in the chair as to the manner in which the questions ought to be answered.

LORD CULLEN did not hear the case.

The Court answered question 1 (*b*) in the affirmative and question 1 (*c*) in the negative.

Counsel for First Parties—Lord Advocate (Hon. W. Watson, K.C.)—Murray. Agents—Skene, Edwards, & Garson, W.S.

Counsel for Second Parties—Brown, K.C.—Marshall. Agents—Mylne & Campbell, W.S.

Saturday, July 14.

FIRST DIVISION.

MURDOCH'S TRUSTEES *v.* STOCK'S TRUSTEES.

Marriage Contract — General Assignation in Marriage Contract — Assignation of Share in Trust Estate—Whether Carrying Income, Accumulation of which had become Illegal — Succession — Thellusson Act 1800 (39 *and* 40 *Geo. III, cap.* 98).

A testator in his trust-disposition and settlement directed his trustees to hold the residue of the trust estate for behoof of his widow in liferent and such of his children as should attain the age of twenty-five years in fee. Vesting of each child's share was to take place upon his attaining the age stated, and power was given to make advances to the children in anticipation of the period of vesting or payment. By a codicil the testator restricted the widow's liferent to a fixed amount, and directed the trustees to accumulate any surplus income and invest it along with and as part of the capital of the trust estate, and to deal with it as they were directed to deal with the capital. The testator was survived by his widow and by three sons and two daughters, all of whom attained twenty-five years of age. Each of the daughters by antenuptial marriage contract assigned to marriage-contract trustees all and sundry her "whole share, right, and interest, present, future, and contingent, of and in the whole funds and estate" held in trust by the trustees under the trust-disposition and settlement and codicil, but excepting therefrom any sum which might be paid to her by them "for trousseau or otherwise in anticipation of her marriage" and "by way of income" during the lifetime of the widow. The daughters were to receive the whole annual incomes from the trust estates created by their respective marriage contracts. The surplus income of the residue of the testator's estate, with the exception of certain sums paid to the children, was accumulated and invested by his trustees for twenty-one years after his death, when further accumulations became illegal owing to the operation of the Thellusson Act. The widow was still alive. *Held* that the daughters' shares of the surplus income set free by the operation of the Thellusson Act did not pass under the general conveyances in their respective marriage contracts, but fell to be paid direct to the daughters.

Mrs Catherine Hutchison or Murdoch, widow of the late Alexander Murdoch, and others, the trustees acting under the trust-disposition and settlement of the late Alexander Murdoch, dated 24th February 1898, and relative codicil dated 21st September 1899, *first parties;* the said Mrs Catherine Hutchison or Murdoch and Alexander Norman Murdoch, trustees under an antenuptial contract of marriage between Francis Douglas Stock and Mrs Evelyn Hutchison Murdoch or Stock, daughter of the late Alexander Murdoch, dated 15th November 1909, *second parties;* Stephen Mitchell and others, trustees under an antenuptial contract of marriage between the said Stephen Mitchell and Mrs Helen Beatrice Murdoch or Mitchell, daughter of the late Alexander Murdoch, dated 14th March 1910, *third parties;* and the said Mrs Evelyn Hutchison Murdoch or Stock and Mrs Helen Beatrice Murdoch or Mitchell, *fourth parties,* brought a Special Case for the opinion and judgment of the Court upon questions as to the effect of the operation of the Thellusson Act upon surplus income of the residue of the trust estate of the late Alexander Murdoch.

By his trust-disposition and settlement the late Alexander Murdoch, after giving directions for payment of his debts and certain legacies and annuities, provided as follows:—"(*Fifth*) I direct my said trustees to hold the whole of the free residue and remainder of my estate for behoof of my said wife in liferent for her liferent alimentary use only and to pay to her the free revenue and proceeds thereof so long as she remains my widow and unmarried, burdened always with the maintenance and education of our children in a manner suitable to their station in life while they continue to reside in family with her and are unable to support themselves: (*Sixth*) After satisfying the purposes foresaid and subject to the provisions before made in favour of my wife and my sister, I direct my said trustees to hold the whole residue and remainder of my estate for behoof of such of my children as shall at my death have attained or shall thereafter attain to twenty-five years of age, when their respective shares shall be held to vest equally among them and for behoof of the issue of any child or children who may die before attaining that age, such issue taking the share their parent would have taken if in life: And I direct that in the event of my wife's death or second marriage before all of my children have reached twenty-five years of age the revenue of the shares of such of the children as may not have reached that age shall be paid and applied for their behoof until the capital comes to be payable: And I also direct that it shall be in the power of my trustees, but with consent always of my widow if in life and remaining unmarried and capable of acting, to make advances to or for behoof of any of my children in

