Tuesday, March 20.

FIRST DIVISION.

BUTE EDUCATION AUTHORITY *v.* GLASGOW EDUCATION AUTHORITY.

School — Education of Pauper Children — Children Boarded out in Education Areas other than their Own—Right of Area Providing Education to Relief — "Children whose Parents are Resident outwith the Education Area in which the School is Situated" — "Parent"—Education (Scotland) Act 1918 (8 *and* 9 *Geo. V, cap.* 48), *sec.* 10.

The Education (Scotland) Act 1918 enacts—Section 10—"Where an Education Authority . . . provide and maintain a school, not conducted for profit, which is recognised by the Department and is attended by children whose parents are resident outwith the education area in which the school is situated, there shall be paid in each year to that authority . . . out of the education fund of each education area in which any such parents are so resident a sum equal to the cost of the education of such children. . . ."

Certain pauper children who had become chargeable to a parish were boarded out by the Parish Council with persons resident in an education area other than that of the parish to which the children belonged. The persons with whom the children were boarded acted as their guardians and were paid by the Parish Council a certain sum annually for the maintenance, clothing, and medical care of the children who attended schools in the areas where they were boarded. *Held* that the persons with whom the children lived, and not the Parish Council, were the "parents" of the children in the sense of section 10 of the Education (Scotland) Act 1918, and that therefore the section did not apply to any of the children in question. *Held*, accordingly, that a claim made by the area in which the school attended by the children was situated for the expense of the education provided, based upon section 10 of the Act of 1918, against the Parish Council could not be maintained.

M'Fadzean v. *Kilmalcolm School Board*, 1903, 5 F. 600, 40 S.L.R. 440, *distinguished.*

The Education Authority of the County of Bute and others, *first parties*, and the Education Authority of the Burgh of Glasgow, *second party*, presented a Special Case for the opinion and judgment of the Court as to the liability of the second party for the cost of the education of pauper children boarded out by the Parish Council of Glasgow in education areas other than that of the Education Authority of Glasgow.

The Case stated, *inter alia*—"2. By section 10 of the Education (Scotland) Act 1918 (8 and 9 Geo. V, cap. 48) it is provided as follows:—'Where an Education Authority or any other governing body provide and maintain a school not conducted for profit, which is recognised by the Department, and is attended by children whose parents are resident outwith the education area in which the school is situated, there shall be paid in each year to that authority or to that governing body, as the case may be, out of the education fund of each education area in which any such parents are so resident a sum equal to the cost of the education of such children (including in such cost repayment of and interest on loans for capital expenditure) after deduction (*a*) in the case of a school maintained by an education authority of income from all sources of income other than education rate, and (*b*) in the case of a school maintained by any other governing body of income from grants made by the Department and from fees—provided that no payment shall be made under this section out of the education fund of any education area in respect of any child for whom it is shown to the satisfaction of the Department that accessible accommodation is available in a suitable school provided within that area, regard being had to all the circumstances including the religious belief of his parents.' None of the schools mentioned in this Case is conducted for profit and all of them are recognised by the Department. 3. Section 33 (3) of the Education (Scotland) Act 1918 provides that 'the Education (Scotland) Acts 1872 to 1914 and this Act may be cited as the Education (Scotland) Acts 1872 to 1918 and shall so far as is consistent with the tenor thereof be construed together as one Act.' Section 1 of the Education (Scotland) Act 1872 (35 and 36 Vict. cap. 62) provides that 'In this Act the following words and terms shall have the meanings hereby assigned to them, viz. . . . "Parents" shall include guardian and any person who is liable to maintain or has the actual custody of any child.' Section 34 of the Education (Scotland) Act 1908 (8 Ed. VII, cap. 63) provides that 'In this Act the following words and expressions have the meanings hereinafter assigned to them unless such meaning is inconsistent with the context (that is to say): . . . Except in section 6 of this Act, the expression "parent" includes guardian and any person who is liable to maintain or has the actual custody of the child or young person; and in section 6 the expression "guardian" includes any person as aforesaid.' It is the duty of every Education Authority to provide educational facilities for children within its area, and it is the duty of every parent (under section 7 (1) of the Education (Scotland) Act 1908) to provide efficient education for his children who are between 5 and 14 years of age. Performance of the last-mentioned duty is in certain circumstances excused, and it is in particular provided by section 11 of the Education (Scotland) Act 1883 (46 and 47 Vict. cap. 56) that 'Any of the following reasons shall be a reasonable excuse within the meaning of sections seventy and seventy-two (section seventy-two being now repealed) of the Education (Scotland) Act 1872, and of the two immediately preceding sections of this Act' (which

