far as the same is sufficient for that purpose (that is to say) first in payment of a dividend at the rate of two and one-half per centum per annum to the holders of preferred ordinary stock, and secondly in payment of any balance to the holders of deferred ordinary stock according to the amount of their respective holdings.'

"The Companies Clauses Consolidation (Scotland) Act 1845 provides (section 69) for ordinary meetings of the company being held half-yearly; (section 119) for the books of the company being balanced half-yearly, and a balance-sheet made up giving a distinct view of the profit or loss which has arisen on the transactions of the company in the course of the preceding half-year; (section 109) for the half-yearly accounts and balance-sheet to be audited; and (section 123) for a scheme to be prepared previously to the declaration of any dividend showing the profits, if any, for the period since the preceding ordinary meeting at which a dividend was declared. These provisions were incorporated in the Glasgow and South-Western Railway Consolidation Act 1855, the 56th section of which Act provided that the half-yearly general meetings of the company should be held in February or March and August or September respectively, and the 64th section that the books of the company should be balanced as at 31st January and 31st July in each year.

"In 1911 the Railway Companies (Accounts and Returns) Act (1 and 2 Geo. V, cap. 34) was passed. That Act came into operation on 1st January 1913. In terms thereof a railway company has to prepare annual accounts and returns in accordance with a prescribed form made up for the year ending 31st December, or such other day as the Board of Trade may fix in the case of any company or class of companies to meet special circumstances. It is no longer obligatory upon a company (section

4 (1)) to prepare or to submit to their shareholders or auditors statements of accounts or balance-sheets, or to hold ordinary general meetings more than once a year—'Provided that nothing in this provision shall relieve a railway company of any obligation to prepare half-yearly accounts in cases where those accounts are required in connection with any guarantee of dividend under statutory provisions.'

"The directors of a company may now (section 4 (2) of the 1911 Act) declare and pay interim dividends for the first half of any year although the accounts are not audited for the half-year, and no statement of accounts or balance-sheet for the half-year is submitted to the shareholders.

"The defenders say that in accordance with the provisions of this Act they no longer hold half-yearly meetings, and hold only one ordinary general meeting in the year, and their accounts are now and have since 1st January 1913 been made up for the year ending 31st December, and not as before half-yearly as at 31st January and 31st July.

"In September 1914 the pursuer alleges that the defenders paid a dividend on their ordinary stock for the half-year ending 30th June 1914 which did not exceed 5 per cent. It was, in fact, 3 per cent. On 16th February 1915 the defenders' directors issued their report to their shareholders, dated 23rd January 1915, for the twelve months ending 31st December 1914. In this report they say—'The dividend for the half-year ending 31st December will be at the rate of two and a half per cent. per annum to the holders of preferred ordinary stock, and at the rate of three and a half per cent. per annum to the holders of deferred ordinary stock.' This payment, which the pursuer maintains is a dividend at the rate of 6 per cent. for the half-year ending 31st December 1914, has now been made to the holders of ordinary stock, and no provision has been made for paying to the holders of deferred stock a dividend measured by the amount by which the dividend on the ordinary stock exceeded 5 per cent., *i.e.*, in this case 1 per cent.

"According to the defenders' contention no dividend was declared or paid for the half-year ending 30th June 1914 or the half-year ending 31st December 1914, within the meaning of the defenders' Act of 1876 or the scheme of 1881 following thereon, whereby the pursuer's rights as a holder of deferred stock are defined. They maintain that the dividend recommended by the directors to be declared by the shareholders at the general meeting on 23rd February 1915 was a dividend for the whole year ending 31st December 1914 at the rate of 4½ per cent. This figure is arrived at if you take the two sums, 3 per cent. and 6 per cent., distributed for the year 1914 and divide by two. In support of this contention they found upon the resolution passed at the general meeting of 23rd February 1915, which was, *inter alia*, in these terms—'It was resolved . . . II. That a dividend be now declared for the year ending on 31st December last at the rate of . . . four and a half per cent. on the ordinary stock, to account of which payment has already been made at the rate of one and one-quarter per cent. to the holders of preferred ordinary stock and one-quarter per cent. to the holders of deferred ordinary stock, by interim dividend at the rate of three per cent. per annum for the half-year from 1st January to 30th June last, leaving one and one-quarter per cent. now to be paid to the holders of preferred ordinary stock and one and three-quarters per cent. now to be paid to the holders of deferred ordinary stock. . . .'

"I am not able to accept the defenders' contention as sound. It appears to me that a dividend is just the proportion of the profits earned by a company that is in fact distributed at any particular time. No authority was cited to show that a distribution not approved by a general meeting of the company is not a dividend. The contrary seems to be the inference to be drawn from the language of the Act of 1911, which allows directors without calling a general meeting of the company to declare an interim dividend. Where such a dividend is declared the final distribution is a separate dividend for the second half-year. Under the scheme of 1881 the rights of deferred shareholders are determined by the amount of each dividend that is declared. They are not cumulative rights, or affected by any previous declaration of dividend. The 5 per cent. mentioned is 5 per cent. for the period to which the dividend applies. The defenders practically conceded this point by admitting that previous to the passing of the Act of 1911 the deferred shareholders participated rateably with the ordinary shareholders in any excess of half-yearly dividend paid to the latter over 5 per cent., and that notwithstanding the fact that the dividends for the full year might be under 5 per cent.