anticipation of the period of vesting or payment of their shares for the purpose of preparing or setting them out in a business or profession or in view of the marriage of a daughter or otherwise for their advancement in life, but the propriety or the amount of such advances shall in each case be entirely in the discretion of my trustees: And I specially direct that the whole provisions hereby made in favour of females shall be exclusive always of the *jus mariti* and right of administration and other rights whatsoever of husbands: And I authorise my trustees in their discretion to make such exclusion of and protection from the rights of husbands effectual by the constitution of a trust in a marriage contract or other deed containing all clauses usual in the circumstances instead of paying over such provision to the beneficiary who may marry."

By his codicil he provided—"And (second) I direct that in the event of the income of the free residue of my estate, which in terms of the fifth article of my said trust-disposition and settlement is to be paid to my wife so long as she remains my widow and unmarried for the support of herself and our children as therein specified, exceeding in any year the sum of Two thousand pounds, my trustees shall restrict the payment to my wife out of said income to the sum of Two thousand pounds per annum, and as regards any surplus income they shall accumulate and invest the same along with and as part of the capital of the trust estate, and it shall be dealt with in the same manner as I have directed with reference to the capital of the trust estate."

By the antenuptial contract of marriage between Francis Douglas Stock and Mrs Evelyn Hutchison Murdoch or Stock the latter assigned and disponed to the marriage-contract trustees—"All and sundry her whole share right and interest present future and contingent of and in the whole funds and estate heritable and moveable real and personal held in trust by the trustees under the following deeds, viz.— . . . (*Second*) Trust-disposition and settlement and codicil thereto annexed granted by her father the said deceased Alexander Murdoch dated respectively the twenty-fourth day of February Eighteen hundred and ninety-eight and the twenty-first day of September Eighteen hundred and ninety-nine and both registered in the Books of Council and Session on the twenty-fifth day of July Nineteen hundred . . .; but excepting therefrom any sum which may be paid to the second party by the trustees acting under her said father's trust-disposition and settlement and codicil for trousseau or otherwise in anticipation of her marriage and any sum which may be paid by the said last-mentioned trustees to her by way of income during the lifetime of the said Mrs Catherine Hutchison or Murdoch . . . for the ends uses and purposes following, viz.— . . . (*Second*) To pay the free annual income and proceeds of the whole estate held by them to the said Evelyn Hutchison Murdoch in liferent for her liferent alimentary use only during all the days and years of her life exclusive of the *jus mariti* and right of administration of the said Francis Douglas Stock or any future husband she may marry and not affectable by her or their debts or deeds or the diligence of her or their creditors."

The antenuptial contract of marriage between Stephen Mitchell and Mrs Helen Beatrice Murdoch or Mitchell contained an assignation and disposition by her in similar terms of her rights in the trust estate of the late Alexander Murdoch.

