Counsel for Pursuer (Respondent)—Anderson, K.C.—J. A. Christie. Agents—St Clair Swanson & Manson, W.S.

Counsel for Defenders (Appellants)—Munro, K.C.—Mair. Agent—D. R. Tullo, S.S.C.

Thursday, January 26.

SECOND DIVISION.

DICK'S TRUSTEES *v.* DICK.

Succession—Will—Construction—Expenses of Education.

A testator directed his trustees "to pay the expenses necessary for the education of my children; and it is my desire that my sons A. and J. should have a university education suitable to prepare them for whatever profession they may adopt."

A had graduated as a Bachelor of Medicine, and was in practice near Leeds. He was studying at Leeds University for an additional diploma in Public Health, which he could not enter for until he held his present degree and had been in practice for at least a year. He called upon the trustees to defray his expenses in connection with the Public Health degree.

Held that the trustees were not bound to pay these expenses, in respect that they were not incurred by A in preparing himself for the profession which he had adopted.

On 15th March 1910 Mrs Annie Buchanan Thomson or Dick and others, the testamentary trustees of the late John Dick, who resided at West Knowe, Airdrie, and died on 16th July 1901, *first parties;* and Alexander Dick, M.B., residing at Birstall, near Leeds, a son of the testator, *second party*, brought a Special Case to expiscate the testator's trust-disposition.

The testator, *inter alia*, directed his trustees—"(*Third*) To pay the expenses necessary for the education of my children; and it is my desire that my sons Alexander and James should have a university education suitable to prepare them for whatever profession they may adopt."

The Case stated, *inter alia*—"The elder son Alexander is a physician near Leeds, and was married on 5th October 1908. . . . The elder son is at present studying at Leeds University for an additional diploma in Public Health, which he could not enter for until he held his present degree and had been in practice for at least a year. This degree will be of advantage to him in his profession, and he has called on the first parties to defray the expenses connected therewith under the powers conferred on them by the third purpose. The first parties feel doubtful as to whether it is within their power to pay these. . . . The first parties *maintain* . . . that they are not entitled, under the third purpose of the settlement, to make any payments on behalf of a son for education after such son has entered the profession adopted by him, and that accordingly they are not entitled to pay on behalf of the second party the expenses connected with his Public Health degree. The second party maintains that he . . . is entitled to the expenses incurred by him in connection with his Public Health degree. . . ."

The following *question of law* was, *inter alia*, submitted—"Are the first parties bound to pay on behalf of the second party the expenses connected with his Public Health degree?"

Argued for first parties—The trustees were not bound to pay the expenses of the second party in obtaining this diploma. He was only entitled to the expenses of preparation for his profession. It was not part of his education for his profession to get this diploma, which was a post-professional qualification. He could not enter for it until he had been a full-fledged practitioner for a year.

Argued for the second party—Under his father's will he was entitled to such sums as were reasonably necessary to complete his education. This Public Health degree was of importance in enabling him to qualify himself for his profession. It was the natural termination of his education as a doctor to take this qualification. It was necessary in order that he might become a full-fledged doctor in public health.

At advising—

LORD JUSTICE-CLERK—Lord Dundas has prepared a judgment in this case, which is the judgment of the Court.

LORD DUNDAS—[*Read by the Lord Justice-Clerk*]—[*After dealing with questions as to which the case is not reported*]—. . . . The third and last question in the case does not appear to me to be attended with any difficulty. By the third purpose of his settlement Mr Dick directed his trustees to pay the expenses necessary for the education of his children, and added—"It is my desire that my sons Alexander and James should have a university education suitable to prepare them for whatever profession they may adopt." The case informs us that Alexander, who is a passed physician, "is at present studying at Leeds University for an additional diploma in Public Health, which he could not enter for until he held his present degree and had been in practice for at least a year. This degree will be of advantage to him in his profession, and he has called on the first parties to defray the expenses connected therewith under the powers conferred on them by the third purpose." The question put to us is whether or not the trustees are bound to comply with this request. I am of opinion that they are not. It seems to me that Alexander Dick has got beyond the stage of preparation for the profession of his adoption, and that the very conditions upon which alone he could enter for this diploma demonstrate that he is thereby excluded from the

conditions under which he could take benefit from his father's provision. The question will accordingly be answered in the negative.

