if this is—as I clearly think it is—one of the debts which affects the heirs of entail of this estate so long as the entail is extant, just provision must be made for it. The effect of the deed of disentail, when it is executed and the entailed estate is freed from the fetters, is not to destroy such a claim as this, for section 32 quite clearly and distinctly provides that the effect of the disentail is to leave intact such burdens, charges, and encumbrances, rights and interests, and that they are to remain just as valid and operative in all respects as if the deed of disentail had never been executed.

It does not appear to me that the two clauses to which I have referred—section 6 and section 32—are open to two meanings. I have no doubt that this is one of the debts referred to in section 6 and one of the debts referred to in section 32, and that the Lord Ordinary has plainly gone directly against the statute. The provision he thinks ought to be made, and which he would make, is to pay £200 a-year to the respondents during all the years of the life of the petitioner. That is exactly what the Entail Act says is not to be done. What is to be done is to make the burden as effective and fully operative as if the deed of entail remained in full force.

I am therefore for recalling the first finding in the Lord Ordinary's interlocutor and substituting for that finding a finding to the effect that the annual sum of £200 directed to be paid to the Kirk-Session of the United Presbyterian Congregation of Kirkwall falls to be secured in terms of section 6 of the Entail Amendment Act of 1848, and for remitting to the Lord Ordinary to see that it is so secured.

LORD MACKENZIE—I am of the same opinion, and I think that to take any other view would be going directly contrary to section 6 and to section 32 of the Rutherfurd Act.

LORD SKERRINGTON—As matters stand at present, the respondents' claim is secured by the fetters of the entail. By the recording of the instrument of disentail the respondents' security would be prejudiced, and they would require to resort to diligence against the estate. Now the Rutherfurd Act, by its 6th section, foresaw such a state of matters, and it conferred a further right upon the creditor to intervene and to object to the disentail being given effect to until security had been given for his just rights and interests, whatever these might be. In the present case I do not think there is any doubt as to the nature of the interest which ought to be secured.

Accordingly I agree with your Lordships.

LORD JOHNSTON was absent.

The Court pronounced this interlocutor—

"Alter the said interlocutor by deleting from the first finding therein the portion thereof commencing with the words 'but that only' to the end thereof: With this alteration, adhere to the said interlocutor, and remit to the Lord Ordinary to proceed as accords."

Counsel for Petitioner—Murray, K.C.—J. A. Inglis. Agents—J. C. & A. Steuart, W.S.

Counsel for Respondents — Macmillan, K.C.—Dunbar. Agents—Robson & M'Lean, W.S.

Friday, June 19.

SECOND DIVISION.

[Sheriff Court at Stranraer.

BARBOUR *v.* M'DOUALL.

Lease — Outgoing — Compensation — Drainage Improvements — Custom of Estate — Notice of Intention to Execute Improvements — Agreement to Dispense with Notice — Agricultural Holdings (Scotland) Act 1908 (8 *Edw. VII, cap.* 64), *sec.* 3 (1) *and* (4).

In a claim at the instance of outgoing tenants at the termination of a lease for compensation for drainage improvements the arbiter found that the improvements had been executed by the claimants with tiles supplied by the landlord in accordance with the "custom on the estate," and that no additional rent or interest had been charged against the claimants in respect of such drainage. The tenants having claimed compensation for the improvements under section 3 of the Agricultural Holdings (Scotland) Act 1908, and averred an agreement to dispense with written notice of intention to execute the improvements, *held* that in respect that the actings of the parties were covered by the custom of the estate a written notice of intention to execute the improvements in terms of the statute was necessary to certiorate the landlord that the tenants intended to claim under the statute, and that no agreement to dispense with such a notice could in the circumstances be inferred.

Lease — Outgoing — Compensation — Unreasonable Disturbance—Reasonable Opportunity of Valuing Stock — Expense Directly Due to Quitting Holding—Forced Sale — Agricultural Holdings (Scotland) Act 1908 (8 *Edw. VII, cap.* 64), *sec.* 10.

