302) and by Lords Kinnear and Salvesen in *Hastie* v. *Edinburgh Magistrates* (1907 S.C. 1102—see also *Davidson* v. *Monklands Railway*, 17 Dunlop 1038). It is evident that these propositions though much alike are not really identical. The child's own contributory negligence, in the true sense of the term, is for the defenders to prove; so, it would seem, is the parent's. In the former case it must be direct or not remote; in the latter it is not easy to see, apart from cases where the parent's negligence is continuing so as to constitute a joint cause of the injury concurrent with the negligence of the defenders, why the neglect to have the child better taught or to keep it in charge of a competent person is not too remote to be a contributory cause of the accident. On the other hand, if the child's inability to take care of itself is part of those circumstances which define the defenders' obligation of care it is the pursuer who should prove it. Again, if the true proposition is that a parent can only sue for solatium in his own right where he can show that he has satisfied the condition-precedent of having taken all reasonable precautions to protect the child from the consequences and risks of its own childishness, it is for him to prove the fulfilment of this condition. But what if the person provided, though proper, is careless, and what if the accident would have happened all the same whether such a person was provided or not? If the parent, who presumably knows all about his child, did not anticipate risk enough to require that the child should not go alone, can it be negligence in the defenders, who do not, to take no precautions for their part in view of the possible tender age of the visiting child? If so, the matter is one to be raised by the defenders. Again, the pursuer no doubt owes a duty to his child, but what is the duty to be careful of the child which he owes to the defenders, as distinct from mere conduct on his part, qualifying him to recover his own solatium? The former duty the defenders would have to prove; the latter as part of his own qualification must be proved by the pursuer. I confess that in view of such opinions as I have cited, the law on this point in actions brought by the parent for the loss of his child does not seem to me to be settled or even to be simple. If a parent sues because he is bereaved, what if it appears that if he had done his parental duty no harm would have come to the child and he would not have been bereaved at all? Is the matter merely one of cause and effect? If a parent's neglect of that duty is not a cause, but at most a *sine qua non* of the child's death, who then in law has caused the child's death? I offer no opinion on any unsettled question. All that I desire to make quite clear is that although these matters were discussed in the Court below, and to some extent also at your Lordships' bar, none of them have arisen for decision at this stage of the case, but they remain open if it becomes necessary to raise them later on.

The position is the same as to the age of the child. The question whether it was or was not capable of contributory negligence on its own part, just as the question whether the parents are or are not guilty of contributory negligence in fact, is untouched. It was contended before the Court of Session that a child has in such matters as this a separate and distinct right in regard to the care that is due it—"that there is a recognised difference in law between the duty of public authorities to a child and to an adult"—58 S.L.R. 158. This is not really a correct statement. Where a question arises as to the care to be used between persons using the place, where they respectively act as of right, infancy as such is no more a status conferring right, or a root of title imposing obligations on others in respect of it, than infirmity or imbecility; but a measure of care appropriate to the inability or disability of those who are immature or feeble in mind or body is due from others who know of, or ought to anticipate, the presence of such persons within the scope and hazard of their own operations.

I think the appeal fails.

LORD WRENBURY—I concur.

Their Lordships dismissed the appeal with costs.

Counsel for the Appellants—Sandeman, K.C. — Gilchrist. Agents — Campbell & Smith, S.S.C., Edinburgh—Sir J. Lindsay, Town Clerk, Glasgow—Martin & Company, Westminster, Solicitors.

Counsel for the Respondent—MacRobert, K.C.—Duffes. Agents—Paterson & Ross, Glasgow—Arch. Menzies & White, W.S., Edinburgh—Faithfull, Owen, Blair, & Wright, Westminster, Solicitors.

Friday, November 18.

(Before Lord Atkinson, Lord Shaw, Lord Sumner, and Lord Wrenbury.)

CURLE'S TRUSTEES *v.* MILLAR AND OTHERS.

(In the Court of Session, May 28, 1920 S.C. 607, 57 S.L.R. 574.)