"The rights of holders of the deferred stock of the defenders' company are not affected by the Act of 1911. If therefore I am right in accepting the pursuer's view that the second distribution of profits for the year 1914 was a dividend for the second half of that year, and in my construction of the scheme of 1881, it follows that the pursuer is entitled to succeed in his present claim. The pursuer argued that the defenders were bound in relation to the deferred stockholders to prepare half-yearly accounts, and to calculate the dividends due to them in each half-year separately. There is, however, no conclusion of the summons raising this point, and as parties were not agreed upon an amendment being made so as to embrace it, I think it inadvisable that I should express an opinion upon the matter. I repel the pleas for the defenders, and grant decree in terms of the conclusions of the summons."

The defenders reclaimed.

Thereafter the pursuer obtained the leave of the Court to amend his pleadings by adding the following conclusion and plea-in-law:—"(*Fourth*) *And further, and in any event, it ought and should be found and declared by decree foresaid that the holders of the said deferred stock of the defenders are entitled to require the defenders for each half-year*

ending thirty-first January and thirty-first July, or otherwise for each half-year ending thirtieth June and thirty-first December, to keep or prepare accounts showing, inter alia, a distinct view of the profit or loss which shall have arisen on the transactions of the defenders in the course of the preceding half-year, and that the defenders are bound for each such half-year to calculate and ascertain the dividend (if any) payable on the basis of such accounts to the holders of the said deferred stock, and to make payment thereof accordingly, or otherwise that the holders of the said deferred stock are entitled to require the defenders to ascertain the profit or loss which shall have arisen on the transactions of the defenders for each half-year ending thirty-first January and thirty-first July, or otherwise for each half-year ending thirtieth June and thirty-first December, and to calculate and ascertain the dividend, if any, payable to the holders of said deferred stock out of the profits so ascertained for each such half-year, and to make payment thereof to the holders of the said stock accordingly."

"4. *The defenders being bound by statute and under said scheme in relation to the deferred stockholders to keep and prepare accounts showing the profits earned in each half-year separately, or otherwise to ascertain the profits earned in each half-year separately, and to declare and pay dividends out of the profits so ascertained for each half-year, decree should be pronounced in terms of the last declaratory conclusion of the summons.*"

The defenders in reply added the following plea-in-law;—"3. *The defenders, in a question with their deferred stockholders, not being bound to keep and prepare accounts showing the profits earned in each half-year respectively, and not being bound and having no power to ascertain the profits earned in each half-year separately and to declare and pay dividends out of the profits so ascertained for each half-year, are entitled to be assoilizied from the fourth conclusion of the summons.*"

Argued for the defenders (reclaimers)—The defenders' financial year prior to 1911 ran from 1st February to 1st February—Glasgow and South-Western Railway Consolidation Act 1855 (18 and 19 Vict. cap. xcvii), sec. 64—and their general meetings were half-yearly (section 56). To those meetings the balance sheets were submitted—Companies Clauses Consolidation (Scotland) Act 1845 (8 and 9 Vict. cap. 17), secs. 109 and 119. The object of those enactments was to secure that the shareholders had full information as to the financial position of the defenders and of the profits, if any, available for distribution as a dividend. No dividend could be declared except at and by those meetings after all the statutory solemnities had been observed—Companies Clauses Consolidation (Scotland) Act (*cit.*), sec. 123. By the Railway Companies (Accounts and Returns) Act 1911 (1 and 2 Geo. V, cap. 34) the defenders ceased to be bound to prepare half-yearly accounts—section 1 (1) and 4 (1)—except where such half-yearly accounts were required in connection with any guarantee of dividend under the defenders' Acts; the financial year ran from 31st December to 31st December—section 1 (2)—but the directors might, if they thought fit, declare and pay an interim dividend for the first half of any year—section 4 (2). The payment to the holders of ordinary stock for the half-year ending 31st December 1914 was not a dividend for a half-year, for the only dividend payable was a yearly one, because the statutory pre-requisites, *e.g.* balance sheets submitted, and meeting of shareholders for the declaration of and payment of a dividend only came into existence once a year—Railway Companies (Accounts and Returns) Act (*cit.*)—unless the case fell under section 4 (1). Further, it was not an interim dividend, for such a dividend was only payable for the first half of any year. In any event an interim dividend was not a dividend in the statutory sense, because it was not preceded by the statutory solemnities for the declaration of dividends; thus it was declared by the directors not by the shareholders, and without balance sheets being laid before a general meeting. It was in reality a payment to account of the dividend payable for the whole year—*Lucas* v. *Fitzgerald*, 1903, 20 T.L.R. 16, *per* Lord Alverstone, C.J., at p. 18. Further, the case was not one in which the obligation to prepare and submit to half-yearly meetings balance sheets &c., for the half-year subsisted in terms of the Railway Companies (Accounts and Returns) Act (*cit.*), sec. 4 (1), for the pursuer had not any guarantee of dividend, for guarantee of dividend meant that there was a contract with the shareholders that he should get a fixed rate of interest which vested in the shareholder as each term for payment passed. *North British Railway Company* v. *Wingate*, 1913 S.C. 1092, 50 S.L.R. 857, was not in point, for in that case the deferred shareholders had a contractual right to a share in the profits of each half-year giving them a vested right thereto as each term passed, and really amounting to an assignation at each term of the amount accrued then.