The Agricultural Holdings (Scotland) Act 1908, sec. 10, enacts—"*Compensation for Unreasonable Disturbance.* — Where (*a*) the landlord of a holding, without good and sufficient cause, and for reasons inconsistent with good estate management, terminates the tenancy by notice to quit, . . . the tenant upon quitting the holding shall . . . be entitled to compensation for the loss or expense directly attributable to his quitting the holding which the tenant may unavoidably incur upon or in connection with the sale or removal of his household goods: . . . Provided that no compensation under this section shall be payable (*a*) unless the tenant has given to the landlord a reasonable opportunity of making a valuation of such

goods . . . ; (*b*) unless the tenant has, within two months after he has received notice to quit . . . given to the landlord notice in writing of his intention to claim compensation under this section."

In a claim under the above section by an outgoing tenant for compensation, *held* (1) that "reasonable opportunity" was a question of circumstances, the section not imposing any duty on the tenants to give intimation to the landlord of such opportunity, and (2) that "loss or expense directly attributable to . . . quitting the holding which the tenant may unavoidably incur" covered loss assessed by arbiter as due to break-up prices at a forced sale.

The Agricultural Holdings (Scotland) Act 1908 (8 Edw. VII, cap. 64) enacts—Section 3—"(1) Compensation under this Act shall not be payable in respect of any improvement comprised in Part II of the First Schedule hereto, unless the tenant of the holding has, not more than three nor less than two months before beginning to execute the improvement, given to the landlord notice in writing of his intention so to do, . . . and upon such notice being given, the landlord and tenant may agree on the terms as to compensation or otherwise on which the improvement is to be executed. . . . (4) The landlord and the tenant may by the lease or otherwise agree to dispense with any notice under this section, and any such agreement may provide for anything for which an agreement after notice under this section may provide, and in such case shall be of the same validity and effect as such last-mentioned agreement." Part II of the First Schedule refers to "Drainage."

Section 10 is quoted *supra* in rubric.

On 10th December 1913 John Miller Hannah, the arbiter in a reference under the Agricultural Holdings (Scotland) Act 1908 (8 Edw. VII, cap. 64), between Andrew Kenneth M'Douall of Logan, Kirkmaiden (the *landlord*), and John Barbour and Robert Barbour, formerly tenants of the holding of Balgowan, on the estate of Logan (the *tenants*), stated a Case for the opinion of the Sheriff-Substitute at Stranraer (WATSON) with reference to certain claims for compensation by the tenants under the said Act on the determination of their tenancy.

The Case stated—"The deceased Robert Barbour (father of the claimants) entered into the occupancy of the farm of Balgowan at Whitsunday 1887 on a nineteen years' lease, but no formal lease was ever executed. From the date of his death, about three years later, the farm was carried on by his testamentary trustees until Martinmas 1900, when the claimants were accepted as tenants, and continued as such until Whitsunday 1906. From that date the farm was held by them by tacit relocation until Whitsunday 1913, at which date their tenancy was brought to an end by notice to quit given by the respondent on 29th April 1912.

"The claim included a claim in respect of improvements made by the tenants by drainage. It was admitted that the claimants did not on any of the occasions on which such improvements were executed give notice in writing to the landlord in compliance with the requirements of section 3 (subsection 1) of the Act. It was, however, admitted or proved to the arbiter's satisfaction that on each of these occasions when drainage improvements were executed, the claimants had interviews with the former factor Mr D. A. M'Clew, at which the nature of the work proposed was brought fully under his notice. Orders for the tiles necessary for carrying out the work, to the Tirally Brick and Tile Works, were given by the said factor to the claimants, and the tiles so supplied were charged against and paid for by the estate. No additional rent or interest was charged against the claimants in respect of such drainage; the cartage and laying of the drains were done by the claimants at their own expense, and that this was and is the custom on the estate. It was further admitted that at none of these meetings was the subject of compensation mentioned, or the question of written notice specifically raised.