Succession — Will — Construction — "Survivors"—"Survivors" read Stirpitally.

A testator directed his trustees to hold the residue of his estate for his son and two daughters in equal shares for their liferent use allenarly and their issue in fee. In the event of his son or daughter or any of them dying without leaving lawful issue the trustees were directed to hold the capital of the said shares for behoof of the survivors of his son and daughters if more than one, or for the survivor if only one, in the way already provided with regard to their original shares. The testator further provided that if any of his children should predecease him leaving issue, such issue should receive the capital which would have been liferented by their parent, and that if any of his children should predecease him leaving no

issue their shares should be divided equally among his surviving children and the issue of predeceasing children *per stirpes*. The settlement further provided—"Failing any survivor of my said son or daughters or issue of any of them, I direct my trustees to pay over the said shares of my said son and daughters to their nearest heirs and representatives in moveables."

The testator was survived by his three children. The son died without issue, survived by the issue of a predeceasing sister and by the other sister and her issue. *Held* (*rev.* judgment of the First Division) that the residuary clause read as a whole showed that the word "survivor" ought not to be construed in its ordinary sense, but was to be read "stirpitally" as meaning surviving in person or in stirps, and that accordingly the share liferented by the son did not fall exclusively to his surviving sister and her issue, but fell to be divided between the issue of his predeceasing sister on the one hand and his surviving sister and her issue on the other.

Wake v. *Varah* (L.R., 2 Ch. D. 348) and *Waite* v. *Littlewood* (L.R., 8 Ch. App. 70) *approved* and *followed*.

This case is reported *ante ut supra*.

The claimants, the children of Mrs Lamont, appealed to the House of Lords.

At delivering judgment—

LORD ATKINSON—The question for decision upon this appeal turns upon the construction of what may be termed the residuary clause in a trust-disposition and settlement dated the 13th December 1878, made by one Robert Curle, therein described, who died on the 8th of June 1879, leaving him surviving three children—a son Robert, and two daughters, Isabella, then married to a Mr Millar, and Jane, then married to a Mr Lamont. This last-named lady died in the month of November 1909 leaving issue who, or some of whom, are still alive. Robert, the son of the settlor, died in the month of December 1916, a bachelor, without leaving issue, and Mrs Millar died in the course of the present proceedings leaving issue. It was admitted, as I understood, by Mr Maughan on the part of the appellants that Mrs Millar and her issue between them are entitled to one-half of the share of the residue of the settlor's estate in which his son Robert had a life interest, but he contended that the issue of Mrs Lamont were entitled in the events which have happened to the absolute interest in the remaining half of that share. It was in the course of the argument admitted by both sides that the word "issue" wherever it occurs in this settlement means "children." A number of cases were cited in argument. I do not think they afford much assistance. In construing a written instrument, whether deed or will, its words admittedly must be taken to bear their ordinary and natural meaning, subject, however, to this, that the instrument itself, either taken as a whole or by force of some important provision in it, may clearly show that to give those words their natural and ordinary meaning would defeat the true intention of the instrument. For instance, it has been held in many cases dealing with the construction of wills that in order not to defeat the intention of the instrument the word survivor should be read as meaning an individual surviving in person or in stirps—*Waite* v. *Littlewood*, 8 Ch. A. 70; *Wake* v. *Varah*, 2 Ch. D. 348. It is therefore necessary to examine closely the language of this trust-disposition with a view to determine whether it is not necessary that this word should be so read in this case.

By the opening provision of this deed the settlor vests in his trustees all his property and estates of whatever kind or nature, and then subsequently as to his residue directs that those trustees are to hold and retain it for the *behoof* of his son and his two daughters, share and share alike. If the disposition ended there his three children would probably take absolute interests in their respective shares, but the settlor then proceeds to show that that is not at all what he means by the word "behoof"; for he proceeds to direct that these shares are to be retained and invested by the trustees as thereinafter mentioned, "that is to say" the trustees are to "hold and retain and invest" these shares in their own names, as trustees for the respective liferent uses allenarly of his son and his two daughters, "and for the behoof of their lawful issue respectively in fee in such proportions among such issue respectively if there be more than one child, and whether there be one or more children subject to such restrictions and conditions as such son or daughters may respectively direct by any deed or writing under their hands or signed by them respectively to take effect at their decease respectively, and failing such appointment equally among such issue if more than one child, share and share alike."