The Case stated—"The late Alexander Murdoch, wine and spirit broker, Glasgow (hereinafter referred to as 'the testator'), died at Glasgow on 11th July 1900 survived by his widow the said Mrs Catherine Hutchison or Murdoch and by three sons and two daughters—Alexander Norman Murdoch, born 23rd February 1879; Evelyn Hutchison Murdoch, now Mrs Stock, born 31st May 1880; Kenneth Murdoch, born 29th August 1881; Helen Beatrice Murdoch, now Mrs Mitchell, born 16th July 1884; and Alan Murdoch, born 29th October 1894. . . . 4. The said Mrs Catherine Hutchison or Murdoch still survives and has remained unmarried, and the said children of the testator likewise survive. 5. The nett income of the trust estate has since the inception of the trust largely exceeded the sum of £2000 per annum. The whole of the said surplus was regularly accumulated and invested in accordance with the directions contained in the said codicil down to 1st January 1910. 6. In anticipation of the marriage of the said Evelyn Hutchison Murdoch, now Stock, and in the exercise of their discretionary powers under the said trust-disposition and settlement, the trustees acting thereunder, with consent of the said Mrs Catherine Hutchison or Murdoch, made a payment of £500 to the said Mrs Evelyn Hutchison Murdoch or Stock, to provide trousseau, and on 19th October 1909 resolved that the said Mrs Evelyn Hutchison Murdoch or Stock should receive out of the surplus income of the testator's trust estate £100 per annum, and that in order to preserve equality among the testator's children payments of £100 per annum should likewise be made to each of the testator's other children (including the said Helen Beatrice Murdoch now Mitchell) out of the said surplus income, the payments falling to the said Alan Murdoch, who alone of the testator's children had not then attained 25 years of age, being accumulated for his benefit till he attained the said age. It was further agreed that if at any time it was found necessary in order to furnish the payment of the £2000 per annum to the said Mrs Catherine Hutchison or Murdoch, or for any other reason, these payments might be stopped by the said trustees. The said payments of £100 per annum to each of the testator's children, including the married daughters, commenced as at 1st January 1910 and have regularly been made since then, and the remainder of the said surplus income, after providing for the said payments, has been regularly accumulated and invested by the said trustees in accordance with the directions contained in the said codicil from the said date down to 11th July 1921. . . . 11. The parties are agreed

that further accumulation of income of the trust estate has in terms of the Thellusson Act become illegal as from 11th July 1921. Parties are also agreed that each of the children of the testator is entitled to one-fifth share of the said surplus income since the said date, and that the sons of the testator are entitled to payment of their shares. Questions, however, have arisen as to the rights of parties in the daughters' shares of the said surplus income since the said date. The parties of the first part are desirous of distributing the said shares of surplus in accordance with the determination by the Court of the question raised. 12. The parties of the second part and third part maintain that the daughters' shares of the said surplus income after providing for the said payments of £100 per annum to each daughter, which are mentioned in article 6 hereof, were carried by the assignations contained in the said antenuptial contracts of marriage and that they fall to be paid to the second and third parties and to be treated by them as capital of their respective marriage contract trusts. 13. The parties of the fourth part maintain that the daughters' shares of the said surplus income fall to be paid direct to the fourth parties as payments by the parties of the first part of income from the estate of the said Alexander Murdoch reserved to the fourth parties by said antenuptial contracts. Alternatively they maintain that if such surplus income is payable to their respective marriage contract trustees it falls to be treated as revenue in their hands, and to be paid to the fourth parties as part of the liferent provisions in their favour under said antenuptial contracts."

The *questions of law* were—"1. Do the daughters' shares of any surplus of income accruing after 11th July 1921, and after meeting the payments of £100 per annum to each daughter, which are referred to in article 6, fall to be paid (*a*) to the parties of the second and third parts respectively, or (*b*) to the parties of the fourth part? 2. In the event of question 1 (*a*) being answered in the affirmative, do the said shares fall to be treated as capital in the hands of the parties of the second and third parts, or to be treated as revenue in their hands?

Argued for the second and third parties—1. Under the testamentary writings there was no present gift of surplus income of residue to the children. During the widow's life they had only a vested interest. The effect of the Thellusson Act was therefore that the surplus went to the children *ab intestato* — *Smith* v. *Glasgow Royal Infirmary*, 1909 S.C. 1231, 46 S.L.R. 860; *Wilson's Trustees* v. *Glasgow Royal Infirmary*, 1917 S.C. 527, 54 S.L.R. 469 — and as capital, succession *ab intestato* to income being unknown. The daughters' shares therefore passed under the general conveyance in the marriage contracts to the marriage-contract trustees. But if the shares of surplus income went to the daughters, not *ab intestato* but under the testamentary writings, or if there was a present gift, the same result must follow from the testator's directions, unaffected by the Thellusson Act, that the surplus was to be treated as capital, and from the wide terms of the general conveyance. *Boyd's Trustees* v. *Boyd*, 1877, 4 R. 1082, 14 S.L.R. 637, and *Young's Trustees* v. *Hally*, 1885, 12 R. 968, 22 S.L.R. 643, did not apply where the question was whether the general assignation in a marriage contract carried capital—*Simson's Trustees* v. *Brown*, 1890, 17 R 581, 27 S.L.R. 472. Even if the surplus came to the daughters as income, these cases were inapplicable in view of the exception in the marriage contracts of sums paid to the daughters by way of income, which indicated the intention that the other forms of income were to pass to the marriage-contract trustees. 2. If the surplus income passed to the marriage-contract trustees, it did so as capital, and fell under the directions in the marriage contracts to be treated as capital the income of which only was to be paid to the daughters. [Reference was made by LORD SKERRINGTON to *Neilson's Trustees* v. *Henderson*, 1897, 24 R. 1135, 34 S.L.R. 865.]