"It was proved that the tenancy of the said John Barbour and Robert Barbour of said holding was terminated by notice to quit given by the landlord without good and sufficient cause, and for reasons inconsistent with good estate management. Notice of intention to claim for loss under section 10 was given by the claimants to respondent's factor on 24th May 1912, and the claimants did not dispose of any of their effects until 13th February 1913, on which date the main part of their dairy stock was sold at the farm by public auction, the remainder of the stock, together with the implements and utensils of husbandry, being sold by public auction at the farm on 17th May 1913. These two sales were duly advertised by posters displayed in the district and also by advertisements in the various local newspapers for some considerable time before the sales actually took place. It was admitted by the factor that he saw the advertisements but that he took no steps to have a valuation made. The claimants gave the following written notice on 26th April 1913 to the respondent—'Balgowan, Ardwell, Stranraer, 26th April 1913. To Andrew Kenneth M'Douall, Esq., of Logan, *per* Henry Michie, Esq., Logan Estate Office, Ardwell, Stranraer. Dear Sir,—In terms of section 10 of the Agricultural Holdings (Scotland) Act 1908 we hereby give you notice that you can now have an opportunity of inspecting the goods, implements, and stock on the farm of Balgowan.—Yours faithfully, ROBERT BARBOUR; JOHN BARBOUR.'

"It was proved that the sale of the dairy stock was a good sale so far as public displenishing sales go, and that at least fair values were obtained for the various animals so far as such sales go. It was, however, proved to the arbiter's satisfaction that during the tenancy the claimants had built up by selection and breeding a good milking herd, the value of which as a herd to the tenants was greater than the *cumulo* value of the component units sold at a displenishing public sale to individual purchasers.

"It was further found proved that the im-

plements and dairy utensils were sold at break-up prices, and did not realise anything approaching their value. It was also proved that the tenants did not receive at the public sale the full values of the horses and brood mares sold."

On 5th November 1913 the arbiter issued proposed findings in which he, *inter alia*, proposed to find—"(1) That on the claim for drainage improvements, from the facts and circumstances proved as above, there existed by implication such an agreement to dispense with formal written notice as is contemplated in and provided for by sub-section 4 of section 3 of the said Act. I therefore proposed to award compensation to the claimants in respect of drainage improvements executed by them, and in assessing the amount of the compensation, to have taken into account the benefit derived by the tenant from the landlord's expenditure on tiles, in accordance with the provisions of section 1 (2) of said Act. (2) That a reasonable opportunity was given by the tenants to the landlord of making a valuation of the whole goods, implements, produce, and stock in respect of which a claim is made under section 10 of the Act. (3) That the claimants sustained loss or expense directly attributable to their quitting the holding, unavoidably incurred by them in connection with the sale of their stock, implements, and dairy utensils; that from the evidence led and my own knowledge I assess the loss sustained on these sales as follows:—Dairy stock, £100; horses and brood mares, £30; implements, £65."

The *questions of law* were—"1. On the facts found by me to be admitted or proved, am I entitled to hold that there was an agreement to dispense with written notice to execute drainage in terms of section 3 (4) of the Agricultural Holdings (Scotland) Act 1908, and to award compensation in respect of such improvements? 2. In respect of the terms of the notice, dated 26th April 1913, given by the claimants to the respondent, are the claimants barred from founding on any other alleged previous circumstances to supersede a similar notice prior to the sale of 13th February? 3. On the facts found by me to be admitted or proved, am I entitled to find that a reasonable opportunity was given to the landlord by the tenants of making a valuation prior to the sale of 13th February 1913, in terms of section 10, proviso (*a*)? 4. On the facts found by me to be admitted or proved, am I entitled to find that the sums proposed to be awarded as loss in connection with the sales of dairy stock and implements are loss or expense unavoidably incurred by the tenants upon or in connection with said sales, and directly attributable to their quitting the holding?"

On 4th February 1914 the Sheriff-Substitute answered the first and second questions of law in the negative and the third and fourth in the affirmative.