Argued for the pursuer (respondent)—The Railway Companies' (Accounts and Returns) Act (*cit.*) dealt solely with regulating matters of form in railway accounting, and was not intended to affect the rights of shareholders. Prior to 1911 the rights of deferred shareholders to dividends were regulated by the Glasgow and South-Western Railway Act 1897 (60 and 61 Vict. cap. clxxii), sec. 28 (2), by which right to payment of a dividend arose half-yearly. The pursuer's right was dependent on the amount of dividend paid in each half-year to the holders preferred ordinary stock, and if the dividend paid to them in any half-year exceeded 5 per cent., the pursuer, as holder of deferred stock, became entitled to a dividend. Thus if not more than would pay a dividend of 2½ per cent. on the preferred stock was earned in one half-year, and more than would pay a dividend of 2½ per cent. on the preferred stock was

earned in the next half-year, the year's rate was more than 5 per cent., and the deferred stock would come in — *Wingate's* case (*cit.*), *per* Lord President Dunedin at p. 1098. The mere fact that the Act of 1911 prescribed that accounts should be made up yearly would not affect that right. Further, the interim dividend was for the present purpose a real dividend. A dividend was simply a distribution of profits—Buckley's Companies (9th ed.), p. 648. And the interim dividend was exactly in the same position as the prior half-yearly dividend, and the pursuer was entitled so to treat it, with the result that for the half-year ending 31st December 1914 a dividend at a higher rate than 5 per cent. per annum was paid, and the pursuer was entitled to come in and share in the profits. In any event the pursuer's stock bore a "guarantee of dividend" in the sense of the Railway Companies (Accounts and Returns) Act (*cit.*) — *Wingate's* case (*cit.*), *per* Lord President Dunedin at p. 1101. Here there was an obligation to deal with each half-year on its own merits.

At advising—

LORD JOHNSTON—The Glasgow and South-Western Railway Company's capital, for the purposes of this case, may be regarded as consisting of—guaranteed 4 per cent. stock, £935,450; preference 4 per cent. stock, £1,892,150—both, so to speak, stereotyped in 1881 and not capable of increase; deferred stock (entitled to participate *pro rata* with the ordinary stock in any dividend declared on the latter in excess of 5 per cent.), £442,250; and ordinary stock (called in the company's accounts consolidated stock), £6,109,609.

It is immaterial, 1st, that since 1881 there have been a number of preference issues postponed to the guaranteed 4 per cent. and the preference 4 per cent. stocks, but having preference over the ordinary stock; 2nd, that the ordinary stock was, in or about 1897, divided into preferred ordinary of same amount as the ordinary, taking the first 2½ per cent. of the ordinary dividend, and deferred ordinary stock of similar amount taking the balance of such dividend. I propose to ignore this latter fact as merely confusing the issue.

The object of the action is to define the rights of the deferred shareholders, and to determine whether these have been affected by certain alterations in account-keeping introduced by the Railway Companies (Accounts and Returns) Act 1911 (1 and 2 Geo. V, cap. 34).

It will be convenient, first, to consider the statutory history of railway companies' accounting. Prior to 1845, if there were any statutory provisions in this respect, they must have been found in the respective companies' private Acts, and if so they would most likely be in the terms afterwards crystallised in the Companies Clauses Consolidation Act of 1845. By that Act, summarising it, as it applied to the Glasgow and South-Western Company, it is provided (section 69) that two "ordinary meetings" of the shareholders shall be held in each year, one in February, and the other in August; (section 119) that the books of the company shall be balanced fourteen days at least before each of these ordinary meetings, and therefore twice yearly; and that forthwith, on the books being so balanced, "an exact balance-sheet shall be made up, which shall exhibit a true statement" of assets and liabilities "at the date of making such balance-sheet, and a distinct view of the profit or loss which shall have arisen on the transactions of the company in the course of the preceding half-year." It is unnecessary to refer to the provisions for an audit (sections 104 to 111). But the statute further provides regarding dividends (section 123) that "previously to every ordinary meeting at which a dividend is intended to be declared the directors shall cause a scheme to be prepared showing the profits, if any, of the company for the period current since the preceding ordinary meeting at which a dividend was declared, and apportioning the same, or so much thereof as they may consider applicable to the purposes of dividend, among the shareholders" according to their holdings, &c., "and shall exhibit such scheme at such ordinary meeting, and at such meeting a dividend may be declared according to such scheme."

