

what it is that he must abstain from doing. The lengthy debate to which we listened showed that opinions may reasonably differ as to the meaning of the word "exporting" as used in the interdict. If the complainers desired to obtain from the Lord Ordinary or to maintain in the Inner House an interdict against the exportation of lamps by the respondents, their counsel ought, in my judgment, to have asked leave to amend their pleadings by adding the averments which were necessary both from the point of view of relevancy, and also for the purpose of defining the acts from which the respondents must abstain under pain of committing a breach of interdict. In expressing this opinion I have not lost sight of the fact that the respondents' fifth plea-in-law may be construed as an assertion of a right to "export" lamps whatever may be implied by that expression. This circumstance does not in my view exonerate the complainers from the duty of presenting their case to the Court in proper and usual form. I think that the interdict ought to be limited by omitting the words "or exporting therefrom."

LORD CULLEN—I concur with the majority of your Lordships.

The Court adhered.

Counsel for the Respondents (Reclaimers)—Moncrieff, K.C.—Wark, K.C.—Burn Murdoch. Agents—Davidson & Syme, W.S.

Counsel for the Complainers (Respondents)—Dean of Faculty (Sandeman, K.C.)—Normand. Agents—Webster, Will, & Company, W.S.

Wednesday, July 19.

FIRST DIVISION.

[Lord Hunter, Ordinary.

M'KINLAY v. DARGAVIL COAL COMPANY.

Reparation—Negligence—Trap—Injuries to Children—Gate in Place Frequented by Children—Relevancy.

A father brought an action against a colliery company for damages for the death of his child, aged nine, who while playing about a gate at the entrance to a colliery was killed owing to the gate, upon which other children were swinging, closing and crushing him between the hinge-end of the gate and the gatepost. The gate was so constructed that the space between the hinge-end of the gate and the gatepost was about one inch when the gate was closed and increased by the opening of the gate until it was sufficient for a child to pass through. The pursuer averred that the gate when open was, in the knowledge of the defenders, dangerous owing to its size, construction, and weight, that it was in a state of disrepair which prevented it from being secured, when open, by a device which the defenders

had provided for that purpose, that children habitually played on and about the gate with the tacit permission of the defenders, that it formed an allurement to them which, owing to the danger not being obvious, was of the nature of a trap, and that the defenders had taken no precautions to prevent children from being injured. *Held (rev. judgment of Lord Hunter, Ordinary, the Lord President dissenting)* that the pursuer had stated a relevant case for inquiry, and issue *allowed*.

George M'Kinlay, miner, Larkhall, *pursuer*, brought an action against the Dargavil Coal Company, Limited, *defenders*, in which he claimed £500 as damages for the death of his son, aged nine, who had been killed while playing about a gate at an entrance to the Cornsilloch Colliery, Larkhall, of which the defenders were owners.

The pursuer's averments were as follows, the words in italics being added by amendment:—(Cond. 2) In the vicinity of the colliery there are two large blocks or tenements of houses known as Cornsilloch, which are occupied by the miners and other employees working at the defenders' colliery. The said tenements are situated at the entrance to the colliery. At one time said tenements were separated from the colliery ground by means of a wooden fence, but latterly the said fence fell into disrepair, and for a considerable time prior to the accident after mentioned it had ceased to be any barrier to free access from the tenements to the colliery ground. The distance from the back of the tenements to what is known as the colliery entrance is only some 30 to 40 yards. At said colliery entrance there are two gates, one a large wooden gate for vehicles and the other a small gate. The large gate closes a path which is used as a cart entrance to the colliery, and at one time when not in use was invariably kept shut and fastened. For a long time past this has not been done. . . . (Cond 3) The larger gate, known as the traffic gate, is of large dimensions. It is some 12 feet long and is 9 feet in height. It is doubly built and heavily constructed. It is fixed to the gatepost by means of large iron hinges some 12 inches each in length, and in the gate there is a hook which is intended to fit into an iron eye which is affixed to an upright post, with an arrangement for padlocking said hook, so as to secure the gate when open and prevent it being, as it would be owing to its weight, a source of danger. The gate has sagged owing to its weight, and for some considerable time prior to and at the time of the accident after mentioned, the hook could not be brought into line with the eye so as to secure it. The defenders were aware that the gate was defective in this respect, as it was their custom to secure the gate when it required to be open for traffic, by placing in front of it bricks and stones so as to hold it in position. . . . (Cond. 4) The ground at the back of the tenements above referred to and in the vicinity of said gate, both within and without the grounds of the colliery, is and was at the time of the accident in question used