Argued for the fourth parties — 1. The effect of the Thellusson Act was to delete the whole of the direction to accumulate, including the direction to treat accumulations as capital. There was therefore no testamentary direction as to the surplus income of residue except the sixth provision of the settlement, which, read in conjunction with the codicil, amounted to a present gift of residue and of the income of residue after the widow's liferent of £2000 had been satisfied. It was only where there was no present gift of residue that illegal accumulations of the income fell into intestacy — *Smith* v. *Glasgow Royal Infirmary* (*cit.*), *per* Lord President at 1909 S.C. 1236, Lord Salvesen at p. 1234, Lord Kinnear at p. 1237; *Mackay's Trustees* v. *Mackay*, 1909 S.C. 139, 46 S.L.R. 147; *Watson's Trustees* v. *Brown*, 1923 S.C. 228, 50 S.L.R. 230. The daughters' shares of the surplus income therefore fell to be treated as income of which there was a present gift, and which did not pass under the general conveyances in a marriage contract—*Boyd's Trustees* v. *Boyd* (*cit.*); *Young's Trustees* v. *Hally*. But if the clauses in the marriage contract were wide enough to carry income, this income was excluded under the exception of payments made by the testator's trustees to the daughters by way of income, and if the surplus income went to the daughters *ab intestato* it could not be carried to the marriage-contract trustees in face of the clause of exception and the powers given by the testator to his trustees with reference to marriage contracts. 2. If the surplus income went to the marriage-contract trustees it did so as income, or there would be accumulation forbidden by the Thellusson Act. There was nothing here to change the nature of the surplus from income to capital—*In re Hawkins*, [1916] 1 Ch. 570; *In re Garside*, [1919] 1 Ch. 132; M'Laren, Wills and Succession, vol. i, p. 310. The surplus income therefore fell to be paid by the marriage-contract trustees to the daughters as income in accordance with the provisions of the marriage contracts.

At advising—

LORD PRESIDENT—By the testator's codicil of 21st September 1899 the alimentary liferent of his residue, which he had provided in favour of his widow by his trust-disposition and settlement, was restricted to the sum of £2000 per annum, and any surplus income was directed to be accumulated and invested along with and as part of the capital of the trust estate, and to be dealt with in the same manner as such capital. When the Thellusson Act came into operation this direction ceased to be operative, with the result that the surplus income could neither be accumulated nor—as accumulated—dealt with as capital of the trust estate. Unless, therefore, the testator's testamentary writings were so conceived as to dispose of the surplus income thus set free by a present gift in favour of some beneficiary or other, such surplus income fell into intestacy—*Smith* v. *Glasgow Royal Infirmary*, 1909 S.C. 1231; *Wilson's Trustees* v. *Glasgow Royal Infirmary*, 1917 S.C. 527.

It is not, in the view I take of the case, necessary to decide whether clause (sixth) of the trust-disposition and settlement, which deals with the testator's residue "after satisfying the purposes foresaid and subject to the provisions before made in favour of my wife and my sister," is or is not effectual to carry the surplus income set free to the fourth parties by a present gift. They are, no doubt, vested in their shares of residue subject to their mother's right to receive an alimentary liferent of £2000 a-year out of the annual proceeds of the residuary estate. But their rights in the surplus income, as on intestacy, are neither less nor more than would be their rights in it under a present gift in their favour.

