Compensation Act 1906, which prevented the recovery of both compensation under the Act and damages independently of the Act. As the son had been paid compensation under the Act any further claim derived through him was barred. If the pursuer's claim was not derived from his son, then *Darling* v. *Gray & Sons* (*cit.*) was in point and excluded his claim. *Blain* v. *Greenock Foundry Company* (*cit.*), *Darlington* (*cit.*), and *Williams* (*cit.*) had no bearing on the present case.

LORD PRESIDENT—I am of opinion that the Lord Ordinary is right, for the reasons that his Lordship has stated. In consequence of an accident which befell him, the deceased workman, it is averred, had a claim against the North British Railway Company based on fault. He had also a claim against his employers for compensation under the Workmen's Compensation Act. He is entitled to recover on one or other of these claims, but not on both. He elected to claim compensation, and, as the Lord Ordinary says, he recovered the full amount of the compensation from his employers. From that moment any claim against the North British Railway Company, either by him or by others claiming through him, for the consequences of his accident was discharged. The North British Railway Company, for aught that appears, may require to pay Messrs Nimmo & Company all that they have paid to the deceased workman. It would be out of the question, therefore, to maintain that they are still liable to a claim at the instance of his representatives in consequence of the mishap for which he himself has claimed and recovered full compensation. I am therefore for adhering to the Lord Ordinary's interlocutor.

LORD MACKENZIE and LORD SKERRINGTON concurred.

LORD JOHNSTON was not present.

Counsel for the Reclaimer — Lippe—Aitchison. Agents — Menzies, Bruce-Low, & Thomson, W.S.

Counsel for the Respondents — Cooper, K.C.—E. O. Inglis. Agent—James Watson, S.S.C.

Tuesday, December 15.

FIRST DIVISION.

[Lord Anderson, Ordinary.

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

Reparation—Railway—Negligence—Relevancy—Boy Injured through Entering Lift at Railway Station.

An action of damages was brought against a railway company on averments that a boy, following a companion, who, with the consent of a servant of the company, was operating a luggage lift at a railway station, entered the lift, descended to the platform, and was injured, on ascending, by getting his foot crushed between the edge of the landing and the floor of the cage. The boy was lawfully present on the station at the time, but had no permission to use the lift. *Held* (*diss.* Lord Skerrington) that there being no sufficient averment of neglect properly to fence the lift, or of faulty construction of the lift, and it being irrelevant in these circumstances to aver that it was the duty of the company to exclude from the lift all except those authorised to use it, there was no relevant averment that the company had been negligent in the care of their property, and accordingly that the action against them should be dismissed.

William Wilson, coal merchant, Paisley, residing at Avonbank, Elderslie, Renfrewshire, as tutor to his pupil son William Wilson junior, residing with him at Avonbank aforesaid, *pursuer*, brought an action against the Glasgow and South-Western Railway Company, *defenders*, for £1000 sterling, as damages which he alleged had been sustained by the said William Wilson junior through the fault or negligence of the defenders or their servants at Elderslie Station on the defenders' line between Glasgow and Greenock.

The pursuer, *inter alia*, averred—"(Cond. 2) The said Elderslie Station consists of two platforms erected on the island principle, with a bridge crossing above the said platforms and railway lines. On the said bridge are the booking and stationmaster's offices. The entrance to the station is by means of a sloping way, and by a flight of stairs which lead on to said bridge. The said island platforms are reached by stairs leading from the said bridge. On either side of the said offices on the said bridge there is a hoist connecting the said bridge with each of the said island platforms. These hoists are for the purpose of conveying luggage and goods from the said bridge to the said island platforms. The said hoists, which are hydraulic, are worked by means of chains. The cage of the northmost hoist after mentioned is about 7 feet in height and about 5 feet in width. (Cond. 3) About 5·30 or 6 o'clock in the evening of Tuesday, 13th January 1914, the said William Wilson junior had gone to Elderslie Station to meet his father on the latter's return home from business. The said William Wilson junior was in the habit of going to the station almost every evening to meet his father, and on this occasion while waiting the arrival of the train from Paisley, he was standing, as he usually did, at the head of the stairs on the said bridge, and immediately opposite the booking office. (Cond. 4) As the said William Wilson junior was waiting for his father on the date mentioned a boy called James Stafford came forward and entered the northmost of the said hoists with a barrow and parcel on it, which he was taking down to the platform below, and the said William Wilson junior also stepped on to the cage of the hoist. They reached the platform all right, but on the return journey the right leg of the said William Wilson junior was caught and jammed between the floor of the cage and