The Court answered the question of law in the negative.

Counsel for First Parties—C. H. Brown. Agents—Webster, Will, & Co., W.S.

Counsel for Second Party — Chree. Agents—Graham Miller & Brodie, W.S.

HOUSE OF LORDS.

Monday, February 20.

(Before the Lord Chancellor (Loreburn), Lord Macnaghten, Lord James of Hereford, and Lord Shaw.)

KLEIN AND OTHERS (OWNERS OF THE "TATJANA") *v.* LINDSAY AND OTHERS (CARGO OWNERS).

(*Ante* December 7, 1909, 47 S.L.R. 177, and 1910 S.C. 231.)

Ship—Affreightment and Carriage—Seaworthiness—Onus.

"The *onus* of proving unseaworthiness is upon those who allege it. This is, of course, a sound doctrine; and it is none the less sound although the vessel break down or sink shortly after putting to sea. That is the principle of law. But the enunciation of that proposition does not impair or alter certain presumptions of fact, such presumptions, for instance, as those which arise from the age, the low classing or non-classing, the non-survey of ship or machinery, the refusal to insure, the laying-up, the admitted defects, and generally the poor and worsening record of the vessel, together with finally the break-down, say, of the machinery immediately, or almost immediately, on the ship putting to sea."

Circumstances in which *held* (*rev.* judgment of the First Division) that it lay with the owner to establish the seaworthiness of his vessel, the *onus* on the cargo owners who alleged unseaworthiness being displaced by the presumptions of fact.

This case is reported *ante ut supra.*

Lindsay and others, the defenders and reclaimers, appealed to the House of Lords. For a narrative of the facts see the opinion of Lord Shaw (*infra*).

At delivering judgment—

LORD CHANCELLOR—This is a case in which both the Lord Ordinary and the Inner House, not without doubts, have held that the steamship "Tatjana" was seaworthy when she sailed from Libau on 8th April, and upon that the order appealed from wholly rests. Your Lordships hesitate long before differing from any finding of fact concurred in by both Courts, and especially so when it hinges upon the credibility or effect of evidence given orally by witnesses. In the present instance nearly all the material evidence was given on commission. Still I hesitate to differ from learned Judges whose opinion carries so great an authority. I can, and do, almost entirely agree with them upon the actual facts, but I do not think that those facts point to a conclusion of seaworthiness.

If this ship was seaworthy, what occurred to her almost immediately after she left port is quite unaccountable, and it is the shipowner's business to account for it if he can in some way which shall displace the natural inference.

The "Tatjana" sailed on the 8th of April, and within a few hours her feed pumps broke down, with the result that the boilers had to be fed with sea water by means of the donkey pump. She met with bad weather and put in at Elsinore for repairs after suffering some damage both to ship and cargo.

Manifestly this occurrence called for explanation. In ordinary circumstances a ship which starts seaworthy on her voyage is not driven to feed her boilers with sea water in three or four hours. When the explanation given by the shipowner, who had all the information in his hands, is examined, it seems to me highly unsatisfactory. The immediate cause of the breakdown was that a pipe, forming part of the valve casing of the feed pumps, cracked. Was it sound when the voyage commenced? Upon that point a good deal of conflicting evidence was given. I greatly suspect that it was not sound. The Lord President found it difficult to answer this question with certainty, and his colleagues concurred in his opinion.

But assume that the pipe was sound when the ship sailed from Libau. The fracture put the after feed pump out of action. There was also a fore feed pump. Why did it not serve to feed the boilers with fresh water from the hot well? No really satisfactory answer was given. During a great part of the controversy it was asserted by the shipowner that the fracture of the pipe necessarily put both feed pumps out of action. Then it was discovered, or thought to be discovered, that this was not so. Upon which the owners of cargo naturally argued that if the fore feed pump did not work properly it must have been itself defective, and there was evidence in support of that view. No, replied the shipowner; it would have worked well enough if the engineer had put a blind flange on both the discharge and delivery side of the broken pipe, whereas he put it only on one side, for which piece of negligence the shipowner is not liable under the contract of carriage. After reading the evidence I am not at all satisfied that the fore feed pump was in efficient order when the voyage commenced.

Let me, however, again assume that it was in good order, and that its failure to do its work was due to the negligence of the engineer. There was still a third pump, the donkey pump, which, as I understand