The question in the case really turns on the effect of the assignations made by the fourth parties in their respective marriage contracts of all their rights and interests, present, future, and contingent of and in the whole funds and estate, heritable and moveable, real and personal, held in trust under the testator's trust-disposition and settlement. It must be taken as settled law that "a general conveyance [in a marriage contract] of wife's estate will not (unless the context necessitates such a construction) include the income of settled estate payable to her by trustees"—*Neilson's Trustees* v. *Henderson*, 24 R. 1135, see especially *per* Lord M'Laren at p. 1138. This principle was originally enunciated by Lord Justice-Clerk Moncreiff in delivering the leading judgment in *Boyd's Trustees* v. *Boyd*, 4 R. 1082. The precedents therein referred to were of English origin, but the ratio given by his Lordship was that the purpose and scope of a conveyance by a wife in her marriage contract was to settle and secure a capital fund for the support of the married establishment, not to interfere with the wife's enjoyment of the fruits of capital funds otherwise secured. "It is reasonable," said his Lordship, "to infer that property coming to the wife, which is not a right of fee, is not comprehended in the trust conveyance. The meaning is that the trustees shall hold the *corpus*, *salva substantia*, of the wife's property. But if the *corpus* is in the hands of others there is no necessity for protection, seeing that there is no capital which might be dissipated." The principle thus laid down was followed in *Young's Trustees* (12 R. 968) in this Division, and as appears from *Neilson's Trustees* v. *Henderson* has become part of the law and practice of Scotland. It has, no doubt, already governed the draftsmanship of countless settlements. As appears from the cases referred to, the comprehensive generality of the terms in which the wife's assignation is conceived (apart from a context which necessitates it being so construed as to include the income of estate secured otherwise than by the marriage contract) affords no reason for declining to apply the principle.

In the present case the only context in any way relevant is a clause in the marriage contracts which excludes from the generality of the assignations sums paid to the fourth parties by the trustees under the testator's trust-disposition and settlement for trousseau or otherwise in anticipation of their marriages, "and any sum which may be paid by the said last-mentioned trustees to [them] *by way of income* during the lifetime of" their mother. It appears that the testator's trustees used a power given to them in the trust-disposition and settlement "to make advances to or for behoof of any of my children in anticipation of the period of . . . payment of their shares . . . or in view of the marriage of a daughter or otherwise for their advancement in life," by paying annually to each of the fourth parties the sum of £100. This mode of advancing capital—described as being "by way of income"—may possibly involve some little stretch of the trustees' powers, but if it were not truly an advance of capital it would be *ultra vires* of the trustees, and no one has suggested that it is so. The argument presented to us with regard to it was that all payments in the nature of income made by the trustees—other than these advances made by "way of income"—must be held, in view of the exception of the latter, to be included in the general assignation, and the surplus income payable to the fourth parties in consequence of the operation of the Thellusson Act—whether on intestacy or under the residue clause—was therefore said to be so included. But, for the reasons indicated, I think the exception really applied to advances of capital, notwithstanding these were made in the form of an annual payment, or as the marriage contracts phrased it, "by way of income."

The surplus income set free by the Thellusson Act falls precisely within the category of wife's estate defined in *Boyd's Trustees* v. *Boyd* and in *Neilson's Trustees* v. *Henderson*, which does not pass under a general assignation in the wife's marriage contract, and I am therefore for answering branch (*a*) of question 1 in the negative and branch (*b*) in the affirmative. If that is right question 2 is superseded.

LORD SKERRINGTON—The question which we have to decide relates to the construction which ought to be given to a general assignation by which a lady conveyed to the trustees of her antenuptial contract of marriage "all and sundry her whole share, right, and interest, present, future, and contingent, of and in the whole funds and estate, heritable and moveable, real and personal, held in trust by the trustees under" certain deeds, and, *inter alia*, the trust-disposition and settlement and codicil thereto of her deceased father. The testator died on 11th July 1900, and the marriage contract of his daughter Mrs Stock was dated in 1909. The question is whether this assignation conveys to the trustees of the marriage contract a right and interest which is not mentioned in the will and codicil, but which would obviously accrue to the testator's children under the Thellusson Act in the event which happened of his widow surviving him for more than twenty-one years and not re-marrying, viz., the right to demand that the surplus income of the trust estate, after paying £2000 a-year to the widow, should after the expiry of twenty-one years from the testator's death cease to be accumulated and dealt with as capital in the manner directed by the codicil, but that on the contrary it should "go to and be received by such person or persons as would have been entitled thereto if such accumulation had not been directed" as ordered by the statute. Mrs Stock maintains that this right and interest being a right to income and not a right to a capital sum, is expressly excepted from the general assignation, and that if not expressly it is impliedly so excepted.