are also now repealed), 'namely —. . . (*b*) That there is no public or inspected school which the child can attend within three miles, measured according to the nearest road, from the residence of such child.' 4. Large numbers of children who become chargeable on the poor rates in parishes of an industrial character are boarded out by the Parish Councils of these parishes with householders in country parishes. At the present time the number of children of school age who are so boarded out in the parishes within the education areas of the first parties by the Parish Councils of the parishes of Glasgow and Govan is about 2000. The Parish Councils by whom the children are boarded out pay the said householders (who are referred to as the 'guardians' of the children) for the maintenance, clothing, and medical care of the children, at the average rate of £28 per child per annum. The 'guardians' are subject to the supervision and control of, and are in fact supervised and controlled by, the Parish Councils. . . On reaching school age the said children are educated in schools provided and maintained by the first parties. 5. The circumstances of the foresaid children, so far as dealt with in this Special Case, vary as between one case and another, but all the cases are within one or other of the following categories—(1) children who were orphaned prior to the date of chargeability; (2) children whose natural parents (or longer lived natural parent) were (or was) resident at the date of chargeability within the education area of the second party and who became orphans subsequent to the date of chargeability; (3) children whose natural parents (or surviving natural parent) were (or was) resident at the date of chargeability within the education area of the second party, and who have been deserted by their natural parents; and (4) children whose natural parents (or surviving natural parent) were (or was) resident at the date of chargeability within the education area of the second party, and who have been taken away from their natural parents (or surviving natural parent) by the Parish Council for reasons such as drunkenness, neglect, immorality, or insanity of the natural parents. In all the cases above mentioned the children are paupers and remain chargeable for poor law purposes to the Parish Council by which they are boarded out. Variations also exist in relation to the facts of residence of the natural parents during the period while the children are boarded out. . . . 6. The Parish Councils of the parishes of Glasgow and Govan (to which the children dealt with in this Case are chargeable) have their principal offices and administer the poor law within the education area of the second party. The Parish Council of Glasgow are proprietors of houses situated at Kirn and Dunoon, within the area of the Education Authority of the county of Argyll, and are assessed for education rate within that county. The Parish Council of Govan are tenants of a house called Stewart Hall, situated near Rothesay, within the area of the Education Authority of the county of Bute, and are assessed for education rate in that county. 7. The second party have provided and maintain within their area schools in which there is accommodation available for all the children with whom this Case is concerned. In all instances where the natural parents reside in Glasgow such schools are situated within three miles of their residence in Glasgow. Further, their schools are within three miles of the principal offices of the said Parish Councils. Such schools are not situated within three miles from the place where any of the children are at present *de facto* in residence. 8. Questions have arisen between the parties as to their respective liability for the cost of education of all or any of the foresaid children in terms of section 10 of the Education (Scotland) Act 1918. 9. The first parties maintain that the word 'parents' occurring in the said section 10 means, and is restricted in its meaning to, the natural parents of the said children if the natural parents are or if either of them is in life, and alternatively that the word 'parents' means, and is restricted in its meaning to, the Parish Council to which the said children are chargeable. They further maintain that in the case of orphan children the word 'parents' means, and is restricted in its meaning to, the Parish Council to which the said children are chargeable. They further maintain that the expression 'resident outwith the education area in which the school is situated' occurring in the said section 10 of the 1918 Act means, and is restricted in its meaning to, *de facto* residence. They further maintain that a Parish Council must be regarded as resident within the area for which it administers the Poor Law. They therefore contend that liability for payment of the cost of education of the foresaid children rests on the second party in all cases (*a*) where the children are orphans, and that whether the longer-lived natural parent has died resident (1) within the area or (2) outside the education area of the second party, (*b*) where the place of actual residence of the natural parents or parent (if in life) is unknown, (*c*) where the natural parents (or surviving natural parent) are confined in prison or detained in an asylum, and (*d*) where the natural parents or parent remain resident within the education area of the second party. In cases where the natural parents or parent (being still in life) have made a change of residence, and this is known, they contend that liability rests on the second party for a proportion of the cost of the education of the said children in any financial year, corresponding to the proportion borne by the duration of residence in that year of the natural parents or parent within the education area of the second party to the whole of that financial year. The second party maintain that they are not liable for payment of the cost of the education of any of the children referred to in the Case on the ground that accessible accommodation is available for them in suitable schools within their area. They further maintain that both as regards children whose natural