It is therefore clear that half-yearly accounting was made the rule by this statute; that the directors may recommend, and the shareholders in meeting assembled may declare, a dividend, though only the dividend which the directors recommend; but that, though half-yearly divisions of profits or dividends are contemplated as the common case, this is not imperative, and that where one or more half-yearly periods have been in fact passed without the declaration of a dividend, the next dividend is of the profits of the company for the period current since the preceding ordinary meeting at which a dividend was declared.

The Railway Companies Act 1867 contains an enactment (section 30) making even more prominent the idea embodied in the Act of 1845, that "a full and true statement of the financial condition of the company" is to be given half-yearly as a condition precedent to the declaration of a dividend. But, notwithstanding, in the Regulation of Railways Act of the following year, 1878, which was passed primarily to provide for, I think for the first time, a statutory form of railway accounts detailing the information which companies were thenceforth to be obliged to give to their shareholders, there is found a provision (section 13) which indicates that notwithstanding the half-yearly balance and half-yearly division of profits, the Legislature regarded the profits of the year as a basis on which the rights of shareholders *inter se* might be adjusted. This section for the first time legalised the division of ordinary stock into preferred ordinary and deferred ordinary stock. It was only after the preferred ordinary stock received its fixed maximum dividend *for the year* that the deferred ordinary stock was to come in to rank "in respect of all dividend exceeding that maximum paid by the company *in that*

year on ordinary stock," and at the same time the holders of preferred stock were limited in their recourse for their maximum dividend to the profits of *the year*, defined as ending on 31st December, and were debarred of any claim against the profits of any *subsequent year*.

Again, in the Regulation of Railways Act 1871 the same thing is noticeable. By section 9 every company is required to furnish the Board of Trade with returns based on the experience of the company "for the last preceding *financial year*" in scheduled form.

But in 1911, by the Railway Companies (Accounts and Returns) Act of that year, companies, which were thenceforth required to prepare their accounts in the new and much more detailed form supplied by the schedule, were absolved from doing this half-yearly, and required to do so for the future only yearly, as at the 31st of December of each year. It is this Act which has raised the present question. By section 1 every railway is required to prepare annually accounts and returns in the new scheduled form for the year ending 31st December. By section 4 (1) the companies are absolved from the obligation to prepare and submit to their shareholders or auditors statements of accounts or balance-sheets, and to hold ordinary general meetings more than once a year. This is under the proviso "that nothing in this provision shall relieve a railway company of any obligation to prepare half-yearly accounts in cases where those accounts are required in connection with any guarantee of dividend under any such (*sic*) statutory provisions." The word "such" is recognised to be of no significance. I merely refer to this proviso to set aside an argument founded on it. It has no application to this question, and refers only to the accounts of a company which has received a guarantee. A good example is found in the Glasgow and South-Western Company's own accounts, Part 1, No. 1 (*c*), where the dividend on the Portpatrick and Wigtownshire Railways is stated to be guaranteed jointly by the London and North-Western, Midland, Caledonian, and Glasgow and South-Western Railway Companies. It is quite possible therefore that the accounts of the Portpatrick, &c., Railway Company may still require to be balanced half-yearly. But then the Act of 1911 goes on (section 4 (2)) to provide that the company's directors may, if it appears to them that the profits of the company are sufficient, declare and pay an interim dividend for the first half of the year notwithstanding that their accounts for the half-year have not been audited and that no statement of accounts and balance-sheet for the half-year have been submitted to the shareholders. Then, finally, section 4 (3) adds—"Any statutory provisions affecting the railway company shall be read with the modifications necessary to bring them into conformity with this section."

To understand the question which has arisen, as well as to decide it, it is necessary, second, to consider whereon are founded the rights of the company's deferred shareholders and what these rights are.

The Glasgow and South-Western Railway Company had prior to 1881 eleven different classes of guaranteed and preference stocks and shares. Of these, three—(*a*) the guaranteed consolidated stock, (*b*) the preference consolidated stock, (*c*) the perpetual guaranteed stock, all bearing 5 per cent. per annum of a minimum guaranteed or preference dividend—were guaranteed as regards this 5 per cent. minimum, that is to say, it was what is called cumulative. Any deficiency in one year had to be made up out of subsequent years' profits. The remaining eight of the eleven classes above referred to, including (*e*) the Castle-Douglas Preference (also a 5 per cent. minimum), were non-cumulative, that is, their preference for dividend was on the profits of each year or other fixed period and therefore contingent. But there was a further distinction among these eleven classes of stock. Three, consisting of (*a*) the guaranteed consolidated stock, (*b*) the preference consolidated stock, and (*e*) the Castle-Douglas Preference, had not only a 5 per cent. preference dividend guaranteed or cumulative in the case of the first two and preference merely and non-cumulative in the case of the third, but they had also a right to participate along with the ordinary stock of the company *pro rata* in any profits distributed in excess of 5 per cent. For convenience they may be termed the participating stocks.