as a playground by the children of the miners residing therein. This was well known to the defenders and their servants, and children were permitted by them to play in the neighbourhood of said gate without objection or complaint. In particular, children were in the habit of playing on or with the said gate by swinging it backwards and forwards. They also were in the habit of using the posts of the gate as goalposts when playing football. These things were known to the defenders and their servants, and no objections were taken by them thereto. (Cond. 5) On 26th July 1921, about 9 p.m., the pursuer's son, the said Daniel M'Kinlay, was playing with other children about said gate. When open there is a space of a foot between the back end of the gate and the gatepost, which is sufficient to admit a small child to pass through. When the gate is closed the distance between the back end of the gate and the gatepost is only one inch. The pursuer's son was playing near the hinges of said gate, it being open at the time, when the gate, either of its own weight or through being moved by some of the other children with whom he had been playing, swung to and closed, with the result that the pursuer's son was caught by the head between the back end of the gate and the gatepost and was instantly killed. (Cond. 6) The death of the pursuer's son was due to the fault of the defenders or of their servants, for whom they are responsible. The said gate when open and unsecured constituted, owing to its size, construction, and weight, a danger on account of its liability to swing and close. It was therefore necessary that said gate, if open, should be properly secured. The defenders were aware of this and had provided a hook and eye for the purpose, but the gate had been allowed to fall into disrepair, with the result that the hook and eye could not be used to secure it. The defenders were further aware, as already narrated, that children were in the habit of playing in the neighbourhood of said gate and upon said gate by swinging it backwards and forwards, and indeed were permitted by the defenders to do so. The defenders, moreover, ought to have anticipated that a gate of the size, construction, and weight described would be dangerous to children playing near or about it, in the event of their moving the gate or of its moving of its own accord. It was the duty of the defenders to see that the said gate was kept securely closed when not in use by or for them, or if they allowed it to remain open it was their duty to see that it was safely secured by means of a padlock or other device so as to prevent it being a source of danger. If they chose to neglect these precautions it was their duty to prohibit and to take active steps to prevent the access of children to the ground, and in particular to prohibit and prevent the use of the ground in the immediate vicinity of the gate as a playground by said children. The defenders or their servants, for whom they are responsible, failed to do so, with the result that the pursuer's son met his death as above described. Further, the defenders

were aware that a large gate which swung upon its hinges was likely to be an allure-ment or attraction to children, and that the danger in the event of its closing was not obvious to children, so that the gate in its unsecured condition was of the nature of a concealed trap. They should, accordingly, have taken the steps above referred to to prevent it being a source of danger. Their failure to do so resulted in the death of the said Daniel M'Kinlay."

The defenders pleaded, *inter alia*—"1. The averments of the pursuer being irrelevant and insufficient to support the conclusions of the summons the action should be dismissed with expenses."

On 17th January 1922 the Lord Ordinary (HUNTER) sustained the first plea-in-law for the defenders and dismissed the action.

Opinion—"In this action the pursuer, who is a miner residing at 28 Cornsilloch, Larkhall, sues the Darngavil Coal Company, Limited, for damages in consequence of the death of his son.