I was surprised to hear it argued on behalf of the marriage-contract trustees that the income of a testamentary trust which a testator directed his trustees to accumulate and capitalise, but which the law for reasons of public policy orders these trustees to pay away as soon as they receive it, must nevertheless be regarded as a series of capital sums due to the beneficiary. The argument seems to me to be unintelligible. Equally I do not concern myself with a question which was anxiously debated but which I regard as irrelevant, viz., whether the children's right in this particular case to receive the surplus income from and after 11th July 1921 belongs to them as residuary legatees in virtue of what is called a "present gift" of the income burdened by an invalid direction to accumulate, or belongs to them as heirs *in mobilibus ab intestato* of the testator on the theory that the direction to accumulate and the gift of the income were on a just construction of the will and codicil inseparable.

The marriage contract expressly excepts from the scope of the conveyance "any sum which may be paid by the" testamentary trustees of the lady's father "to her by way of income during the lifetime of" the testator's widow. This clause (the whole of which I have not quoted) is undoubtedly peculiarly expressed, and I agree with the view that its primary purpose was to save and reserve a discretionary power which the testator had conferred upon his trustees to make advances "in anticipation of the period of vesting or payment" of the children's shares. None the less the language of the reservation is in my opinion wide enough to include income which the trustees might be under a legal obligation to pay over to the assignor, and having in view the nature of the document which we are construing I think that the reservation is entitled to the liberal interpretation contended for by Mrs Stock. Even, however, if this view is not accepted as affording a satisfactory ground of judgment, I am of opinion with your Lordship that the three decisions which were cited to us were intended to lay down a general rule to the effect that liferent rights and similar usufructuary interests are *prima facie* held to be excluded from a general conveyance in a contract of marriage. Exceptions to this rule ought not to be admitted except for some clear and cogent reason. It has been often observed that in matters of conveyancing it is more important that the law should be certain and uniformly administered than that the decision in every particular case should be in conformity with sound legal principle

For these reasons I am of opinion that the first question of law should be answered in the negative as regards branch (*a*) and in the affirmative as regards branch (*b*). The question applies also to Mrs Mitchell, another daughter of the testator, whose marriage contract was as regards this matter identical with that of her sister. The second question is superseded.

LORD SANDS — The character of a payment as capital or income in the hands of the recipient cannot, I think, be determined solely by the source from which the person who makes the payment obtains the money. Regard must be had to the recipient and the nature and circumstances of the payment in relation to him. Any difficulty I have felt in holding the rule of the case of *Boyd's Trustees* v. *Boyd* (4 R. 1082) and the cases which followed as applicable to the circumstances of the present case is due to the doubt which I entertain as to whether intestate succession is income of the recipient when that succession takes the form of an annual payment for a limited number of years. I should, as at present advised, not be disposed to hold it to be income of the recipient in a case where, under the Thellusson Act, income of a fund destined to strangers was temporarily released in favour of the heirs-at-law. Certainly no sensible heir-at-law would so regard it. The question does not, however, arise in that form in the present case, and therefore it is in my view unnecessary to determine the question whether the released interest is an intestate succession by the two ladies.

The case of *Boyd's Trustees* and the cases following upon it did not proceed upon the ordinary judicial construction of the terms of the conveyances to the marriage-contract trustees. On the contrary, this construction was held to be overruled by a general consideration of presumed intention in such

circumstances as there obtained. If we are to follow these cases, as, of course, we are bound to do, we must apply this non-technical method of construction logically and consistently. We are not to follow it up to a certain point, and then to allow it to be defeated by a mere technicality with no substance behind it. In the present case the annual interest is derived from funds which the testamentary trustees hold for the two ladies in fee. This is not the case, such as I have figured above, of a temporary windfall from a source in which the recipient has no permanent interest. On the death of the mother, so far from there being any cesser, there will be an expansion of their enjoyment of the income of these funds. In these circumstances it appears to me to be a reasonable application of the rule of *Boyd's Trustees* to hold that these annual payments, being in substance, if not perhaps in accordance with technical rule, annual income of these ladies, do not fall under the conveyances in the respective marriage contracts.