parents are (or the surviving natural parent of whom is) in life, and also as regards orphan children, the 'guardians' with whom they are boarded out are their parents within the meaning of said section, and that in any event the Parish Council to which such children are chargeable are not their parents within the meaning of said section, and that the second party are under no liability for the payment of the cost of the education of the children. Should it be held that the Parish Councils to which such children are chargeable are their parents within the meaning of said section, the second party maintain that a Parish Council resides within the meaning of said section in any area in which it owns or occupies heritable property. They also contend that if it be held that the word 'parents' means the natural parents of the said children, section 10 does not apply in the case of parents resident outwith their area, and that as regards parents resident within their area they are under no liability in respect that accessible accommodation is available in suitable schools within their area."

The *question of law* was — "Where a child becomes chargeable on the poor rate in the parish of Glasgow or Govan and is boarded out by the Parish Council at a house within the education area of one of the first parties, and where the natural parents or last surviving natural parent of the child predeceased the date of chargeability or were (or was) resident at the date of chargeability within the education area of the second party, does liability for payment of the cost of education of the child rest in whole or in part on the second party, in terms of section 10 of the Education (Scotland) Act 1918? . . ."

[Here followed an enumeration of various cases in which the question might arise.]

The following authorities were cited:—*By the First Parties*—The Custody of Children Act 1891 (54 and 55 Vict. cap. 3); Stroud's Judicial Dictionary, *s.v.* "Actual" and "Residence"; Maxwell on Statutes, pp. 75 and 76; *M'Fadzean* v. *Kilmalcolm School Board*, 1903, 5 F. 600, *per* Lord Low (Ordinary) at pp. 605 and 610, and Lord President Kinross at p. 611, 40 S.L.R. 440; *School Board of Glasgow* v. *Parish Council of Glasgow*, 1916 S.C. 26, 53 S.L.R. 57; *Jones* v. *Scottish Accident Insurance Company*, (1886) 17 Q.B.D. 421. *By the Second Party*—The Education (Scotland) Act 1872 (35 and 36 Vict. cap. 62), sec. 26; *School Board for London* v. *Jackson*, (1881) 50 L.J. (M.C.) 134; *Macdonald* v. *Lamont*, 1892, 19 R. (J.) 41; *School Board of Glasgow* (*cit.*); *Southwark Union* v. *London County Council*, (1910) 2 K.B. 559, *per* Lord Alverstone, C.J., at pp. 571 and 572; *Gateshead Union* v. *Durham County Council*, (1918) 1 Ch. 146.

At advising—

LORD PRESIDENT — The point on which the answer to the question in this case turns is not clearly brought out in the printed contentions of parties, and at the commencement of the argument it seemed doubtful whether the matter in dispute did not involve an administrative problem which it would be for the Education Department to solve under the powers given to it by the proviso in section 10 of the 1918 Act. But as the discussion proceeded it became clear that the real question on which the case depends is whether section 10 applies at all to any of the classes of boarded-out pauper children to which the case refers.

It is necessary to bear in mind that among the important changes in the educational system of the country projected by the Act of 1918 the school age was to be raised to fifteen (section 14), and intermediate and secondary education were made integral parts of the system in the same way as primary education. Hence the heavy obligation placed on the new education authorities to provide throughout their respective areas primary, intermediate, and secondary education in day schools — an obligation which was accompanied by a power to support schools in which fees are charged (section 6). The practical difficulties in the way of making this complex educational machinery available and accessible to all children within each area are obvious. Under the system of secondary education prevailing prior to the passing of the Act it was not uncommon that children living in one school board district attended an intermediate or secondary school provided and maintained by the school board of another district. The result was to relieve the school fund and the rates of the former at the expense of the latter. A remedy was provided by section 17 (1) of the Act of 1908, and the provisions of that enactment are reproduced with some modifications in section 10 of the Act of 1918. The provisions of section 17 (1) of the Act of 1908 were not referred to at the debate, and we heard nothing of either the history or the practice in this matter. But it may be useful to refer to the memorandum of the Department on section 17 of the Act 1908 (and particularly to paragraph 9 thereof), which forms appendix 21 of the 1911 edition of Mr Graham's Manual of the Education Acts. The mischief thus sought to be remedied is the interference with the administrative and fiscal independence of two Educational Authorities administering and financing separate areas of their own, which results from parents (who live and pay rates in one area) sending their children to a school provided and maintained in another area by the Education Authority administering it. The remedy provided both in the Act of 1908 and in the Act of 1918 is to make the Authority of the former area debtor to the Authority of the latter in a sum equal to the cost of the education of such children.