"The pursuer explains that there are two large blocks of tenements, partly occupied by employes of the defenders, in the vicinity of their Cornsilloch Colliery. At the entrance to this colliery there are two gates, one a large wooden gate for vehicles and the other a small gate. The large gate closes a path which is used as a cart entrance to the colliery. The pursuer alleges that the ground at the back of the tenements, both within and without the grounds of the colliery, was at the time of the accident to his son used as a playground by the children of the miners residing therein. 'This,' he says, 'was well known to the defenders and their servants, and children were permitted by them to play in the neighbourhood of said gate without objection or complaint. In particular, children were in the habit of playing on or with the said gate by swinging it backwards and forwards.' On 26th July 1921, about 9 p.m., the pursuer's son, who was aged about nine, was playing with other children about the gate. At this time the gate is said to have been in disrepair, inasmuch as a hook and eye which had been used to keep the gate fixed either when shut or open could not be used. When the gate is open there is said to be a space of a foot between the back end of the gate and the gatepost, which is sufficient to admit a small child to pass through. When the gate is closed the distance between the back end of the gate and the gatepost is only one inch. 'The pursuer's son was playing near the hinges of said gate, it being open at the time, when the gate, either of its own weight or through being moved by some of the other children with whom he had been playing, swung to and closed, with the result that the pursuer's son was caught by the head between the back end of the gate and the gatepost, and was instantly killed.' For the purpose of testing the relevancy of the pursuer's averments it must be assumed that the gate was swung back owing to its being actively interfered with by the companions of the pursuer's son.

“The pursuer’s case of fault against the defenders is stated thus—‘It was the duty of the defenders to see that the said gate was kept securely closed when not in use by or for them; or if they allowed it to remain open, it was their duty to see that it was safely secured by means of a padlock or other device, so as to prevent it being a source of danger. If they chose to neglect these precautions, it was their duty to prohibit and to take active steps to prevent the access of children to the ground, and in particular, to prohibit and prevent the use of the ground in the immediate vicinity of the gate as a playground by said children. The defenders or their servants, for whom they are responsible, failed to do so, with the result that the pursuer’s son met his death as above described. Further, the defenders were aware that a large gate which swung upon its hinges was likely to be an allurement or attraction to children, and that the danger in the event of its closing was not obvious to children, so that the gate in its unsecured condition was in the nature of a concealed trap.’ The pursuer relies upon the two cases of *Cooke v. Midland Great Western Railway of Ireland*, [1909] A.C. 229, and *Taylor v. Corporation of Glasgow*, 1922 S.C. (H.L.) 1, 59 S.L.R. 14, as showing that his averments constitute a relevant case against the defenders. In the former of these cases a jury awarded damages to a child who was injured while playing at a turntable, which was situated in ground belonging to the defenders. There was access to this turntable from the public road through a gap in the hedge, and it was proved that within the knowledge of the defenders’ servants children came in and played at this turntable. The award by the jury was sustained by the Court. In the latter case it was held that the father of a boy who had died from eating belladonna berries in the Botanical Gardens in Glasgow, had stated a relevant case against the Corporation of that city. There were averments that the berries had an alluring appearance for children, who would eat them without knowing there was any danger. In both those cases the source of danger was concealed so far as children were concerned, and therefore constituted a trap. In *Latham v. R. Johnston and Nephew, Limited*, [1913] 1 K.B. 398, Lord Sumner, then L. J. Hamilton, said—‘A trap is a figure of speech, not a formula. It involves the idea of concealment and surprise, of an appearance of safety under circumstances cloaking a reality of danger. Owners and occupiers alike expose licences and visitors to traps on their premises at their peril; but a trap is a relative term. In the case of an infant there are moral as well as physical traps. There may accordingly be a duty towards infants not merely not to dig pitfalls for them, but not to lead them into temptation.’

“I cannot see that in any reasonable sense of the term there is a trap or allurement in a gate into private property which is not so secured, both when it is open and when it is closed, that it cannot be moved by children who interfere with it. The

accident which occurred is not one which an owner of property could be expected to anticipate and provide against. I therefore hold the pursuer’s averments irrelevant and dismiss the action.”