The Glasgow and South-Western Railway Company had obtained powers under section 37 of its private Act of the year 1876 to prepare and adopt a scheme for the conversion and consolidation of these guaranteed and preference issues into such classes of new shares or stock "of such names and nominal amounts, bearing such rate or rates of dividend, and having attached thereto such respective rights, liens, guarantees, priorities, and privileges present and contingent, and such conditions and restrictions, as shall be defined in such scheme: Provided always that the amount of dividend payable to the holders of each class of existing stock shall not be diminished or increased by such scheme." A scheme was framed and adopted in 1881 by which, *inter alia*, the three participating stocks were dealt with. And the question in the present case is, What are the rights of participation of these participating stocks under the scheme in the matter of dividend, and in particular have they since 1911 to be dealt with half-yearly or yearly?

In order to arrive at the rights of the participating shareholders under the arrangement of 1881, I think that it is a necessary preliminary to know what their rights were prior to 1881. Every issue of shares, at least of guaranteed or preference shares, in a railway company is made on a definite proposal to the subscriber, whether he be already a shareholder or a member of the public, and therefore on conditions. Between the company representing in this matter the ordinary stockholders and the

subscriber and his successors by progress these conditions are matter of contract. I look therefore in the papers for evidence or information as to the original contract between the company and the holders of the participating stocks—that is, (*a*) the guaranteed consolidated stock, (*b*) the preference consolidated stock, and (*c*) the Castle-Douglas Preference.

The evidence or information afforded us is in a most unsatisfactory position. I am persuaded that it exists, and was intended by someone to be supplied in three excerpts in the print. But on neither side apparently has the bearing on the question at issue of these documents been appreciated or studied. I think that they are the essential basis of our judgment. Though I should have welcomed information in supplement, I do not think that it is impossible to satisfy oneself, so far as necessary for this question, as to the information which they were intended to supply.

Excerpt (*a*), I take it, refers to (*a*) the guaranteed consolidated stock, and shows that the condition of its issue was that it was "to receive a preferable half-yearly dividend" at the rate of 5 per cent. per annum, "and if the profits shall in any year turn out sufficient to pay more than five per cent. on the whole of the then paid-up capital of the company the holders of the new shares shall be entitled to draw their share of such surplus fund." The issue was in June 1842, at which time I should infer from the terms of the excerpt that this was the first issue of guaranteed or preference capital, and no interests were concerned except those of the original shareholders of the company and the subscribers for the new shares. The latter for their participating interest in profits or dividend were therefore expressly dependent on the profits not of the half-year but of the year.

Excerpt (*b*), I take it, refers to (*b*) the preference consolidated stock. If so, its holders were "to receive a preferable minimum dividend" at the rate of 5 per cent. per annum "and to participate in all the other privileges of holders of shares in the company." The issue was in 1848. I think that we are entitled to interpret these words as securing to the preference consolidated stockholders the same conditions as had the guaranteed consolidated stockholders, postponed to them as to their preference, and *pari passu* with them and with the ordinary stock holders as to their participation. If so, for their participating interest in profits they were equally dependent on the profits not of the half-year but of the year.

Excerpt (*c*) expressly refers to (*c*) the Castle-Douglas 5 per cent. preference stock, and leaves nothing to be inferred as to the condition of the issue which was made in 1865. It states—"That the holders of the said stock shall be entitled to receive a preferential dividend thereon at the rate of five pounds per cent. per annum out of the profits of the company for each year ending on the thirty-first day of January, in priority to the ordinary stock of the company, the said dividend being paid half-yearly within one month after the statutory half-yearly general meetings of the company, declaring that the holders of the said stock shall be entitled to participate rateably with the ordinary shareholders in the company in any surplus divisible profits after payment of dividend at the rate of five pounds per cent. per annum on the ordinary shares or stock of the company." The basis of distribution, then, is the profits for the year, notwithstanding that the preferential dividend is to be payable half-yearly a month after the then statutory half-yearly meeting.

The company thus saw no difficulty in regarding the profits of the year as a basis on which the rights of three sets of shareholders might be founded and adjusted, and that basis was a term of the original contract between them and the company. I would venture to refer, as bearing on the conclusion, to what I have said above about the terms of the General Railway Acts 1868 and 1871.

If, then, that was the condition of the issue of these stocks, what is the effect of what passed in 1881, for the new stocks then issued, though they could only be issued on a contract between the company and the allottees or holders, may have been issued on conditions wholly at variance with the original conditions? This is, however, not to be presumed. Rather presumably the contract conditions of the old issue were carried into the new.

I have already narrated the powers to convert and consolidate contained in the Glasgow and South-Western Railway Company's Act 1876, and only note again that this conversion and consolidation was made under the proviso "that the amount of dividend payable to the holders of each class of existing stock shall not be diminished or increased by such scheme." There would be grave risk of that occuring—in fact it is the object of the pursuer to secure it—if the rights of the shareholders interested are transferred from a yearly to a half-yearly basis of account.