It is, I think, quite manifest from this passage that the purpose and intention of the settlor was that each of his children should take beneficially in his or her original share held by the trustees for his or her behoof nothing more than a liferent allenarly, and that the capital of those shares should be held for his grandchildren in the manner directed.

Mr Tomlin, as I understood him, contended, on behalf of the respondents in the appeal that under this disposition, which for convenience sake has in argument been styled clause 1, the settlor's three children took respectively in the first instance an absolute interest in the capital of their respective shares, that interest being subsequently cut down by the subsequent provisions. It would appear to me that this contention is quite unsustainable. The interests from first to last which the settlor's children take in their respective shares are liferents and nothing more—the fee, *i.e.*, the capital of the shares, is to be held by the trustees for the behoof of the issue, *i.e.*, the children of these children, the testator's grandchildren. That appears to me to be

the paramount intention of the settlor clearly revealed by the words of this portion of his deed. I think it is equally revealed in the language to be found in the subsequent dispositions, dealing with the share or shares of the residue accruing on the death or deaths of one or more of his children. The first clause in which the settlor deals with this survivorship has for convenience been referred to as clause 2. It is a double clause in this respect, that it deals with two events. The first, the event of one of his children dying in the lifetime of the two others without leaving issue, or only leaving issue who die before attaining majority or being married. The second, the event of more than one, *i.e.*, two of his children dying in the lifetime of the third, either leaving no issue or only leaving issue who die before attaining majority or being married. In the first of these events the settlor directs his trustees to hold and retain the fee or capital of the said share for "behoof of the survivors of my son and daughters equally among them, share and share alike, if more than one," and in the second he directs that the capital of these shares should be held for behoof of the one surviving child. If the disposition ended here there might be much in the respondent's contention that the words "survivor or survivors" should be read in their normal and ordinary meaning, but it does not end there. The settlor goes on to add the words following—"In the same way as is hereinbefore provided with regard to the shares originally taken by the said survivors or survivor in their own right." The use of the word "survivors" in the plural shows clearly these additional words apply to the consequences of each of the events mentioned in this clause, but the way in which it is in the first clause provided that each of the settlor's three children should take his or her original share is in liferent allenarly with remainder as to the capital of that share for the issue, the stirps of that child in manner set forth. If therefore the words "survivors" or "survivor" occurring in this clause be read in their ordinary meaning, it necessarily follows that the only interest in a share accruing to one or more of them on the death of a brother or sister is a life interest, leaving the capital of that share undisposed of, which is probably the very last thing the settlor aimed at or desired. But if the word "survivor" be read as it may be read as meaning an individual surviving in person, or figuratively in stirps, the paramount intention of the settlor would be effectuated. On the death of his son Robert the stirps of his sister Mrs Lamont would become entitled to the capital of half their uncle's original share. His other sister would take a liferent in the other half, the capital of that other half going to her stirps in the manner provided in the case of an original share.

The language of clauses 3 and 4, though somewhat clumsy, is quite consistent with the intention of the testator as revealed in the preceding clauses 1 and 2. If one of his children should predecease him, leaving issue, the issue are to receive the capital of the provision which would have fallen to their parent in liferent—but if the predeceasing child should leave no issue then this same capital sum is to be divided equally between the testator's surviving children and lawful issue of any child who may have died leaving such issue, the issue, if more than one child, taking equally among them the shares, or proportions of shares, the liferent of which would have fallen to the deceased parents had they survived. This is the only provision I can find apparently designed to secure for one or more of the settlor's children any portion of the capital of the shares into which he divides his residue. Then follows after the word "survivor" an obscure provision. It runs thus—"to be paid over or held and retained subject to the same conditions and provisions as regards liferent and fee, and otherwise in every respect as are hereinbefore provided in reference to the shares of my children and their issue." The object of this clause may have been to limit the interest the settlor's children were to take in the capital, apparently given to them by the immediately preceding provision, to a liferent or liferents with remainder to their respective issue.