the edge of the landing on the bridge as the cage approached the latter, and so severely injured that it had to be amputated considerably above the knee. (Cond. 5) The said accident was caused by the fault or negligence of the defenders or of their servants for whom the defenders are responsible. The cage of the hoist in question was not fitted with a door or gate which when shut would prevent the public entering the cage. It ought to have had such a door or gate, and the same ought to have been shut when the hoist was not in use or properly attended to. The upper gate which shuts off the well of the hoist was always automatically raised along with the cage, and closed when the said cage was lowered, and was thus open when the cage was at the top. Consequently the cage was left invariably open, and was in fact open on the occasion in question, viz., on the date and hour mentioned in Cond. 3. Further, the operating gear of the hoist was unprotected, and the hoist could be put in motion by any person caring to do so. It was the duty of the defenders or their servants to see that the public had no access to the said cage or the said hoists or to the operating gear thereof, and to prevent these being used by anyone except the defenders' servants. No precautions to insure this were taken. The defenders' servants were well aware that persons and young people were in the habit of going on said lift and using it, but they took no means to prevent this. The open access to the said cage and the unprotected condition of the operating gear constituted a danger to the public, and in particular to children. It is believed and averred that it was at the request of Michael Hayes, a porter in the defenders' employment, that the boy James Stafford, who was not a servant of the defenders, took the barrow and parcel down on the hoist on the said 13th January 1914. The said Michael Hayes on said occasion saw, or ought to have seen, the said William Wilson junior at or near the entrance to the cage of the said hoist, and ought to have warned the said William Wilson junior away from the said hoist. His failure to do so led to the said accident. Prior to the accident in question boys were in the habit of going down in the cage of the hoist with parcels for the defenders' servants, or of going down and returning for their own amusement, with the knowledge of the defenders or their servants, and in the latter case without their being challenged or forbidden to do so. The said hoist, and the freedom allowed by the defenders to young boys to make use of the same unattended by the defenders' officials, and the open condition of same as above stated, formed a dangerous attraction and a trap to young people. (Cond. 6) Further, the said hoist is so constructed as to also entail risk and danger to anyone using it. The front edge of the floor of the cage as it approaches the landing on the bridge is about 6 inches away from the wall of the well, while the landing itself projects beyond the face of this wall about 5½ inches or 5¾ inches. If an occupant of the cage allowed his foot to project, as the pursuer's son did, beyond the front edge of the cage it would be crushed just before the cage reached the level of the landing on the bridge. If, as the defenders should have seen was the case, the floor of the cage had fitted the well properly, and had come level with the bridge without any projection therefrom, the accident to the pursuer's son would not have happened. It is believed and averred that since the date of the said accident the said projection has been altered by the defenders with a view to rendering a repetition of such an accident unlikely."

The defenders averred, *inter alia*—"The hoist is of recent and usual construction, and is of modern and approved design. It is intended only for the conveyance of goods, and is in every way fitted for that purpose. The method whereby the upper gate is raised as the hoist rises is one usually found in such hoists, and is convenient and safe. The operating gear of the hoist is at the side, and to get at it it is necessary to put the hand through an opening in the framework of the cage. This is the universal method employed. The defenders' servants take every reasonable precaution to prevent the hoist being used by unauthorised persons. William Wilson junior had no right to enter the hoist, as he well knew, and in doing so he was trespassing. The station staff had warned him on previous occasions not to enter the hoist. Properly constructed stairs are provided for the use of persons descending from the bridge to the platform."