Shortly, what was done in 1881 was to create two new stocks, a guaranteed 4 per cent. stock of £935,450, and a preference 4 per cent. stock of £1,892,150, and to give to the three guaranteed and cumulative stockholders (*a*) (*b*) and (*c*) an equivalent in the guaranteed 4 per cent. stock to produce the same minimum guaranteed and cumulative dividend as their holdings in the original 5 per cent. stocks gave them—this was easily arranged, and they got £125 4 per cent. stock, "the dividend of which is not contingent upon the profits of each year," for each £100 of their existing stock,—and further, to give to the eight preference but non-cumulative sets of stockholders, including (*e*) the Castle-Douglas Preference, a similar equivalent in the preference 4 per cent. stock "bearing a fixed dividend at the rate of 4 per cent. per annum out of the profits of each year, but without further participation in the profits of the company." But this was not enough; the right of participation of the three sets of participating stockholders (*a*), (*b*) and (*c*) in any distribution to the ordinary stockholders of

dividend in excess of 5 per cent. had to be provided for, and this was done by creating £442,250 deferred stock, so as to separate from the said guaranteed and preference stocks their contingent participating rights. "and at the same time to provide that the holders of these stocks shall receive an equivalent which will still enable them to participate in any dividend in excess of 5 per cent. paid on the ordinary stock."

The whole contention of the pursuer which subserves all the conclusions of his summons is that the terms of this issue give to the deferred stockholders a right to participate in the excess profits of the company half-year by half-year and not year by year, so that if on a first half-year's accounting and balance there is not enough to pay a half-year's dividend at the rate of 5 per cent. to the ordinary shareholders, but enough on the second half-year's accounting and balance to pay them more than 5 per cent., they are entitled to participate in the excess in the second half-year, notwithstanding that the dividend to the ordinary shareholders is less than 5 per cent on the year. The particular year at issue gives these figures as a 3 per cent., *i.e.*, per annum, dividend for the first half-year, and a 6 per cent., *i.e.*, per annum, dividend for the second half-year, and therefore a 4½ per cent. dividend for the year to the ordinary shareholders. The pursuer in respect of his deferred stock claims a participating dividend at the rate of 1 per cent. per annum for the second half-year, though admitting that there was nothing due to him on the first half-year, nor would there have been on the whole year had the year been the base of computation. I should find it hard to evolve this conclusion from the terms of the scheme for consolidation of stocks of 1881 if I considered it by itself, and with the knowledge that at its date railway companies were bound to bring their books to a balance half-yearly, and might, and in practice did, unless their profits were insufficient, declare a dividend half-yearly. I have shown that this did not prevent the year being the basal period for adjusting the rights of different sets of shareholders *inter se*. Without this condition being in express words attached to the issue of the deferred stock, the whole purview of the scheme, which is not very artistically drawn, imports it.

But when I read what was said in 1881 I am compelled to the conclusion that the object of the scheme of 1881 was to perpetuate the rights of participating shareholders as these stood before it was adopted. If, then, there is any dubiety about the meaning to be attached to the documents of 1881, such difficulty may be resolved by going back to the conditions on which the participating stocks were held prior to 1881, and if these are referred to it can but be resolved in one way, and that against the pursuer.

But again, if the pursuer is right, it follows that the scheme is struck at by the proviso at the end of section 37 of the Glasgow and South-Western Railway Company's Act of 1867, for it would result in giving the deferred stockholder a prospect occasionally of an increased dividend, beyond what he could have claimed prior to its adoption. But personally I find the grounds which I have first stated quite sufficient for the disposal of the case.

We were referred to the judgment of this Division in *Wingate's* case, 1913 S.C. 1092, 50 S.L.R. 857, as a conclusive authority binding on us in the present case. The two cases are, however, on examination totally different. There was in *Wingate's* case no antecedent contract with the preferred shareholders to which reference could in any sense be made. The division of the ordinary stock was a new departure in 1888. The statute of that year, for it was a statutory matter, imposed this condition expressly on the issue of the preferred stock, viz., "any preference share or preference stock which may be issued in pursuance of such scheme shall be entitled to the preferential dividend or interest assigned thereto out of the profits of each half-year"; and, not content with that, went on to say that if there were not sufficient profits available in the first half-year "no part of the deficiency shall be made good out of the profits of any subsequent half-year." We held that it was necessary to give effect, and that it was possible to give effect, to this express statutory condition, notwithstanding the passing of the Act of 1911 altering the statute law as to railway accounts. And I have carefully considered the judgment, and am satisfied that it arrives substantially at a sound conclusion. But I cannot in the different circumstances hold that judgment to cover the present case.

In conclusion I desire to reserve my opinion as to whether the interim dividend declared by the directors of the Glasgow and South-Western Railway Company in the present case can be regarded as a dividend in the sense of the documents which we are called on to interpret here. I am disposed to think not, but the determination of the point is unnecessary for this judgment.