The children concerned in this case are pauper children who have become chargeable to the parishes of Glasgow and Govan, and who are boarded out by the Parish Councils of those parishes with persons residing in various localities in Scotland situated in education areas other than the area of the Education Authority of Glasgow. The children attend provided schools in the respective areas in which they live

in family with those persons. In order to constitute a claim under section 10 of the 1918 Act by the Education Authorities of the respective areas in question against the Education Authority of Glasgow, it is necessary for them to make out that their provided schools are being "attended by children whose parents are resident outwith the education area in which the school is situated." In particular, they have to make out, with reference to the statutory definition of the word "parent," that the persons with whom the children are boarded are *not* "parents" of the children within the meaning of section 10. Subject to context "the expression 'parent' includes guardian, and any person who is liable to maintain, or has the actual custody of, the child or young person"—1872 Act, section 1; 1908 Act, section 34.

It has to be kept in view that in the system of enforced education established by the Education Acts compulsion is applied not to the children but to their "parents"—1872 Act, section 70; 1908 Act, section 7; 1918 Act, section 14 (1). Every child, in short, must (if the system is to work) have "parents" within the meaning of the Act, and among these "parents" there must anyhow be one in such a position with regard to the child as to be able to discharge the responsibility of sending the child to school. I do not myself doubt that a destitute and deserted child (whether its natural parents are alive or not) whom no Samaritan has rescued from the streets finds a "parent" in the parish council. But even a natural parent may find it expedient to commit the care and charge of a child to someone other than himself or his own servants, or to board it in some other family establishment than one maintained by himself, or even in some institution. The head of such establishment or institution will in general have what the statutory definition calls the "actual custody" of the child—by which I understand to be meant the *de facto* custody, not necessarily as matter of any legal right—and will become the "parent" of the child, entitled and bound under the Education Acts to send the child to school in the area in which he resides. It is no doubt assumed in all this—surely a legitimate assumption—that children of school age do not reside in accommodation provided by themselves, but live in the residence of that one of their statutory "parents" in whose care and charge they are as children. In short, a child resides where that one of its "parents" is resident.

The persons with whom the pauper children referred to in this case are boarded out are householders, and reside in the education areas in which the boarded-out children go to school. The arrangements made between them and the Parish Councils of Glasgow and Govan are fenced with many conditions and regulations, but the contract remains essentially one for board and lodging of the child in family, not of service, as in *M'Fadzean* v. *Kilmalcolm School Board*, 5 F. 600. Some of the Education Authorities who provide the schools attended by these boarded-out pauper children may have reason to complain that the school population of their area is unduly increased beyond the standard set by the local birth rate, but the house property in which the children live in family with their statutory "parents" continues to return to them its annual crop of rates, and they are bound to provide the statutory educational facilities for all children living in their area without discrimination between native children, adopted children, or boarded children.

My opinion therefore is that the first parties have failed to establish that the "parents" of these boarded-out children within the meaning of section 10 are resident outwith their education areas, and I think we should answer the questions by finding that section 10 does not apply to any of the children referred to in the case.

LORD SKERRINGTON—Section 10 of the Education (Scotland) Act 1918 is susceptible of the construction contended for by the parties of the first part, but it is also susceptible of the narrower construction contended for by the parties of the second part. According to the former construction the section would apply to the case of a pauper child sent by the Parish Council of a city to live in the country where it attends a public school maintained by the Education Authority of the area within which it resides. By parity of reasoning the section would equally apply to the case of the child of a self-supporting person who resided in a city but who sent his child to live in the country where it was boarded and lodged at his expenses and where it attended a public school maintained by the rural Education Authority. In each case, as a result of the present system of free education, a child whose education would naturally be a burden on the ratepayers of a city would be educated at the expense of the ratepayers of a rural area without any compensating increase in the assessable value of that area. There seems to be no difference in principle between the two cases, though the hardship upon the ratepayers of the country area (if there be a hardship—a point in regard to which opinions appear to differ) becomes more serious when town children in large numbers are systematically boarded out in the country by the Poor Law authorities of cities. I cannot help thinking that section 10 would have been differently expressed if it had been intended to settle a question of such public and controversial interest as that to which I have referred. Moreover, it is difficult to reconcile this construction of the section with the terms of its proviso, and in particular with the power conferred upon the Department in the case of any child, in respect of whose education a claim of contribution under section 10 has been made, to decide whether "accessible accommodation is available in a suitable school provided within" the area where the child's parents are resident, "regard being had to all the circumstances, including religious belief" of the parents. It would seem idle in the case of a child which for some reason, good or bad, had been sent to live in the country, and