The pursuer reclaimed, and argued—On the principle of *Cooke v. Midland Great Western Railway of Ireland*, [1909] A.C. 229, 46 S.L.R. 1027, affirmed in *Taylor v. Corporation of Glasgow*, 1922 S.C. (H.L.) 1, 59 S.L.R. 14, the pursuer’s averments were relevant. The gate was a trap. It was in a place which was used by children as a playground with the defenders’ permission. It formed an allurement to children, while its dangerous condition was not apparent to them. The defenders knew of its dangerous condition but had taken no precautions to prevent children from being injured and had allowed the only means provided as a precaution to become useless. The Lord Ordinary’s interpretation of *Latham v. R. Johnston & Nephew, Limited*, [1913] 1 K.B. 398, was not justified by views of that case in *Taylor v. Corporation of Glasgow (cit.) per Lord Buckmaster* at p. 5 and Lord Shaw at p. 10.

Argued for the defenders—The case fell within the principle of *Latham v. R. Johnston & Nephew, Limited (cit.)*. There was no danger here such as would bring the case within the principle of *Cooke v. Midland Great Western Railway of Ireland (cit.)*; *Latham v. R. Johnston & Nephew, Limited (cit.) per Hamilton, L.J.*, at p. 419. The gate was an ordinary one, the danger of which was obvious even to a child of nine years. There was nothing special about it creating a duty on the defenders and there was no averment of any previous accident. The mere anticipation that an accident might take place did not create a duty. The sagging of the gate and the fact that the hook and eye were not in use were irrelevant. The gate might have been closed when the children began to play on it. There was no neglect of any precaution which others adopted, as in *Cooke v. Midland Great Western Railway of Ireland*. The arrangement for padlocking the gate was not a safety precaution, but was merely for the convenience of the owners. The decision in *Taylor v. Corporation of Glasgow* depended on absence of warning. There was no such case here. The pursuer’s case meant that a proprietor was bound to guarantee children playing on his ground against danger. There was no foundation for such a case—*Hastie v. Magistrates of Edinburgh*, 1907 S.C. 1102, 41 S.L.R. 829; *Stevenson v. Corporation of Glasgow*, 1908 S.C. 1034, 45 S.L.R. 860.

LORD MACKENZIE—The question here is whether the Lord Ordinary is right in saying “The accident which occurred is not one which an owner of property could be expected to anticipate and provide against.”

Now if all that had been said by the pursuer in this case had disclosed that the gate was a gate of ordinary construction in regard to which only ordinary precautions

ought to be taken, I for my part should not have seen my way to differ from the conclusion to which the Lord Ordinary has come. It is because I construe the averments of the pursuer in a different sense that I think we are not in a position at this stage, and knowing no more about the facts, to come to a conclusion that the accident was not one which the owner of the property could be expected to anticipate and provide against. The reason I have for saying that is because I find in the condescence an averment that the defenders had imposed upon themselves the duty of taking a precaution which certainly is peculiar and not ordinary in regard to every gate. The averment is that they had an arrangement for padlocking the "hook so as to secure the gate when open and prevent it being, as it would be owing to its size, construction, and weight, a source of danger." The pursuer then goes on to aver that the gate had sagged owing to its weight, with the result that the hook could not be brought into line with the eye so as to secure it. He says "The defenders were aware that the gate was defective in this respect," and then he goes on to detail the contrivance by which they attempted to get over that defect.

Then the averments disclose the particular danger to which the child was exposed, and condescence 6 points to the nature of the danger, saying that the "gate when open and unsecured constituted, owing to its size, construction, and weight, a danger on account of its liability to swing and close. It was therefore necessary that said gate if open should be properly secured. The defenders were aware of this and had provided a hook and eye for the purpose, but the gate had been allowed to fall into disrepair, with the result that the hook and eye could not be used to secure it." Therefore so far as averment goes the pursuer does connect the disrepair for which the defenders were responsible with the defective contrivance of the gate on the day in question; and then he goes on in condescence 5 to aver that the accident did happen when the gate was open.

