is there any ground for holding that the defenders have been guilty of an actionable wrong towards him, and how are they to be subject to an action of damages for an accident arising from inefficient machinery at his instance, or at the instance of one, his workman, who is engaged only under a contract with him? If a householder engages workmen to repair his house, and agrees to provide the apparatus necessary to carry out the business; orders the contractor to supply himself with the apparatus to his own satisfaction, and to send him the bill for payment; if an accident occurs to one of the workmen through the failure of the apparatus the contractor has taken, is the householder to be held responsible in an action of damages on a proof that the work might have been carried out in some other and safer way? I think not, and I feel it so strongly that I consider it my duty to state my opinion as negativing that view. I only wish to say further that I do not think there was any duty imposed upon the defenders, either by their duty to the public or under their contract, that they have been shown to have failed in carrying out. I think that there is no possible ground of action shown here.

LORD RUTHERFURD CLARK—I think that the defenders should be assoilzied, but I desire to say I ground my judgment solely upon the matter of fact. I think it is proved that the system employed in sinking this shaft was reasonably safe, and that is enough for our judgment. I also wish to say that I agree that the defenders have violated no provisions necessary to be observed under the statute.

LORD TRAYNER—This action is based upon fault; there was no contract of any kind between the defenders and the deceased. The fault alleged against the defenders is, that whereas they were bound by their contract with Mr Swan (in whose employment the deceased was) to supply him with all the necessary and proper appliances for performing the contract work, they supplied improper appliances, which were not only old-fashioned but dangerous, with the consequence that the use thereof led to the deceased's death. I am satisfied on the evidence that the unfortunate death of the workman, whose representatives the pursuers are, did not arise from the fault of the defenders. The appliances, in themselves, were according to the evidence reasonably safe; they were not objected to by Swan or anyone else; and the defenders cannot therefore be held to have committed any breach of their contract with Swan. It is on an alleged breach of that contract, however, with its consequences, that the defenders' alleged fault depends.

But I go further. It is, I think, clear that the death of the workman in question was not occasioned by any defect in the appliances furnished by the defenders. That occurrence was occasioned by the neglect and fault of the pithead-man. Had he exercised that care in the performance of his duty which he was bound to exercise, and which he might reasonably be expected to exercise, the occurrence would not have taken place. With due care the appliances in question would have been quite safe. I agree with Lord Young on both points.

The Court pronounced this judgment:—

"Find in fact that the death of Joseph M'Gill senior, husband of the pursuer Mrs Jane Buchanan or M'Gill, was not caused by fault or negligence on the part of the defenders: Therefore sustain the appeal; recal the judgments of the Sheriff and Sheriff-Substitute appealed against; assoilzie the defenders from the conclusions of the action, and decern."

Counsel for the Defenders and Appellants—Graham Murray — Salvesen. Agents—Reid & Guild, W.S.

Counsel for the Pursuers and Respondents—Asher, Q.C.—Shaw. Agent—A. Stewart Gray, W.S.

Friday, November 21.

FIRST DIVISION.

CAMPBELL AND OTHERS, PETITIONERS.

Building Society—Dissolution—Petition by Trustee for Authority to Grant Conveyances of Heritable Subjects without Completing a Title in his Own Person.

A building society was dissolved by consent of its members in terms of sub-section 3 of section 32 of the Building Societies Act 1874, and a trustee was appointed to wind up the affairs of the society and divide the funds. Without completing a title in his own person, he sold some of the heritable property belonging to the society, and it was objected by the purchaser that the trustee could not grant a valid conveyance of the subjects sold. The trustee therefore applied by petition to the Court for authority to grant conveyances of the heritable property belonging to the society, and to discharge the heritable bonds to which the society had right without completing a title in his own person. *Held* that the Court could not grant the power craved, and petition *refused*.

The West of Scotland Property Investment and Building Society was established in 1860 under the Act 6 and 7 Will. IV. cap. 32, and was on 4th December 1886 incorporated under the Building Societies Act 1874 (37 and 38 Vict. cap. 42).