which attended a public school there, to ask the Department to consider whether there was a suitable school within a reasonable distance of the father's house in a city where the child did not in fact reside. On the other hand, if the child resided with its parents in the country but travelled daily to a city in order to attend a public secondary school there, it would be intelligible that the claim for contribution at the instance of the urban against the rural education authority should depend upon whether the Department was satisfied that accessible accommodation was available for the child in a suitable school within the country area. It is unnecessary, however, to decide these questions, as it is enough for the decision of this Special Case to point out that the statutory right to a contribution created by section 10 is limited to the case of children attending a school situated in an area within which the parents of such children do not reside, and that the children referred to in the Special Case do not fall within this description. The statutory definition of "parent" is wide enough to include a person who has the actual custody of a child which he contracts to provide with board and lodging in his own home, but subject to the supervision and control of the person who is legally responsible for its maintenance. The case of *M'Fadzean* v. *Kilmalcolm School Board* (5 F. 600), which was relied upon by the counsel for the first parties, differs essentially from the present case both as regards its material facts and also as regards the nature of the legal question which had to be decided. I accordingly agree with your Lordship.

LORD CULLEN—It is clear that if the persons who are called for the purposes of the case the "guardians" of the children in question answer to the word "parents" as used in section 10 of the Act of 1918, the claim by the first parties made as under that section cannot be maintained. The word "parent" as used in the Act is a flexible one with several meanings. One of these is "any person who has the actual custody of any child." Now looking to the direct control which the guardians have over the persons of the children who live with them and the duties and responsibilities which they discharge, not only in regard to the schooling of the children but in regard also to the general regulation of their lives, I am of opinion that they must be regarded as having the actual custody of the children. The argument for the first parties consisted in invoking the case of *M'Fadzean*, 5 F. 600. The circumstances of that case, however, were different in more than one material respect from those of the present case, and I am unable to regard the decision in it as ruling this. Accordingly, as I think the "guardians" here are parents in the sense of section 10, I agree that the case should be disposed of as your Lordships propose.

LORD SANDS—Ever since the passing of the Education Act of 1872 there has been a source of difficulty and friction in the fact that a certain number of children in one area found it more convenient to attend the school of another area. The friction thereby occasioned was accentuated when fees were abolished as regards the great majority of school children. It was further accentuated when the old parish schools, or the schools which now represented them, came to be reduced more and more to be strictly primary schools, and intermediate and secondary schools were started in the more populous centres. These considerations explain section 10 of the Education (Scotland) Act 1918, which had a precursor to a certain extent in section 17 (1) of the Act of 1908. Area A complained that it was making provision for children from area B, from which it derived no revenue. To the complaint area B might or might not according to circumstances be able to reply —"We make suitable provision for our own children. We have places for all of them in suitable and accessible schools, and by luring them away you are depriving us of our grants, whilst the places in our schools are empty." The intention of section 10 is to hold the balance even by enforcing contribution from area B only when that area has failed to provide suitable and accessible accommodation to meet the needs of the children in question. In my view the case which the section contemplated was one of normal domestic relations—children having their home in their parents' house. It does not follow from this that the provisions of the section are inapplicable in any other circumstances. But it is desirable at the outset to consider its operation in the normal case. Where a child is sent for the purpose of education to a school outwith the area of its home in its parents' house the parish of the parents' residence may be made liable, but only when that parish has failed itself to provide a suitable and accessible school for the child. By "accessible" is meant accessible to the child at home in its parents' house. It makes no difference in my view as regards the operation of the section whether the child returns every night to its own home or is lodged or boarded for the purposes of education in the foreign area. So much for the normal case. An abnormal case may arise when the circumstances render it doubtful whether the child can really be said to have a home with its parents. One abnormal class of case is where by arrangements made by the child's own natural parents the child lives separate for reasons other than educational, and does not live at home with them even during the holidays. Cases of this kind vary so much in their circumstances that it is difficult to lay down a general rule. On the one hand the parent may have a home but may board the child away for special domestic reasons, such as its health or his widowhood or an unsympathetic stepmother. On the other hand the child may be forisfamiliated and maintained and virtually adopted by some other person. I confess that my inclination would be to hold that when the natural parents of a child are not divested in any way of responsibility for it and actually maintain it, these are the parents who are contemplated in the clause in section 10—"Whose

parents are resident outwith the education area in which the school is situated."