If the gate had not been in a state of disrepair, and if the defenders could have carried out the peculiar method that they adopted for making the gate secure when it was open, then the accident would not have happened.

These being the facts as set out by the pursuer, one takes note of the fact that this was a place that was used as a playground by the children, that that fact was well known to the defenders and their servants, and that children were permitted by them to play in the neighbourhood. The question then is whether this case does not fall within that class of cases of which *Cooke v. Midland Great Western Railway of Ireland* ([1909] A.C. 229, 46 S.L.R. 102) is an instance, and we have to decide whether the principle of that case does not compel us to allow this case to go to a jury that they may express their opinion whether the circumstances disclose such a risk that the owner of the property ought to have anti-

icipated and provided against. That is to say, the question is whether the gate was a thing that would attract children, whether there was a concealed peril which could be made a real peril by children meddling with the gate, and whether the place was one which was open to the public or one to which children were invited to come.

If the facts as they come out at the trial show that the principle laid down in *Cooke* applies, then the pursuer will be entitled to a verdict. But one cannot pretend that there may not be when the proof is taken a reason for distinguishing this from the cases which the pursuer says assist him.

Accordingly I am of opinion that the case cannot be withheld from a jury, and that there should be an issue.

LORD SKERRINGTON—Like your Lordship I think that the Lord Ordinary correctly directed himself in regard to the law which ought to be applied. He states that "the accident which occurred is not one which an owner of property could be expected to anticipate and provide against." If the facts as averred by the pursuer are such that no reasonable jury could come to a different conclusion from the Lord Ordinary upon this point he was right in dismissing the action. I disagree with the course taken by the Lord Ordinary because I think that a reasonable jury might properly take the view that the accident was one which a prudent and humane occupier of property ought to have anticipated and provided against. In my opinion the Lord Ordinary has gone too fast and has usurped the functions of the jury. I hope that nothing which I may say will appear to prejudge the case against the defenders. Even if the facts as averred by the pursuer are substantially accurate it will still be for the jury to consider whether there was any breach of duty on the part of the defenders in not anticipating that the gate in its actual condition was likely to be dangerous to the children whom they permitted to play in its vicinity, and if so, whether they failed to do something which was reasonable and practicable in order to guard against this danger. There is no question of a duty to guarantee children against injury by making the gate "child-proof" as was suggested by the defenders' counsel.

Although the pursuer does not aver that the gate was of an unusual construction, it does not follow, as was assumed by the defenders' counsel, that its construction in combination with its size and weight was not such as to expose children to a danger with which they were unfamiliar, and from which it would have been easy and reasonable to protect them. Every child learns by early and painful experience in its own home that it may get its finger pinched in the aperture on the inside of the door. There must, however, be many a child who has never seen a gate with an opening on the inside wide enough for him to pass through, and who might be excused for not realising that such an aperture has within it a danger similar to but much more serious than that which lurks in the crack on the

inside of a house door. He might also be excused for not appreciating the additional risk due to the size and weight of a gate 12 feet in length and 9 feet in height. It will be for the jury to say how far such excuses can be accepted in the case of a boy nine years of age who lived at a short distance from the gate in question. Another matter to which a jury might legitimately attach importance is the fact (if it be a fact) that the gate was out of order as regards a part of its construction, which had a direct bearing upon the safety of the children whom the defenders permitted to play with and about the gate. The pursuer offers to prove that the gate was fitted with an arrangement for securing it when open by means of a hook and padlock, but that this arrangement could not be used through the gate having sagged owing to its weight.

LORD PRESIDENT—I have the misfortune to differ from both your Lordships. The question is whether the accident which occurred to this child is shown on the pursuer's averments to have been one which the owner of the gate ought reasonably to have anticipated and to have provided against. The Lord Ordinary thought it was not, and my opinion coincides with his.