On 3rd November 1914 the Lord Ordinary (Anderson) approved of the issue proposed by the pursuer, and appointed a day for the trial of the cause.

Note.—"This is an action of damages at the instance of William Wilson, coal merchant, Paisley, as tutor to his pupil son William Wilson jun., against the Glasgow and South-Western Railway Company, and the pursuer craves damages from the defenders in respect of certain injuries which his son, the said William Wilson jun., sustained at the railway station at Elderslie, Renfrewshire, the property of the defenders. At the time of the injury, the pursuer states, his son was between seven and eight years of age.

"At Elderslie Station there are two platforms constructed on the island principle, with a bridge crossing above the platforms and the railway lines. The bridge is accessible to the public, and is indeed much used by the public, because upon it are the booking-office and the stationmaster's office. In addition to these there are hoists which are used for the purpose of transferring luggage from the bridge to the said island platforms. The boy was injured by one of the hoists in circumstances to which I shall advert in a moment. The averment of the pursuer regarding the hoist is that when the hoist is stationary at its upper point, namely, upon the bridge, there is no obstacle to prevent persons in the vicinity of the hoist from entering it if they choose.

"The circumstances under which the boy was injured are these—On the date in ques-

tion, the 13th of January of the present year, he was at the station, on the bridge, for the purpose of meeting his father, who was coming from Paisley by railway. He saw a boy, James Stafford, in the hoist, and about to operate the mechanism in order to cause the hoist to descend to the platform with some luggage. As there was nothing to prevent him, and no servant of the defenders took any objection to his going into the hoist, he went down with Stafford to the island platform. Shortly afterwards he returned in the hoist with Stafford to the bridge, and just as the hoist was coming to rest at the bridge the boy's right foot was caught between the platform of the hoist and a projecting portion of the bridge, and he sustained the injury for which damages are craved.

"The case which the pursuer makes against the defenders is this—He says that the boy was on the bridge and in the vicinity of the hoist with the rights at all events of a licensee. He says something more than this, to which I shall advert in a moment. But the case which he does make is that the boy being there with the rights of a licensee was allured or attracted by the unprotected hoist, that that allurement was a dangerous one, and that it was in consequence of these circumstances that he sustained the injury complained of. If that had been the pursuer's only case I think he has a relevant action, on the authority of the well-known case of *Cooke*, 1909 A.C. 229, in which the circumstances are, in my judgment, similar to those in this case. In that case the child who was injured was held to be at the turntable which occasioned the injury by the leave or licence or permission of the defenders, the Midland Railway Company, Ireland.

"But this case goes, in my judgment, further than *Cooke's* case. The pursuer, as I read the averments in the record, not only avers that the boy was in the vicinity of the hoist with the rights of a licensee, but he avers that he was in the hoist with the rights of a licensee, because what he says in two passages is this—'The defenders' servants were well aware that persons and young people were in the habit of going on said lift and using it, but they took no means to prevent this. And further down—'Prior to the accident in question boys were in the habit of going down in the cage of the hoist with parcels for the defenders' servants, or of going down and returning for their own amusement, with the knowledge of the defenders or their servants, and in the latter case without their being challenged or forbidden to do so.' Accordingly we have here a case going much further than the case of *Cooke*, because here we have an averment, which I must at this stage hold will be substantiated by evidence, that the defenders permitted or gave leave or licence to those boys to ride on this hoist for their own amusement.

"If that be so, the only other point is whether the pursuer has relevantly averred that this hoist was a dangerous machine. It is well settled that a licensee is entitled to be protected from danger which is known to the owner of the machine but which is concealed from the licensee. What the pursuer says about the hoist in condescendence 6 is this—He says that it was constructed in this way, that there was a space of some 6 inches between the floor of the hoist and the wall of the well while the hoist was in transit between the station platform and the floor of the bridge; and then he says that just as the hoist reached the level of the bridge the floor of the hoist engaged with a projection from the bridge into the well of the hoist, and he says that the lad's foot was caught between the floor of the hoist and this projection.