The last clause (5) is, I think, merely designed to prevent intestacy. It would appear to me, therefore, that on the true construction of clauses 1 and 2 (clauses 3 and 4 do not apply) in order to effect the clearly expressed intention of the settlor, it is necessary to construe the words "survivor or survivors," not in their ordinary and proper sense, but in the sense of those who survive either in person or figuratively in issue.

For these reasons I think the appeal succeeds, that the judgment appealed from was erroneous and should be reversed, and the judgment of Lord Blackburn restored, and this appeal be allowed.

LORD SHAW—I am of opinion that the learned Lord Blackburn, Lord Ordinary, came to a right conclusion in the present case, and that the appeal should accordingly be allowed.

As to the will itself, I think misconstruction is apt to arise unless the whole of the residuary clause of the will be read together. This is a sound principle, and in many cases it removes by an adequate conspectus the error which is apt to arise from the selection and segregation of individual expressions and phrases. The present will appears to me to afford a good instance for the sound application of this principle.

In the clause itself I attach much importance to the first portion of it, which is a broad direction that the trustees ought to hold and retain the residue for the three children, share and share alike—"that is to say," that the trustees are to hold and retain and invest the shares for the "liferent use allenarly" of the children, and "for behoof of their lawful issue respectively in fee," with power to each child to apportion among their respective issue and to impose restrictions and conditions upon the grandchildren. It appears to me that this part

of the clause cannot be in itself split up, but that the phrase "that is to say" is a simple equivalent for the testator having said "by which I really mean as follows." So taking the testator's meaning I am of opinion that it is fairly clear that the children's rights were definitely limited to a liferent only, and that the grandchildren took in fee their respective parent's share so liferented. I think this direction to be the paramount direction in the interpretation of the whole clause.

The second part of the clause dealt with the event "of my son or daughters or any of them dying without lawful issue, or of such issue all dying before majority or marriage." In that case the trustees were directed to hold and retain the fee or capital of the said shares "for behoof of the survivors of my said son and daughters, . . . and in the event of only one surviving, for his or her behoof in the same way as is hereinbefore provided with regard to the shares originally taken by the said survivors or survivor in their own right." It is to be noted that there were no shares taken in any absolute sense by the survivors or survivor in their own right, none. It appears to me accordingly not to be doubtful that the second part of this clause and the words above stated, *i.e.*, "in the same way as hereinbefore provided," is made to point to just that division into shares taken stirpitally according to that paramount direction to which I have referred. After full consideration of the clause I do not think that any other meaning can be attached to survivors than survivors in this stirpital sense.

I cannot agree with the learned Lord Ordinary that the word "others" must be substituted for the word "survivors." It is sufficient to construe survivors by the application of the idea of the division of the estate into three shares enjoyed in liferent and fee as prescribed, and when one share lapses at the death of the liferenter then the other shares take it up equally between them. If accordingly the state of the other shares be that they are enjoyed by the issue of a predeceasing liferenter—that is to say, by the fiars of that share—and the second share is held for behoof of a surviving liferenter and the issue of that liferenter in fee, then the division takes place according to the idea, and in my opinion according to the prescription, of the will. The respondent's argument was that in those circumstances the children who are in fee enjoying one share are not to have half of the lapsed share equally with the other share still enjoyed in liferent. This would be to make out of the death of the liferenting parent a distortion of the succession so disturbing as this, that the half-lapsed share would go past one of the families because their parent had died, and the whole, and not the half, would be succeeded to by the other family because their parent was still alive. I cannot bring my mind to think that that was the testator's intention, and it requires no straining whatsoever of words, according to the view which I take, to interpret the words of survivorship in the stirpital sense, thus producing the equality of division and right which appears to me to have been what the testator aimed at when he used the words "in the same way as is hereinbefore provided" in the governing portion of the clause to which I have already alluded. The third part of the residuary clause deals with the case of children predeceasing the testator and leaving lawful issue. In that case the issue take the predeceasing parent's share. The fourth part provides that if no lawful issue is left, then the lapsed share is divided on identically the same principle although the expression of the division is more amply worded, and the issue plainly come in as takers by survivorship irrespective of the fact that their parent was dead. The clauses have been cited to your Lordships at length in the judgment which has preceded mine.

