Lordship has expressed views as to what plant ought to be considered as "machinery for producing or transmitting first motive power" with which I concur. I also agree as to stand-by plant. In the special circumstances, and looking to the complicated nature of the machinery, I think that it may be left to the parties to adjust figures, but I do not think that it ought to be understood that we shall always follow a similar course where there is as manifest a failure to present a case on proper lines as there is here.

In the matter of the boilers I concur with Lord Salvesen.

LORD SALVESEN—I desire to associate myself with the views expressed by Lord Cullen and Lord Hunter on the subject of the findings that ought to have been made here by the Committee. As regards the machinery, I think the Committee did not treat the matter as they ought to have done. It was their duty to have made findings of fact in regard to each machine, and we would then have known what their view was both in fact and in law with regard to each machine, and we would have been able to consider whether their view was right or wrong instead of having to consider these questions entirely independently upon the evidence. The course adopted by the Committee is not in accordance with their duty in presenting a case for review by this Court, and we certainly will not encourage the method being followed in the future. If Valuation Committees persist in taking a course of that kind to save themselves trouble it may result in our holding the old figures to be the real figures, and that the assessors will have to suffer.

In the present case we realise that there was a great mass of detail which involved partly questions of law and partly questions of fact, and that in the circumstances it was a matter of more than usual difficulty for the Committee to express their findings in the usual way; that is the reason why this Court has gone into the matter item by item as we otherwise would not have done.

With some observations made by Lord Hunter on the question of profits I do not concur. I think the valuation of heritable subjects is a matter that does not ordinarily depend upon profits. If a business is carried on in fine premises the value of the premises will not be reduced by the fact that owing to bad management the business is not profitable. Similarly, if a business is successful in less valuable premises through the energy and enterprise of the proprietors, in my opinion the value of the heritage as such is not thereby increased.

There are cases—and I think it is to these that special reference has been made in the House of Lords—where the whole or the main profits of a business depend upon the situation and character of the heritable property in which the business is carried on. In such cases the profits may very properly enter into the question of valuation. But in ordinary manufacturing businesses whose success depends mainly upon skill in buying and selling, trade connection, goodwill, and economy in management, it does not seem to me that the fact that one particular business, or even several businesses, have been making large profits for a few years can enter into the question of the valuation of the heritage, which after all, although it is technically open to be reviewed year by year, is intended to be more or less a permanent figure until some substantial change is demonstrated. I thought it right to make these additional remarks because otherwise it might have been thought that I agreed with my learned colleague in the application which he makes of the various dicta which he has cited.

The Court were of opinion that the determination of the Valuation Committee was wrong, and that the valuation should be reduced to £6390, arrived at by taking £3600 as the annual value of the buildings, £480 as the annual value of the railways, £60 as the annual value of the land, and £2250 as the annual value of the plant and machinery, being 7½ per cent. on £30,000, the capital value thereof.

Counsel for the Appellants—Macmillan, K.C. — Wilton, K.C. — Burn - Murdoch. Agents—Fraser, Stodart, and Ballingall, W.S.

Counsel for the Assessor—Dean of Faculty (Constable, K.C.)—W. T. Watson—Aitchison. Agents—Wallace & Begg, W.S.

Friday, February 25.

FIRST DIVISION.

AITKEN'S TRUSTEES v. AITKEN AND OTHERS.

Process—Special Case—Minors and Pupils—Appointment of Curator ad litem to Parties in Minority and Pupilarity.

Application for the appointment of a curator *ad litem* to parties to a special case, some of whom were in minority and others in pupilarity, *granted.*

James Ballantyne and others, as trustees under a disposition and assignation and two deeds of assignation and declaration of trust by the late James Aitken, shipbroker, Glasgow; the said James Ballantyne and others, as trustees under the trust-disposition and settlement of the said James Aitken; and the other parties interested in the estate of the said James Aitken under the above-mentioned deeds, brought a Special Case for the opinion and judgment of the Court.

On 25th February, in the Single Bills, counsel for the eighth parties, James Rupert Miles and Olive Joyce Reynolds, who were both in pupilarity, moved the Court to appoint a curator *ad litem* to them.

On 2nd March, in the Single Bills, counsel for the fifth parties, Bettie Florence Aitken, Natalie Aileen Aitken, Marjorie Aitken, Lionel Aitken, and Andrew Aitken, some of whom were in minority and others in

pupilarity, moved the Court to appoint a curator *ad litem* to them.