Apart from the fatal consequences which attended it, the accident was one of the most ordinary kind and, indeed, of everyday occurrence. It consisted in the circumstance that a part of the child's person was caught between a gate and the gatepost to which it was hinged, in the course of play (participated in by a number of children) round about the gate. The hinged sides of gates and, indeed, of ordinary swing-doors present wide opportunities for just such accidents, and many, I imagine, are the careless fingers, hands, arms, and legs, of children particularly, that get squeezed in them. This time unhappily it was the child's head that was caught.

The particular gate with which this case is concerned is an ordinary sparr'd wooden gate. As appears from the sketch, with which the pursuer supplied us in supplement of his record, it is hung upon hinges of ordinary construction attached to an ordinary wooden gatepost, and there is an ordinary wooden fixing-post to which the gate can, when fully opened, be fixed by a hook. The only feature about the gate (beyond the usual particulars of size and weight) which is specially referred to on record is that the distances between the side of the gate and the nearest surface of the gatepost varies—according as the gate is closed or fully open—from a few inches to nearly a foot. But it is not said that this variation is exceptional in a 12-foot gate or unusual, and everybody who knows anything at all about a gate or a door is aware that variation, more or less, is inevitable as it is opened and closed.

The case has, so far as I am able to see, no resemblance to the class of case (to which *Taylor v. Glasgow Corporation, supra*, (H.L.) 1 belongs) where a child is allowed unrestricted access to some public place, such as a garden, containing some object

unusual in the experience of ordinary folk, and of a child in particular, which is attractive, and yet has peril hidden in it for those who meddle with it. A gate hinged on a gatepost is one of the most ordinary objects in the experience even of a child, and I cannot bring myself to regard the risk of getting part of the person caught and squeezed by the gate when it is swung on its hinges as constituting a hidden peril. In the case of *Cooke* (1909, App. Cas. 229, 46 S.L.R. 1027) the scene of the accident was private property, but children were allowed unrestricted access to it, and on it there was a piece of mechanism with whose working and operation children were necessarily unfamiliar, and which if they meddled with it was eminently capable of producing unforeseen dangers. So in the case of a horse and cart left without anyone in care of them in a place to which children are freely admitted. It has been said in such cases that where the owner or other person responsible for the management of property in which there is something out of the common, attractive, and holding a lurking peril to life or limb, ought to realise that if he allows children access to the property their curiosity and inexperience is likely to bring them into close and unsuspected contact with the concealed danger. It has been decided accordingly that if he fails to anticipate and provide against such an event he is liable in damages. But I fail to appreciate the view upon which it is said that a gate, with a varying distance between its side and the nearest surface of the gatepost, as it swings from the open to the closed position—a variation not in itself averred to be unusual or extraordinary—is an object so out of the common, or presenting such allurements, or concealing such latent sources of peril, as to require its owner to provide against children getting themselves caught in it.

An imperfect correspondence between the hook on the gate and the eye on the fixing-post, to which both your Lordships have referred, seems to me to have had nothing whatever to do with the accident which occurred. The gate had sagged and the hook could not therefore be placed in the ring, with the result that the gate could not be secured permanently in the fully open position. But this circumstance had no connection with the accident. Even if the gate had been fully opened, and the hook duly placed in the eye on the gatepost, children playing with the gate would have had no difficulty in taking the hook out and allowing the gate to swing. The gate might, no doubt, have been padlocked to the fixing-post so that children could not release it. But unless it be held to be the duty of the owner of the gate to make the gate childproof, it is not in my opinion possible to hold him liable as for negligence because he did not keep the gate padlocked when open as well as when closed. I cannot help noticing that when one looks to the record the accident is not attributed to the imperfect correspondence between the hook on the gate and the eye on the fixing-post. The truth is that if anybody has a gate to

his property which is accessible to children from the road, it may be anticipated that they will amuse themselves with it, and climb on it, and swing it, unless it is made childproof by one means or another. But to deduce from this that the owner is bound to anticipate that children will fall from it or get knocked down by it or get squeezed in it, and therefore to make special provision against anything of that kind, is a proposition which I do not think the authorities require me to accept, and which I feel sure cannot be accepted, as a general proposition without grave injustice.