I entirely agree with Lord Skerrington's observation in his judgment to the effect that "in every case of this kind the question is whether the text of a bequest to 'survivors' and the general scheme of the will would either of them afford conclusive evidence that the bequest was intended to benefit every child of the testator who should survive a particular event either in his own person or in that of a descendant." I think that material is found within the residuary clause itself, taken as a whole, to answer that test and afford that evidence. "It is necessary," said Lord Kinnear in *Ward* v. *Lang* (20 R. 953), "in the first place to find from the intentions of the will, apart from the clause immediately under consideration, some reason for holding that the literal language of that clause is inadequate to express the full meaning of the testator, and then to find in the will some clear intention to do something different from what a literal interpretation of the clause would infer." In my opinion the residuary clause now under construction itself contains within its provisions ample material for satisfying that test. There are, as it appears to me, abundant indications that the word survivors was meant in the comprehensive and family sense which is known as stirpital, and that the will could not be interpreted justly as the will of the testator by a more restricted view of the language which is employed.

LORD SUMNER—I concur.

LORD WRENBURY—On the 13th December 1878 Robert Curle executed a trust-disposition and settlement disposing of his property. He had at the date of the instrument three children, Mrs Millar, Mrs Lamont, and Robert Barclay Curle. Mrs Lamont and Mrs Millar had children. Robert Barclay Curle was a bachelor. Robert Curle, the testator, died on the 8th June 1879. The facts as regards his children were at his death the same as at the date of the deed. By the trust-disposition and settlement the testator disposed of his residuary property by clauses, five in number. The question for decision arises upon the second of these clauses.

By the first clause the testator gives his residue in trust for behoof of his three children equally, "to be retained and invested as

hereinafter mentioned," but he continues—"That is to say, I direct my trustees to hold and retain" the shares "for the respective liferent use allenarly of my said son and two daughters, and for behoof of their lawful issue respectively in fee" in such proportions among the issue respectively as the parent may appoint, and in default of appointment, equally. The first step in the respondents' argument—and it is a step which is for his purpose essential—is that to this first clause the principle of *Lassence* v. *Tierney* (1 Mac. & G. 551) is applicable. To call *Lassence* v. *Tierney* into action it is necessary to find that the testator has made a gift absolute as regards his estate and has only restricted the mode of enjoyment by the legatee so as to secure certain objects upon the failure of which the absolute gift prevails. The first clause, it is true, begins with words which would constitute an absolute gift if there were nothing more, but it is shutting one's eyes to the express words of the will to say that this is an absolute gift. The testator goes on to explain what he means by his initial words—"That is to say" he says—in other words he tells me that his previous words do not mean an absolute gift to the children but a gift to the children for a liferent "allenarly" (that is, only) and then for their respective issue in fee. He explains his own language and says his words mean that the gift to the child is not absolute but for life only. The doctrine of *Lassence* v. *Tierney* has no application to this case. By the second clause the testator provides for the event of a son or daughter dying without leaving lawful issue. It is upon the construction of this clause that the question arises. The testator has then concluded the disposition he is minded to make if his three children living at the date of his will shall be living also at the time of his death. But he bethinks himself that this may not be the case. Accordingly he goes on to deal with the event (which did not happen) of some or one of them predeceasing him. This is the subject of the third and fourth clauses. The fifth clause contains a gift-over.