LORD MACKENZIE—The effect of the resolution of the general meeting held on 23rd February 1915 was, in my opinion, not to declare a separate dividend for the half-year ending 31st December 1914; it dealt with the distribution of the balance available after deducting the interim dividend paid for the half-year ending 30th June, and declared a dividend for the year ending 31st December. The actings of the directors and of the company were in accordance with the provisions of the Railway Companies Accounts Act 1911. That Act says nothing about a final dividend; what it does expressly provide for is the year's dividend—that is, the dividend which proceeds not upon an estimate but upon realisation, and comes in place of the old half-year's dividends, which also proceeded upon realised figures and not on estimates. The Act of 1911, which imposed additional labour on the staff of railway companies in the form of the accounts, provided, by section 4 (1), that

the company should not be bound to prepare or submit accounts or balance-sheets or hold ordinary meetings more than once a year. Section 4 (2) provides that notwithstanding this the directors may declare and pay an interim dividend for the first half-year in the same manner and subject to the same provisions as to the closing of the register as is the case with regard to their ordinary dividend. The First Schedule, No. 9, deals with the proposed appropriation of net income, bringing out the balance available for dividends on ordinary stock, and No. 9 (*a*), under the heading Statement of Interim Dividends Paid, contains this—"Balance available for dividends, year 19—. Deduct: Interim dividends paid (particulars)." The interim dividend was a novelty, and there is no obligation upon the directors to make any such payment except in one class of cases. That is the case of guaranteed stocks provided for by section 4 (1) in regard to which the duty of making up half-yearly accounts is continued. That is to say, when the terms of the contract make it imperative, then the previous practice is to continue. That the Legislature recognised there might be interference with rights, which, though not based on contract, resulted from the practice of half-yearly accounts, is seen from the provisions of section 4 (3), which says that "any statutory provisions affecting the railway company shall be read with the modifications necessary to bring them into conformity with this section." I am unable to find in the scheme of 1881 for the consolidation of the Glasgow and South-Western Railway stocks any right conferred by contract on the class of shareholders represented by the pursuer such as is claimed in this action. Therefore I think his demand fails. It fails in my opinion, as regards the original conclusions of the summons, because it proceeds on a mistaken view of what in fact was done. It is not the case that a dividend has been paid for the second half-year of 1914. A dividend was declared and paid at the rate of 4½ per cent. per annum for the year ending 31st December 1914 on the ordinary stock. The pursuer's right to share only emerges if there is a surplus over 5 per cent.—a state of matters which in point of fact did not arise. It would have raised quite a different question if the pursuer had been seeking to share in a surplus over 5 per cent. upon an interim dividend. That is a matter we do not require to consider at present.

As regards the first of the additional conclusions, added at amendment to the summons—[*His Lordship quoted the conclusion*]—there is, in my opinion, no such obligation imposed upon the directors except in the case of holders of guaranteed stock, which is not the position of the pursuer.

The last conclusion, also added at amendment, is said to be founded on the case of *Wingate*, 1913 S.C. 1092, 50 S. L.R. 857. There was, however, in the constitution of the stock under consideration in that case an express condition as to the rights attaching, which is absent in the present case. The Court gave effect to the antecedent contract contained in that condition, and held that the directors were bound to do what otherwise would have been in their discretion.

LORD SKERRINGTON—In the case of *Wingate*, 1913 S.C. 1092, 50 S.L.R. 857, to which we were referred, the pursuer was in this favourable position, that by an Act of Parliament and a scheme issued in pursuance thereof he had secured to him, in express terms, the right to have a half-yearly calculation of the profits of the Railway Company, and he had also an express right to any surplus profits available as dividend after 3 per cent. had been paid on the preferable stock. Further, the Act of Parliament contained an express declaration that if there was any deficiency in the dividend payable to the preferable stockholders at the end of any half-year that dividend should not be made up out of the profits of the next half-year. In these circumstances the problem which confronted the Court was how to reconcile these statutory rights of the pursuer with the new system of accounting introduced by the Railway Accounts Act of 1911. But no such problem confronts us in the present case, because I have been entirely unable to discover in the terms of the scheme or the Act of Parliament in virtue of which the pursuer's shares were issued any language at all similar to that which we find in the case of *Wingate* (*cit.*)—language which confers upon the pursuer a contractual right or a statutory right to have the profits of the defenders' railway company calculated half-yearly. I assume, what we were told by counsel on both sides was the fact, that, in point of fact, up to the year 1911 the pursuer had enjoyed the benefit of a half-yearly calculation of profits, which, of course, to a person in his position was much more favourable than to have the profits calculated yearly. I further assume, what counsel on both sides of the bar admitted, that that enjoyment which the pursuer *de facto* had prior to 1911 he was also to receive *de jure*, because at that date the almost universal rule in railway companies was that the dividend should be calculated half-yearly. But where the pursuer's case fails is, I think, in saying that these advantages which he enjoyed both *de facto* and *de jure* prior to 1911 he is still entitled to enjoy notwithstanding the change in the system of accounting introduced by the Act of 1911. I freely allow to the pursuer all the benefit he is entitled to from the circumstance that the effect of the scheme under which his shares were issued, taken in conjunction with the system of half-yearly balance-sheets, had conferred upon him a certain advantage. But I say that to concede that does not in the least lead to the conclusion that he had a right, either contractual or statutory, to have that system continued from year to year.