"I think it is a question for the jury whether that was not a trap in which the danger was concealed from a boy of the age of seven years, and whether the construction was such that the defenders ought to have anticipated that a boy using the hoist might project his foot into the space beyond the floor of the cage, and that when the foot was projected it might be caught and crushed when the floor of the cage engaged with the projection. I say it is for the jury to determine whether that was not a danger, whether it was not concealed from boys of tender years, and whether the defenders ought not, if they choose to allow their property to be used by boys for their amusement, to have taken steps to protect the boys from danger. I approve of the issue as amended."

The defenders reclaimed to the First Division, and argued—The pursuer had averred no relevant ground of action. The defenders owed no duty towards the pursuer. The proximate cause of the accident was the use of the lift by the boy Stafford, which it was not averred was unlawful. There was therefore no averment of the presence of a trap. A railway station was not a naturally safe place where the same standard of safety could be expected as elsewhere. There was no invitation extended to the pursuer, who at most was merely in the position of a licensee on the station premises; but in such a case the sole duty was to render the premises safe to a person using reasonable care, which the pursuer had not here used—*Latham* v. *R. Johnston & Nephew, Limited*, [1913] 1 K.B. 398, Farwell (L.J.) at 404, 408, Hamilton (L.J.) at 413. To infer liability in such circumstances there must be present (*a*) a danger, (*b*) something in the nature of an allurement—*Cooke* v. *Midland Great Western Railway of Ireland*, [1909] A.C. 229, Lord Macnaghten at 236, Collins (L.J.) at 241. Failing these elements the only duty was to obviate any concealed danger—*Burchell* v. *Hickisson*, 50 L.J., C.P. 101. In Scotland no higher duty lay towards a child licensee than to an adult—*Grant* v. *John Fleming & Company, Limited*, 1914 S.C. 228, Lord President at 232, Lord Mackenzie at 238, 51 S.L.R, 187; *Stevenson* v. *Corporation of Glasgow*, 1908 S.C. 1034, Lord Mackenzie at 1046, 45 S.L.R. 860; *Holland* v. *Lanarkshire Middle Ward District Committee*, 1909 S.C. 1142, Lord Kinnear at 1149, 46 S.L.R. 758.

Argued for the pursuer (respondent)—A

distinction fell to be drawn between property in an active and property in a passive condition — *i.e.*, between property which had or had not its natural features interfered with. Though in the former case many obligations arose, in the latter there was no duty on the owner to one who was on the property by mere permission. In this respect *Cooke* v. *Midland Great Western Railway of Ireland* (*cit. sup.*) was distinguished from *Latham* v. *R. Johnston & Nephew, Limited* (*cit. sup.*), inasmuch as in the former case the turn-table represented property in an active condition—Lord Macnaghten at p. 236, Lord Atkinson at p. 238, Lord Loreburn (L.C.) at p. 242. By this classification *Burchell* v. *Hickisson* (*cit. sup.*), *Grant* v. *John Fleming & Company, Limited* (*cit. sup.*), *Stevenson* v. *Corporation of Glasgow* (*cit. sup.*), and *Holland* v. *Lanarkshire Middle Ward District Committee* (*cit. sup.*) all fell under the head of property in a passive condition, whereas the present case concerned property in an active condition. In the latter circumstances an injured party might recover damages even though his own misconduct had contributed to the accident—*Lynch* v. *Nurdin*, [1841] 1 Q.B. 29, Lord Denham (C.J.) at 35, 36.

At advising—

LORD PRESIDENT—I cannot find in this record any relevant averments of fault on the part of the Railway Company. We have had a very elaborate citation of authority, and a great deal was said about other cases; I would prefer to direct my attention to this case and its facts.

At the spot in question the line of railway passes below the level of the land and the road on both sides of the railway, and a bridge spans the line at the station. On that bridge is found the booking office and the stationmaster's office. From that bridge there is found suitable access to the platform for foot-passengers, but in order to convey goods and parcels from the station to the road, and from the road to the station, there are two luggage lifts placed on the bridge. These luggage lifts when level with the bridge are open; when they reach the platform with goods or parcels the opening to the lift on the bridge is automatically closed.