Mrs Lamont died in 1909 leaving children. Robert Barclay Curle died a bachelor in 1916. Mrs Millar was the survivor of the three children of the testator. She died very recently leaving two children. Mrs Lamont's share, of course, went on her death to her children. When Robert Barclay Curle died one-half of his share went, of course, to the Millar family. The question is whether the other half went also to the Millar family or to the Lamont children. I need not quote the second clause. In commenting upon it I shall assume that the reader has it before him. The testator there gives the capital of the share of the child who dies without issue "for behoof of the survivors of my said son and daughters equally among them, share and share alike if more than one, and in the event of only one surviving for his or her behoof." If this were all, the result would be that the accruing share would be given, not in settlement but absolutely in fee to the surviving child or children. But the testator continues—"In the same way as is hereinbefore provided with regard to the shares originally taken by the said survivors or survivor in their own right." There was no share originally taken in fee by a child in his or her own right. The share was given in settlement and the child was but a liferenter. The survivor therefore who is here spoken of as taking in his own right is not the child to the exclusion of his or her issue, but the stirps of which the child as a liferenter and the issue as absolute owners in reversion were the beneficiaries taking "as is hereinbefore provided." From this it is plain that the word "survivors" and the words "his or her" cannot mean children to the exclusion of issue, but must mean the stirps in which the child is parent of the issue. The words are "for behoof of the survivors" or "for his or her behoof" in the same way as is hereinbefore provided. That which had been "hereinbefore provided" was not a gift to the child to the exclusion of the issue, but a gift to the child as liferenter and then to the issue as absolute owners. Both, however, are included under the expression "for behoof of the survivors" or "for his or her behoof," for if they are not so included there are no words expressive of the behoof of the issue. These words in this context necessarily mean for behoof of him or her and his or her issue. If the third clause stood alone I should be of opinion that it is impossible to give effect to the testator's words except by holding that the word "survivor" here is not confined to survivorship of the child but extends to what has been called stirpital survivorship—that is to say, survivorship of the child or his stirps. Attention, however, is called, and quite rightly, to the fact that in clause 4 the testator uses language more accurate than that found in clause 2 to state the mode of devolution of the share of the child who dies leaving no lawful issue. The event of course is different. In clause 2 the event of death without leaving lawful issue may happen at any time. In clause 4 it is an event which will have happened in the testator's lifetime. In the latter case (clause 4) the gift is an original, not a substitutionary, gift. In the former case it is a substitutionary gift to take effect in a named future event if it shall occur. Whether this difference of fact is sufficient to account for a difference of language it is not necessary to inquire. It remains that it is the language of clause 2 that has to be construed, and the language of clause 4 assists me little if at all in the matter.

The case does not end here. There is a gift-over, and I must consider its effect. I again assume that the text of the clause, viz., clause 5, is before the reader—"Failing any survivor of my said son and daughters or issue of any of them." What do these words mean? If I use the phrase "failing any survivor of A, B, and C," what is my meaning? There must be a survivor, for someone of them must be the last to die. Say that they die in the order A, B, C. Then C is the survivor, and the fact that he died last is a fact not only at the moment

of his death but for all future time. If there be nothing more, therefore, the word "failing" cannot mean "not existing," for a survivor will necessarily exist. It must bear some other meaning, and the meaning, I think, is "failing by death." To escape this the respondents seek to add the words "at my death." If a point of time be added there may, of course, be a failing of any survivor at that point of time by reason of the fact that all may be dead before that time. In this case there will be a failure of any survivor at that time, because the man who was survivor in fact did not survive that point of time. The words "at my death" are not in the deed. The respondents seek to justify their insertion by pointing out that the word "survivor" is used in the last preceding clause in the sense of surviving the testator. The testator is there speaking of children "predeceasing me," and uses the words "survived" and "surviving" in a way which in that clause mean "survive me." *Ergo*, say the respondents, the word survivor in clause 5 means "person surviving me." The argument does not commend itself to me.