By section 32 of this latter Act it is provided—"A society under this Act may terminate or be dissolved—1. Upon the happening of any event declared by its rules to be the termination of the society. 2. By dissolution in manner prescribed by

its rules. 3. By dissolution with the consent of three-fourths of the members holding not less than two-thirds of the number of shares in the society, testified by their signatures to the instrument of dissolution. The instrument of dissolution shall set forth—(*a*) The liabilities and assets of the society in detail; (*b*) the number of members, and the amount standing to their credit in the books of the society; (*c*) the claims of depositors and other creditors, and the provision to be made for their payment; (*d*) the intended appropriation or division of the funds and property of the society; (*e*) the names of one or more persons to be appointed trustees for the special purpose, and their remuneration. Alterations in the instrument of dissolution may be made with the like consent, testified in the same manner. The instrument of dissolution and all alterations therein shall be registered in the manner provided for the registration of rules, and shall be binding upon all the members of the society. 4. By winding-up, either voluntarily under the supervision of the Court or by the Court, if the Court shall so order, on the petition of any member authorised by three-fourths of the members present at a general meeting of the society specially called for the purpose to present the same on behalf of the society, or on the petition of any judgment creditor for not less than £50, but not otherwise. General orders for regulating the proceedings of the Court under this section may be from time to time made by the authority for the time being empowered to make general orders for the Court. Notice of the commencement and termination of every dissolution or winding-up shall be sent to the registrar, and registered by him."

On 21st February 1889 an instrument of dissolution was made in terms of subsection 3 of that section, and on 27th February it was duly registered. By said instrument it was, *inter alia*, provided—"(Fourth) After payment of the claims of depositors and other creditors the funds and property of the society shall be appropriated and divided among the members thereof in the proportion of the amount standing to each member's credit in the books of the society. (Fifth) Dugald Campbell, accountant in Greenock, is hereby appointed trustee for the special purpose of dissolution, and shall be remunerated by a commission of two and one-half per cent. on the free funds divisible among the members. (Sixth) Full powers are hereby conferred on said trustee, with advice, direction, and control of the committee hereinafter named, to sell by public or private sale the heritable subjects belonging to the society, to call up and receive payment of all sums due to the said society by bonds and dispositions in security, and to exercise the powers of sale therein contained, to grant discharges thereof, and dispositions following thereon; and generally all powers necessary for the realisation and distribution of the assets competent to a trustee by the law of Scotland."

At the date of the dissolution the society owned and was infeft in certain heritable subjects, and also owned other heritable subjects, the titles of which stood in the names of certain trustees for the society who were in office before the society was incorporated under the Building Societies Act 1874. The society had also, prior to its incorporation, lent on bonds and dispositions in security over heritable subjects various sums, of which £11,021, 2s. 2d. was still outstanding, the various bonds and dispositions in security being taken in name of various trustees then acting as already mentioned.

By the said Building Societies Act 1874, section 27, it is provided that "All rights of action and other rights, and all estates and interests in real and personal estate whatsoever now belonging to or held in trust for any society certified under the said repealed Act" (being the Act 6 and 7 Will. IV. cap. 32) "shall, on the incorporation of the society under this Act, vest in the society without any conveyance or assignment whatever." . . .

The trustee Dugald Campbell having, with consent of the committee appointed to advise him, sold the heritable subjects in which the society was infeft, the purchaser objected that the trustee could not grant him a valid conveyance, no provision being made by the Building Societies Act for such a case.

The trustee accordingly, with the concurrence of the members of the committee, presented the present petition, praying the Court to authorise him, "without completing a feudal title in his person, on payment of the purchase prices, to execute and deliver dispositions, or other necessary and proper conveyances, of the several heritable subjects belonging to the West of Scotland Property Investment and Building Society, now dissolved, to the person or persons purchasing such heritable subjects; and further, to grant warrant to, and authorise and empower the said petitioner, as trustee, and without completing a title as aforesaid, on receiving payment of the various sums due to the said society by bond and disposition in security, to execute and deliver discharges, or restrictions, or assignations thereof."

It was argued for the petitioner that no provision having been made for conveyances where a building society was wound up by instrument of dissolution, the statutes in favour of gratuitous trustees not being available since there was no vesting, and the facilities afforded in the 32nd section of the Building Societies Act 1874 and by Act of Sederunt for winding-up by liquidation process not having been extended, as might have been done under said section, to the present form of liquidation, no other course was open than to make a special application to the Court—Act of Sederunt, 7th March 1882, sec. 7.