Counsel for the eighth parties referred to *Ward* v. *Walker*, 1920 S.C. 80, 57 S.L.R. 121, and *Macdonald's Trustee* v. *Medhurst*, 1915 S.C. 879, 52 S.L.R. 698.

The Court appointed a curator *ad litem* in both cases.

Counsel for the Eighth Parties—Hunter. Agents—Campbell & Smith, S.S.C.

Counsel for the Fifth Parties — King. Agents—Arch. Menzies & White, W.S.

HOUSE OF LORDS.

APPEAL COMMITTEE.

Thursday, February 24.

(Before Viscount Cave, Lords Dunedin, Atkinson, Shaw, and Moulton).

NORTH BRITISH RAILWAY COMPANY *v.* MAGISTRATES OF EDINBURGH.

(In the Court of Session, March 12, 1920, 57 S.L.R. 344, 1920 S.C. 409).

Process — Appeal to House of Lords — Competency—Interlocutory Judgment of Inner House—Leave to Appeal Granted—Subsequent Final Judgment by Lord Ordinary.

In an action against the magistrates of a burgh for relief from certain burdens and for recovery of sums paid, the First Division on 12th March 1920 granted the decree of declarator craved and remitted the cause to the Lord Ordinary to dispose of the petitory conclusions of the summons. Leave to appeal was granted. No appeal having been presented, the pursuers (after notice to the defenders, who did not appear) obtained decree from the Lord Ordinary for the sum sued for with expenses. Both the principal sum and the pursuers' expenses as taxed were thereafter paid by the defenders. On 24th February 1921 the defenders presented a petition and appeal against the interlocutor of 12th March 1920.

The Committee *dismissed* the appeal as incompetent.

On 12th March 1920, in an action at the instance of the North British Railway Company against the Magistrates of Edinburgh, the First Division, on a reclaiming note, found and declared that the defenders were bound in all time coming to relieve the pursuers and their successors in the subjects mentioned in the summons from all burgh assessments and other burdens therein specified, and *quoad ultra* remitted the cause to the Lord Ordinary to dispose of the petitory conclusions. On 19th March 1920 the defenders applied for and obtained leave to appeal to the House of Lords. No appeal having been presented, the pursuers enrolled the cause before the Lord Ordinary and on 1st June 1920 (after notice to the defenders, who did not appear) moved for and obtained decree with expenses. Thereafter the pursuers' account was taxed in presence of the agents for both parties, and the sum decerned for, and the pursuers' expenses as taxed, were duly paid by the defenders.

On 24th February 1921 the defenders presented a petition and appeal against the interlocutor of 12th March 1920. The pursuers presented a petition craving that the appeal should be dismissed as incompetent "because the interlocutor of the First Division of 12th March 1920 being an interlocutory judgment is not now appealable, inasmuch as a subsequent interlocutor of 1st June 1920 pronounced in the cause by one of the Lords Ordinary . . . disposing of the remaining merits of the case and of expenses was not reclaimed against in terms of the Act 6 Geo. IV, cap. 120, section 18, and has in consequence now become the final interlocutor disposing of the whole merits of the cause, and is no longer subject to review by the Court of Session in Scotland or by your Lordships' House."

At the hearing before the Appeal Committee the agents for the appellants argued that the appeal was competent, and cited *Downe, Bell, & Mitchell* v. *Pitcairn and Others*, 1829, 3 W. & S. 472.

The agent for the respondents maintained that where, as here, the interlocutory judgment of the First Division had been followed by a subsequent interlocutor in the Outer House exhausting the cause the appeal was incompetent. The case of *Downe*, relied on by the appellants, was distinguishable, as the Journals of the House (vol. lvi, 1824, p. 119, see also p. 461) showed that at the time the appeal was presented, viz., 29th March 1824, the last interlocutor in the case was that of the Second Division, dated 11th March 1824, and that the subsequent interlocutor of Lord Mackenzie, dated 22nd May 1824, and that of the Inner House adhering thereto, dated 22nd June 1824, were both pronounced after the appeal had been presented. In *Downe's* case therefore the appeal had not been taken *after* but *before* the final decision of the cause. The headnote was misleading.

The Committee dismissed the appeal as incompetent.

Agents for the Pursuers and Respondents — James Watson, S.S.C., Edinburgh — Lewin, Gregory & Anderson, London.

Agents for the Defenders and Appellants —A. Grierson, S.S.C.—Beveridge & Company, Westminster.