On the occasion in question the unfortunate boy was, I assume, quite lawfully on the bridge—in other words, in the immediate precincts of a station for goods and passengers. It appears that it was the custom of the Railway Company to permit people who had goods or parcels to be taken to the station to work the luggage lift themselves and so convey the goods from the bridge to the station. On this occasion a lad named James Stafford came with a barrow and a parcel and was invited, it is said, by Hayes, a servant of the company, to take the goods from the bridge to the station. The lift was open. Stafford entered with his goods and operated the lift successfully to the bottom, and then came up again. Before he started, however, this boy, who was, I repeat, quite lawfully there, went into the lift and accompanied Stafford to the bottom. But, unfortunately, when they reached the top, coming back, the little boy had placed his foot outside the platform of the lift, and by consequence it was crushed between the platform and the projecting ledge at the bridge, which closed the gap between the platform of the lift and the wall of the lift.

Now the lift, it is noticeable, is not said to be of unusual construction, and, except in one minor particular, to which I shall presently allude, is not said to have been defective in any way in construction. The fault which is alleged against the company—a fourfold fault—is as follows—First, it is said that when the lift was at the level of the bridge it ought to have been closed by means of a gate so as to exclude anybody except the servants of the company or anybody authorised by them from using or entering the lift. That allegation of fault, however, is answered by the pursuer himself, who says that "the upper gate which shuts off the well of the hoist was always automatically raised along with the cage, and closed when the cage was lowered, and was thus open when the cage was at the top." And he does not go on to aver that this was an unusual or faulty arrangement. Indeed it seems to have been inevitable that when the lift was at the station level the opening to the lift on the bridge was closed, but when it was at the bridge level then it was open. However, that averment is really not relevant in the circumstances of the present case, because confessedly the opening to the lift must have been at this particular time free to anybody—for James Stafford had to get in with his goods.

The second ground of fault is that the operating gear was unprotected and the hoist could have been put in motion by anybody caring to do so. It is not said that that is an unusual or faulty method of construction, and once more it is not relevant, because it is not said that the little boy set the operating gear in motion at all, and I think we all know quite well that if you have access to the lift, access to the operating gear is never shut off.

But (third) it is said that the construction was faulty in respect of the interval between the edge of the platform of the lift and the wall of the lift. There was a gap of some six inches. Once more the answer is that, according to the pursuer's own averment, the method of construction was such that there must have been a gap there, and it is not alleged that there is anything unusual or faulty in that method of construction. It may quite well be that the gap has been obviated in some way since the date of this accident. I cannot comprehend how it could be so, but I assume that it was so. That, however, would not infer fault against the defenders unless it is alleged that the gap, such as it is, was unusual and faulty.

There is left, therefore, only one other ground of fault, and that is, that be it that the gateway was properly open, be it that the construction was without fault, nevertheless the defenders' company should have seen to it in some way that nobody was

allowed to enter this luggage lift except servants of the company and those who were authorised by them; and on the particular occasion in question it is alleged that the railway porter who authorised Stafford to take the goods down to the level of the station ought to have seen the boy, whom he had previously observed loitering about the station, entering the lift and prevented him doing so. Well, I do not think, if the lift was of the usual construction and not faulty in any way, that there is anything specially dangerous in the construction of the lift which should make it the duty of the Railway Company to see that nobody entered the lift except those authorised to use it. It is very difficult to conceive beforehand of any lurking danger connected with the lift, and, so far as I can see, the boy would have made his journey up and down, as other boys we are informed did, in perfect safety if he had not put his foot where his foot ought not to have been—beyond the edge of the lift. But that was not a danger which it was reasonable, in my opinion, for the defenders to have anticipated and provided against by enjoining their servants to see that nobody unless authorised persons entered the lift when it was going either up or down. In short, it appears to me that the defenders here have not been guilty of any negligence in not foreseeing the kind of danger which befell the boy and in not taking precautions to guard against a danger which I do not think they could reasonably anticipate.