The present case, however, is on a different footing. The natural parents of the children where there are such do not maintain them, and the Parish Council, which has assumed responsibility for them, if it be a parent, is so only in an artificial sense. I am not prepared to affirm that in determining whether the persons with whom the children actually reside are to be deemed their parents under section 10 this is an irrelevant consideration. The case is not in my view on the same footing as if the natural parents of the children resident outwith the school area had made an arrangement with the persons with whom the children reside upon similar lines to those which the Parish Council has made. Every child must have a statutory parent, and if the natural parent is ousted, as is I think the case here, and the competition for statutory parenthood is between two parties neither of whom is the natural parent, the considerations are not the same as in a competition between the natural parent and an artificial one.

I have come to the conclusion, though not I confess without some hesitation, that as between the Parish Council and the local person to whom the child has been entrusted, the latter is the parent within the meaning of section 10. The case appears to me to be distinguishable from the case of *M'Fadzean* v. *Kilmalcolm*, 5 F. 600. There the pursuers, though allowed a certain administrative authority over the children, were really the servants of an institution to the head of which the care of the children had been entrusted. Here the guardians are independent cottagers leading a private family life in their own houses, and they are expected to make the children share in their family life, and to teach them to regard the cottage as their home in a sense which an institution can never be.

If this view be sound it is not necessary to examine the proviso. But if I were in error as to who are in the present circumstances the parents within the meaning of the section, and if the Parish Council were held to be the parents, I should be disposed to negative both the contention that "accessible" means accessible to the child wherever he may happen to be, or accessible to the parent whoever or however situated he may be. I think that the primary intendment is accessible to the child in its home with its parents. If there were special circumstances, such, for example, as the impossibility of the child being at home with its parents in the Parish Council offices, then I think that the matter is one appropriated to the Department.

The Court in answer to the question of law found that section 10 of the Education (Scotland) Act 1918 did not apply to any of the children referred to in the case.

Counsel for the First Parties—Robertson, K.C.—Patrick. Agents—Wallace, Begg, & Company, W.S.

Counsel for the Second Party—Solicitor-General (D. P. Fleming, K.C.)—Crawford. Agents—Laing & Motherwell, W.S.

HOUSE OF LORDS.

Thursday, January 25.

(Before the Lord Chancellor, Lord Dunedin, Lord Shaw, Lord Buckmaster, and Lord Carson.)

JAMES SCOTT & SONS, LIMITED *v.* R. & N. DEL SEL AND ANOTHER.

(In the Court of Session, June 23, 1922, S.C. 592, 59 S.L.R. 446,)

Contract — Frustration — Impossibility of Performance—Arbitration—Application of Arbitration Clause—Contract to Ship Jute — Order in Council Prohibiting Export of Jute.

A firm of jute merchants contracted to ship a specified number of bales of jute from Calcutta to Buenos Ayres. The contract contained, *inter alia*, the following provisions:—"Any delay in shipment caused by fire, strike, breakages, and accidents . . . and for any other unforeseen circumstances, to be excepted, and the quantity short produced in consequence thereof to be deducted from the quantity named in this contract, or delivered soon as possible thereafter, buyers having the option of refusing it after time. . . . Should the vessel by which freight has been engaged be commandeered or delayed by the Government, sellers shall not be responsible for any late shipment or other consequences arising therefrom, and the goods shall be sent forward as early as possible. . . ." It also contained an arbitration clause in the following terms:—"Any dispute that may arise under this contract to be settled by arbitration in Dundee." Before all the bales of jute had been shipped, further export of jute from India to the Argentine was prohibited by an Order in Council of the Governor-General of India. A dispute having arisen between the parties as to whether the contract was rendered void and unenforceable *quoad* the balance of the bales of jute, the sellers maintained that the arbitration clause was inapplicable on the ground that the dispute as to whether the contract had been ended was not a dispute arising under the contract. *Held* (*aff.* the judgment of the Second Division) that as the dispute which had arisen was a dispute as to the meaning of the contract, viz., whether the contract had specifically provided for the events which had happened, it was a dispute under the contract, and that accordingly it fell to be determined by arbitration.

The case is reported *ante ut supra.*

The pursuers appealed to the House of Lords.

At the conclusion of the arguments on behalf of the appellants, counsel for the respondents being present but not called upon, their Lordships delivered judgment as follows:—