This testator by clauses 1 and 2 had provided for a certain event, viz., the event of his three children surviving him; by clauses 3 and 4 he had provided for another event, viz., the event of the children or some or one of them predeceasing him. By clause 5 he directs that which is to happen "failing any survivor of my said son and daughters or issue of any of them." I do not understand the ground on which it can be maintained that clause 5 is addressed only to clauses 3 and 4 and not to clauses 1 and 2. It names an event, and says what is to happen in that event. The event is the failure—that is, the non-existence of a living person — of any survivor of his son and daughters or issue of any of them. From this it is to be inferred that he thought that so long as any son, daughter, or issue was living he had already disposed of the property. But if the respondents are right, and if the last survivor of his son and daughters did not leave issue, he had not disposed of it. The previous language ought to be construed (if it will bear the construction) so as to give effect to this fact, and this results if survivor is read in the sense of stirpital survivorship. Moreover, the construction which the respondents put upon the gift-over is so extravagant as not to be admissible. Inserting after the word "failure" the words "at my death," they say the testator gives to the nearest heirs and representatives in moveables at that time of his children and their issue. But they being all dead that would lead only to a reverter to himself. The view I take is one which attributes to him a sensible meaning, viz., that there shall be no intestacy so long as any child or issue of a child is in existence who can take.

In my judgment upon the words of this will, and upon the principles of *Wake* v. *Varah* (2 Ch. D. 348) and *Waite* v. *Littlewood* (L.R., 8 Ch. D. 70), this appeal succeeds, and one-half of the share of Robert Barclay Curle passed after his death to the children of his sister Mrs Lamont, who had predeceased him.

Their Lordships ordered that the interlocutor appealed from be reversed, that the interlocutor of the Lord Ordinary be restored, and that the costs of all parties here and below be paid out of the fund *in medio*.

Counsel for Appellants—Maughan, K.C.—Christie. Agents — Boyd, Jameson, & Young, W.S., Leith—Stibbard, Gibson, & Company, London.

Counsel for Respondents — Macmillan, K.C.—Tomlin, K.C.—Henderson. Agents — James Gibson, S.S.C., Edinburgh — Church, Rackham, & Company, London.

COURT OF SESSION.

Tuesday, October 18.

SECOND DIVISION.

[Sheriff Court at Stranraer.

DONALDSON *v.* BOWIE.

Process—Appeal—Competency—Summary Cause—"Not exceeding £50 in Value exclusive of Interest"—Meaning of "Interest"—Value of Counter-claim—Sheriff Courts (Scotland) Act 1907 (7 *Edw. VII, cap.* 51), *secs.* 3, 7, *and* 28 (1), *as Amended by the Sheriff Courts (Scotland) Act* 1913 (2 *and* 3 *Geo. V, cap.* 28).

A landlord brought an action in the Sheriff Court against his tenant for payment of the sum of £50, being the amount of the half-year's rent of a farm, and interest thereon at 5 per cent. per annum from the preceding Martinmas, the term when the half-year's rent fell due. The defender made a counter-claim for £75. The pursuer having obtained decree the defender appealed. The respondent objected to the competency of the appeal on the ground that the cause did not exceed £50 in value exclusive of interest. *Held* that the meaning of the word "interest" was not limited to interest from the date of citation, and objection *sustained*.

Opinion per Lord Salvesen that no counter-claim, however large, could make appealable a cause which judicially satisfied the definition of section 3 of the Act of 1913.

The Sheriff Courts (Scotland) Act 1907, as amended by the Sheriff Courts (Scotland) Act 1913, enacts — Sec. 3 — "In construing this Act (unless where the context is repugnant to such construction)—(*i*) 'Summary cause' includes — (1) Actions . . . for payment of money not exceeding fifty pounds in amount, exclusive of interest and expenses. . . ." Sec. 7—"Subject to the provisions of this Act and of the Small Debt Acts, all causes not exceeding fifty pounds in value exclusive of interest and expenses, competent in the Sheriff Court, shall be brought and followed forth in the Sheriff Court only, and shall not be subject to review by the