I forbear using any of the expressions which are so common in the English cases, because frankly I do not understand them, such as "invitee" and "licensee." I am very well content with what Lord Justice Hamilton — *Latham* v. *R. Johnston & Nephew, Limited*, [1913] 1 K.B. 398, at p. 413—calls "the general rule," as old as the year 1773, "that a person who in neglect of ordinary care places or leaves his property in a condition which may be dangerous to another, may be answerable for the resulting injury, even though but for the intervening act of a third person"—to wit, Stafford in this case —"that injury would not have occurred." If I had thought that the company here were guilty of lack of ordinary care by leaving their property in an unsafe condition, I should have agreed with the Lord Ordinary and sent this case to a jury; but it appears to me that it falls altogether outside the rule which was laid down—and altogether outside the facts which were found—in the case of *Cooke* v. *Midland Great Western Railway of Ireland*, [1909] A.C. 229, pressed upon us by Mr Cooper, where I think Lord Macnaghten very accurately expresses the general conclusion in non-technical words thus—"Persons may not think it worth their while to take ordinary care of their own property, and may not be compellable to do so; but it does not seem unreasonable to hold them, if they allow their property to be open to all comers, infants as well as children of maturer age, and place upon it a machine attractive to children and dangerous as a plaything, they may be responsible."

In this case I think the company were not lacking in ordinary care of their property. I cannot see what better care they could have taken of it than they did take. Nor did the company place upon their property a machine that was attractive to children or dangerous as a plaything to children; and whilst therefore I accept all the law which the Lord Ordinary lays down in the very careful opinion appended to his interlocutor, my answer is that it has no application to the facts of the case before us. These facts, as disclosed by the pursuer, set out no relevant ground of liability on the part of the defenders, and therefore I am for recalling the interlocutor of the Lord Ordinary and dismissing the action.

LORD SKERRINGTON—I agree with your Lordship that we have had a large citation of authorities, including the well-known case of *Cooke*, [1909] A.C. 229, none of which have any bearing upon the facts of the present case. The present case seems to be a much clearer and stronger one for inferring liability against the defenders if the facts averred can be proved, than was the case of *Cooke* to which I have referred. The only difficulty, as it seems to me, arises from the fact that the pursuer has alleged some four or five distinct grounds of fault, and has thereby confused what ought to have been a simple issue. The salient fact is that the defenders kept in their passenger station a piece of mechanism suitable for raising and lowering luggage, but dangerous when used by passengers and especially by young children. We know from experience how frequently accidents occur even in the case of lifts intended for raising and lowering human beings from persons putting out a hand or an arm and having the limb crushed. The danger is one which is obvious *a priori* wherever there is a mechanism with a stationary and a moving part. The next important fact is that this child of seven was injured exactly in the way in which one would expect that a child of his age would be hurt if he travelled by himself in a lift, and especially in a lift which was not intended for carrying passengers. He put his foot outside the floor of the lift with the result that it was crushed against a projecting portion of the platform. If anyone had been told beforehand that a child of seven was going to amuse himself by travelling up and down a luggage lift at a railway station he would have said that that was an improper thing either for a child to do or for anyone to allow the child to do, because the child might probably get his foot crushed —exactly as it was crushed. That statement shows that when the case comes to trial the defenders will have a plausible defence, viz., contributory negligence. It may well be that the child ought to have known that he had no business to make a plaything of a lift, and that he was exposing his foot to peril by putting it outside the floor of the lift, but we have heard no argument on that topic because counsel on both sides recognised quite properly that if there was a relevant case of fault averred against the defenders the question of con-

tributory negligence was one of circumstances which would arise at the trial and upon which the jury would then have to form their judgment.