The effect which ought to be given to the special treatment of an exception in the conveyances to the marriage-contract trustees is not altogether free from difficulty. But I concur in the conclusion which your Lordship in the chair has arrived at on that matter.

I am accordingly of opinion that the questions should be answered in the manner proposed by your Lordship.

LORD CULLEN was not present.

The Court answered branch (*a*) of the first question of law in the negative and branch (*b*) in the affirmative, and found that the second question was superseded.

Counsel for the Second and Third Parties—Chree, K.C.—Normand. Agents—Graham, Johnston, & Fleming, W.S.

Counsel for the Fourth Parties—The Lord Advocate (Hon. W. Watson, K.C.)—Graham Robertson, K.C.—Burnet. Agents—Carmichael & Miller, W.S.

HOUSE OF LORDS.

Thursday, June 14.

(Before the Earl of Birkenhead, Viscount Finlay, Lord Dunedin, Lord Atkinson, and Lord Shaw.)

1. MURRAY *v.* PORTLAND COLLIERY COMPANY, LIMITED.
2. JOHN WATSON, LIMITED *v.* QUINN.
3. WILLIAM DIXON, LIMITED *v.* MADDEN.

(In the Court of Session—*Murray* v. *Portland Colliery Company, Limited*, 1923 S.C. 60, 60 S.L.R. 56; *John Watson, Limited* v. *Quinn*, 1923 S.C. 6, 60 S.L.R. 1.)

1. MURRAY *v.* PORTLAND COLLIERY COMPANY, LIMITED.

Workmen's Compensation Act 1906, *First Schedule*, 1 (*b*) *and* 3—*Partial Incapacity—Failure to Obtain Employment Due to State of Labour Market—Review of Compensation.*

A miner who had been injured by an accident was awarded compensation in respect of partial incapacity, and thereafter obtained light work at a reduced wage. His right to compensation was with his consent subsequently terminated in consequence of a general rise in the level of wages, which brought the amount he was able to earn above the pre-accident level. The light work on which he was employed having ceased owing to the pit being flooded as the sequel of a strike, and no other employment being available for him, he applied for a renewal of compensation. *Held* (*aff.* the judgment of the Second Division) that as the workman's incapacity due to the accident still continued, his right to compensation was not terminated by the supervening of a period of unemployment, and that accordingly he was entitled to compensation.

2. JOHN WATSON, LIMITED *v.* QUINN.

3. WILLIAM DIXON, LIMITED *v.* MADDEN.

Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *First Schedule* (3)—*Partial Incapacity — General Fall in Wages — Review of Compensation.*

A miner who had been injured by an accident was awarded compensation in respect of partial incapacity and thereafter obtained light work at the surface. His right to compensation was subsequently terminated in consequence of a general rise in the level of wages, which brought the amount he was able to earn above the pre-accident level. On wages falling again below that level in consequence of economic causes he applied for a renewal of compensation. His physical condition remained the same as it was at the date of the original award. But for the accident he would have been able during this period to earn as a miner a wage substantially the same as his average weekly earnings prior to the accident. *Held* (*aff.* the judgment of the Second Division) that as the workman's inability to earn his former wage was due to the incapacity caused by the accident and not to economic causes, he was entitled to an award of compensation.

The cases are reported *ante ut supra.*

The employers in each case appealed to the House of Lords.

At delivering judgment—

EARL OF BIRKENHEAD—I have had the pleasure and advantage of reading the judgment of my noble and learned friend Lord Dunedin in this matter, and I so completely agree with the conclusions which are stated in that speech that I find it necessary to add nothing. I have also to say that my noble and learned friends Lord Finlay and Lord Shaw find themselves equally in complete agreement with the judgment, which I shall now read, of my noble and learned friend Lord Dunedin.