At advising—

LORD PRESIDENT—[*After reviewing the circumstances in which the application was made*]—The office of this petitioner is entirely statutory. He is given power to

sell the heritable estate, and also to grant discharges of real burdens, but he has not been given power under the statute of 1874 to do that without having a proper feudal title in his own person. It rather appears from what we have heard from the bar that the feudal title of the subjects in question is vested in the person of some trustee or trustees who were appointed to hold those estates during the subsistence of the company, and in what manner the title may be competently transferred from the present holder or holders of the title to the petitioner it is not for this Court to advise the petitioner. But one thing has to be said here—either that the statute must have given authority to sell and dispose of those subjects, and to grant discharges of bonds, without making up a feudal title in his own person, or that it has not; and I see no jurisdiction that the Court can have to confer that power if the statute has not given it. There is no creation of any jurisdiction in this Court to authorise the dispensing with any of the ordinary forms of feudal conveyancing in reference to dissolved companies of this kind, and it is not a case in which there can be any application of the *nobile officium*, because it is a matter depending entirely on the construction of the words of the statute. And if we were to grant this power it might turn out that what we had done was after all of no value. It could not possibly shut the mouth of a purchaser or the debtor on a heritable bond from stating an objection that the trustee, the petitioner, had no title either to convey or discharge, as the case might be. That would be quite open hereafter, notwithstanding anything we might do in the way of granting the prayer of this petition. In short, the question, if it is to be tried at all, must be tried in a totally different form from this, and in a way which will bind the parties who may be interested. I am therefore for refusing the prayer.

LORD ADAM—I am of the same opinion. I never was able to understand the ground on which this petition was brought before us. The Court is in use to grant authority to sell to judicial factors, because they are officers of Court, and we also sometimes grant authority to sell in the case of gratuitous trustees, and so on, where they have power to come to us under statute. I am not aware of any other power we have to grant to anybody, whether a person appointed to wind up an estate, or any other private individual who may come to us, authority to sell property without completing a feudal title. I know of no precedent or authority for such a petition as this, and I entirely agree with your Lordship.

LORD M'LAREN—I understand that the property as to which we are asked to give power to sell is partly in the position which your Lordship has pointed out, in the hands of separate trustees, and partly vested in thecompany itself. The property acquired at the later period vests by statute in the company itself, and I suppose it is with reference to property so situated that the difficulty arises, because the company has now dissolved. The estate must be taken in some way from the company. Well, that raises the question between an intending seller and an intending purchaser. There are well-known means of trying the question whether the seller is able to give a good title to the purchaser, but the way of doing it is not by a summary petition. I agree with your Lordship that we have no power to make the title any better than it is in the existing state of the titles; we have no authority to grant such a power as is asked, or to put the trustee, for the purpose of realisation, in any better position as regards his ability to dispose of the subjects than he is under the authority given to him by the statute.

LORD KINNEAR—I am entirely of the same opinion. It is to be observed that the petitioner does not ask us for power to sell; all that he asks is that we should empower him, having sold, to give to his purchaser a disposition without completing a feudal title in his own person—that is to say, we are to decide in this petition, to which the purchaser is not and cannot be a party, that he is bound to accept such a title as the petitioner is in a position to offer him. I quite agree with your Lordship that it is impossible we could grant such a prayer as that. The petitioner can suggest nothing to show that he is, in making this application to the Court, in a different position from that of any other seller whose title for one reason or other happens to be possibly open to challenge. He is in the same position as any private person—no better and no worse; and therefore, as your Lordship pointed out, he is in this dilemma, he either has a good title to convey, and in that case he does not need our authority, or he has not a good title to convey, and in that case we are not in a position to give it.

The Court refused the petition.

Counsel for the Petitioner — Rankine. Agents—John C. Brodie & Sons, W.S.

Wednesday, November 26.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

ADAM *v.* J. & D. MORRIS.

Ship — Reparation — Shippers — Duty of Master to do what he can for Safety of Cargo—Liability of Owners.

A merchant shipped a cargo of oil-cake under a charter-party which exempted the owners from liability for accidents of navigation, even when occasioned by negligence of the master or other servants of the shipowners. After the vessel reached the port of discharge a quantity of water was let into the hold through the negligence of