Accordingly the only question which we are called upon to consider at this stage is whether it is relevantly averred that the defenders were in fault for permitting this young child to be upon the lift on the occasion in question. The pursuer alleges that "it was the duty of the defenders or their servants to see that the public had no access to the said cage or to the said hoists or to the operating gear thereof, and to prevent these being used by anyone except the defenders' servants. No precautions to ensure this were taken." According to my own experience at railway stations the public are strictly excluded from luggage hoists and are not allowed to use them. The pursuer undertakes to prove that the system adopted by the defenders at this particular railway station was dangerous, and that the only safe method is to allow no one to operate a luggage hoist except one of their servants—all passengers, and particularly all children, being strictly excluded. I do not see why the pursuer should not be entitled to prove that his accident was due to this dangerous system, leaving the defenders to prove if they can that he was guilty of contributory negligence. But the pursuer goes further, and offers to prove that the defenders' servants allowed young boys like himself to go up and down in the hoist for their own amusement. If that averment is true, such of the defenders' servants as knew of the practice incurred a grave moral responsibility, and as at present advised I do not see why they may not also have incurred a legal responsibility, and one which would result in liability on the part of the Railway Company. The concluding averment of cond. 5 is that "the said hoist, and the freedom allowed to young boys to make use of the same unattended by the defenders' officials, and the open condition of the same as above stated, formed a dangerous attraction and a trap to young people." That is rather cumbrous language, but what is intended to be averred is clear enough, namely, that this boy who had been in the habit of frequenting this station almost every evening for the purpose of meeting his father had come to know that boys and others were allowed to use this hoist without objection by the Railway Company's servants, that it was perfectly open to go into the hoist—there being no door to it—and that accordingly he was attracted to enter the hoist and to go up and down—a thing which any child would enjoy doing. The question of law, to my mind, is whether the defenders unnecessarily and unreasonably exposed this child to the danger of losing his limb, and I respectfully think that the pursuer has stated a relevant case for inquiry before a jury.

LORD HUNTER—I concur with your Lordship in the chair in holding that the pursuer, in the circumstances of this case as set forth in his record, has not made out a relevant case against the defenders. I also agree with the reasons which your Lordship has given in detail for so holding.

LORD JOHNSTON and LORD MACKENZIE were not present.

The Court recalled the interlocutor of the Lord Ordinary and dismissed the action.

Counsel for the (Defenders) Reclaimers—Macmillan, K.C.—D. Jamieson. Agents—John C. Brodie & Sons, W.S.

Counsel for the (Pursuer) Respondent—Cooper, K.C. — Armit. Agents — Lister Shand & Lindsay, S.S.C.

HOUSE OF LORDS.

Thursday, December 3, 1914.

(Before Earl Loreburn, Lord Atkinson, Lord Parker, Lord Sumner, and Lord Parmoor.)

INLAND REVENUE *v.* WALKER.

(In the Court of Session March 6, 1913, 50 S.L.R. 470, 1913 S.C. 719.)

Revenue — Valuation — Increment Value Duty—Site Value on Occasion of Sale—"Like Deductions" — Finance (1909 - 10) *Act* 1910 (10 *Edw. VII, and* 1 *Geo. V, cap.* 8), *secs.* 2 *and* 25.

A tenement was valued, under the Finance (1909-10) Act 1910, as at 30th April 1909, the original total value £400, the original assessable site value £20, £380 being the deduction made for buildings. In June 1911 the property was sold by a widow to her brother-in-law, a man up in years, who had long lived and carried on a draper's business there. The price paid was £650. Nothing admittedly had occurred calculated to affect the value of the buildings or the site since April 1909. The Inland Revenue claimed increment value duty on £250, viz., on the £650 less the £380 which had been allowed for buildings in the original valuation, and less £20, the original assessable site value. A referee being of opinion that the property had not altered in value since April 1909, but that the figures then taken were too low, made a new valuation, the total value £470, the deduction for buildings £400, the assessable site value £70. As regarded the price obtained, he, purporting to act under section 25 4 (*d*), deducted £180, which he stated must be attributed to some personal consideration, bringing out the occasional site value at £70.

Held (1) that the case being ruled by the English case of *Lumsden* v. *Inland Revenue* (*v. infra*) the deduction for buildings on the occasion of sale was £400, the "like deductions" in section 2(2) (*a*) meaning deductions ascertained by the same method as in the original valuation—*i.e.*, by obtaining a gross value and total value by valuation and