In my view the Lord Ordinary took a proper course in refusing an issue in this case.

The result of the majority opinion will be that the issue will be approved.

LORD CULLEN did not hear the case.

The Court recalled the interlocutor of the Lord Ordinary, approved of the issue, and remitted to Lord Morison to proceed.

Counsel for the Pursuer and Reclaimer—Fraser, K.C.—Cooper. Agents—Erskine Dods & Rhind, S.S.C.

Counsel for Defenders and Respondents—MacRobert, K.C.—Marshall. Agents—W. B. Rankin & Nimmo, W.S.

Thursday, July 20.

FIRST DIVISION.

DRYSDALE'S TRUSTEES v. DRYSDALE AND OTHERS.

Succession—Special Destination—Revocation—Effect of General Disposition—Special Destinations Prior to and Subsequent to General Disposition—Jus quesitum tertio—Donation—War Stock Taken by Testator in Names of Wife and Children.

A testator, who was survived by his wife and three children, by trust-disposition and settlement conveyed to his trustees "the whole means and estate . . . which shall belong to me at the time of my death, including all means and estate held by me at my death, under special destination, and all means and estate of which I may at my death have the power of disposal or appointment"—and revoked all former testamentary writings made by him. His estate consisted partly of three groups of investments, the first (Group A) being National War Bonds purchased prior to the date of the trust-disposition and settlement and taken in the names of his wife and children, the second (Group B) Registered War Stock purchased after the date of the trust-disposition and settlement and taken in the names of the children, and the third (Group C) Registered War Stock purchased after the date of the trust-disposition and settlement and taken in names of his wife and himself. The money in these

investments belonged solely to the testator and he drew the interest during his life, the documents being kept by banks on his behalf. The testator's estate exclusive of these investments was not sufficient to carry out the purposes of the trust-disposition and settlement. *Held* (1) (a) that the fact that the investments under Group A had been taken in name of the wife and children did not create an irrevocable right there-to in their favour, and (b) that the destinations in these investments having been revoked by the clause of revocation in the trust-disposition and settlement, the investments fell to be disposed of in terms thereof; (2) that the destinations of the investments in Groups B and C were not affected by the trust-disposition and settlement, and that the investments in Group B belonged to the children in whose names they were taken, and those in Group C to the extent of one half to the trust estate and of the other half to the widow.

Mrs Mary Anne Westwood or Drysdale, widow of the late William Drysdale, Dunfermline, and others, the accepting trustees acting under his trust-disposition and settlement, *first parties*, the said Mrs Mary Anne Westwood or Drysdale, *second party*, Charlotte Wilhelmina Drysdale, Campbell Westwood Drysdale, and William Douglas Drysdale, children of the said William Drysdale and Mrs Drysdale, *third parties*, and Miss Amalia Brichta and others, the directors of the First Church of Christ Scientist, Edinburgh, *fourth parties*, brought a Special Case for the opinion and judgment of the Court upon questions as to the application of the said trust-disposition and settlement to certain investments of the testator.

By his trust-disposition and settlement dated 10th August 1918 the testator, who died on 20th April 1921, conveyed to trustees for certain purposes "the whole means and estate, heritable and moveable, real and personal, of what kind soever and wheresoever situated, which shall belong to me at the time of my death, including all means and estate held by me at my death, under special destinations, and all means and estate of which I may at my death have the power of disposal or appointment." The fifth purpose directed the trustees, after the death of his wife, to pay the income of the estate, to the extent of £750 to the third parties, and to divide any balance after said payment between the fund for disabled soldiers and sailors and the fourth parties until the youngest of the children attain the age of thirty-five, when the estate was to be realised and divided equally amongst them. The testator expressly revoked in the trust-disposition and settlement all former testamentary writings made by him.

The Case set forth (the words in italics having been added by amendment), *inter alia*—"7. . . Throughout the period from 1906 until February 1920 the testator was ordinarily resident in Java. During that period he had from time to time lodged sums on current account with (a) the London branch of the said corporation (The Hong-