For these reasons I think that the more important question between the parties,

which was the one intended to be raised by the amended conclusions of the summons, must be decided against the pursuer.

The only other question is that which the pursuer raised in the original conclusions of his summons. He seeks to have it found—and the Lord Ordinary has given effect to his contention—that the dividend which was declared in the month of February 1915 as a dividend for the whole year ending 31st December 1914 must be regarded, not as what it bore to be in the resolution, but as something entirely different, namely, the dividend for the half-year ending 31st December 1914. For that view I can find no warrant either in the resolution of the company or in the Act of Parliament passed in the year 1911. I refer in particular to section 1 (1), section 4, and also to the form of account in the schedule, especially heads Nos. 9 and 9 (*a*). And it is further significant that the schedule directs that in the auditor's certificate the words "yearly accounts" are to be substituted for the words "half-yearly accounts." It is quite true that in that passage in the schedule reference is made to the Act of 1867, cap. 127, which is an English Act, and no reference is made to the Scottish statute, which was cap. 126 of the same year. But that difficulty is entirely obviated by section 4 (3) of the Act of 1911, which directs that in construing any statutes relative to railway companies one is to read in any modifications made necessary by the Act of 1911.

In these circumstances I have no hesitation in agreeing with your Lordships that the dividend declared in the month of February 1915 was a dividend for the whole preceding year up to the end of December, and that it was not a dividend merely for one half-year.

LORD PRESIDENT—I reach the same conclusion as Lord Johnston, but by the shorter methods adopted by your Lordships.

Confessedly the pursuer is entitled to participate in any excess of dividend over 5 per cent. paid on the ordinary stock. That has been called his charter. The meaning of the expression "dividend" in the pursuer's charter, I think, is the ordinary dividend declared at the ordinary meeting of the company, prescribed by the Statute of 1911, after an exact balance-sheet and statement of accounts has been prepared. The interim dividend declared by the directors in September 1914 appears to me to be neither more nor less than a payment to account of the dividend declared at the annual meeting—a payment arrived at on an estimate, more or less accurate, made by the directors who have not necessarily or presumably an exact balance-sheet and statement of accounts before them. It is fallacious for the pursuer to assert, as he does, that the resolution passed on 23rd February "declared a dividend for the half-year ending 31st December 1914." It did nothing of the kind. It explicitly declared a dividend of 4½ per cent. for the whole year ending 31st December. There was no declaration of any dividend for the half-year. It is, further, alleged by the pursuer that "it was incumbent upon the defenders in relation to the deferred stockholders to calculate the dividend payable to them in said half-year and to declare the amount. But no clause in the scheme of 1881 or in any Act of Parliament was cited to us in support of that allegation. It is, in my opinion, destitute of foundation.

Accordingly I reach the conclusion that none of the conclusions of this summons can be supported, and I propose to your Lordships, in accordance with the opinions which have been delivered, that we should recal the Lord Ordinary's interlocutor and assoilzie the defenders from the conclusions of the action.

The Court recalled the interlocutor of the Lord Ordinary and assoilzied the defenders from the conclusions of the summons.

Counsel for the Pursuer (Respondent)—Horne, K.C.—D. Jamieson. Agents—Dove, Lockhart, & Smart, S.S.C.

Counsel for the Defenders (Appellants)—Macmillan, K.C.—C. H. Brown. Agents—John C. Brodie & Sons, W.S.

Saturday, December 9.

SECOND DIVISION.

M'FADZEAN, PETITIONER.

Minor and Pupil—Nobile Officium—Foreign—Foreigner as Guardian Seeking Power to Sell Pupil's Heritage.

A widower, domiciled abroad, acting as the guardian and administrator-in-law of his pupil child, which resided with him, presented a petition for authority to sell heritage in Scotland, in the ownership of which his ward had succeeded its deceased mother. The Court, in the exercise of its *nobile officium*, granted the petition.

James M'Fadzean, farmer, Langside Farm, Minburn, Alberta, Canada, as guardian and administrator-in-law of his pupil child Robert M'Fadzean, residing with him, *petitioner*, presented a petition for power to complete title *habili modo* to certain heritable property in Scotland and for power of sale.

The petition stated—"That the petitioner's wife Mrs Margaret Malcolm Gray or M'Fadzean, who resided with him, died intestate and domiciled in Alberta, Canada, on 13th April 1916, survived by the petitioner and their two children, the said Robert M'Fadzean and a daughter, who are both in pupillarity. The said Mrs Margaret Malcolm Gray or M'Fadzean died infeft in one-sixth share of the house and two acres or thereby of ground known as Crossbush or Crossbuss in the parish of Riccarton and county of Ayr, all as more particularly described in the prayer hereof. Her heir in heritage is the said Robert M'Fadzean, and according to the law of Alberta the petitioner is his legal