The claimants appealed, and argued—(1) It was clear from the circumstances of the case that the landlord and tenant had agreed to dispense with notice under section 3 of the Agricultural Holdings (Scotland) Act 1908 (8 Edw. VII, cap. 64). It was not necessary that such an agreement should be in writing—*Ogilvy* v. *Elliot*, November 3, 1904, 7 F. 1115, *per* Lord Ordinary (Kincairney) at p. 1124, 42 S.L.R. 41. Under sections 2 and 4 writing was specifically required, but not under the present section. It was competent, therefore, to prove dispensation with notice *prout de jure*. In any event, if writing were necessary, it need not be formal, but only such as was necessary to found a good contract of lease or loan, and that in the present case was satisfied by the written orders for tiles which the landlord supplied—*Hope* v. *Derwent Rolling Mills Company, Limited*, June 27, 1905, 7 F. 837, 42 S.L.R. 794; *Sellar* v. *Aiton*, January 26, 1875, 2 R. 381, 12 S.L.R. 272. (2 and 3) The claimants were not barred by their letter of 26th April 1913 from proving that prior to 13th February 1913 a reasonable opportunity had been given to the landlord of making a valuation of the stock. Reasonable opportunity was a question of fact, and did not require any written notice. (4) The Sheriff was right in upholding the arbiter's award for loss incurred in removing under section 10. Compensation was properly due for depreciation due to a forced sale.

Argued for the respondent—(1) There was an express finding by the arbiter that all that was done in respect of drainage was done in accordance with the custom of the estate. Where there was such a custom there was no room for an inference such as the claimants asked in the present case, that compensation had in fact been claimed. Written notice was necessary in such cases, and its object was to certiorate the landlord that his tenants intended to proceed under the Act. Where there was no such custom as existed here it might be that without a written notice compensation might be found due, but that was not the case here. (2 and 3) The letter of 26th April 1913 showed that the tenants had not previously to February 1913 given the landlord a "reasonable opportunity" of valuing, and they were therefore barred from maintaining that they had. Further, it was the tenant who under the Act was bound to make the first move in giving such an opportunity—*Brown* v. *Mitchell*, 1910 S.C. 369, *per* L.P. Dunedin at p. 384, 47 S.L.R. 216. (4) The arbiter was not entitled to award compensation for mere speculative loss, as he had done in the present case.

LORD MACKENZIE—The questions in this case arise in a note of appeal in a stated case under the Agricultural Holdings (Scotland) Act 1908, and relate to matters in dispute between the proprietor of the farm of Balgowan and the tenants whose tenancy was determined as at Whitsunday 1913. The matter was dealt with by the arbiter Mr Hannah, and after he had issued certain proposed findings a case was, at the request of the landlord, stated for the opinion of the Sheriff-Substitute, who has disposed of the matters that we now have to consider.

The first of those relates to a claim for compensation for certain drainage improvements executed as described in the case; and the

question of law is:—"On the facts found by me to be admitted or proved, am I entitled to hold that there was an agreement to dispense with written notice to execute drainage in terms of section 3 (4) of the Agricultural Holdings (Scotland) Act 1908, and to award compensation in respect of such improvements?" Upon that question the arbiter and the Sheriff-Substitute have taken different views. [*His Lordship summarised the facts stated in the case and continued*:—]

It is quite plain, therefore, from the facts found in the case that there was no compliance with the requirements of section 3, subsection 1, of the Act. In that sub-section it is provided:—[*His Lordship quoted the sub-section*].

The notice required in this sub-section was admittedly not given; but it was argued on behalf of the appellants that although this was so, yet looking to the provision in subsection 4 it might be inferred in certain cases, of which it is contended that this is one, that there was an agreement to dispense with any notice under this section, including notice of an intention to execute an improvement of the class comprised in Part II of the First Schedule of the Act. We had an argument on the question whether an agreement to dispense with notice could be inferred from facts and circumstances, or whether it was necessary that, as the notice is to be given in writing, so such an agreement should be proved by writing also. It is not necessary to pronounce an opinion upon that point in the present case. It may be that in a future case such facts and circumstances may be presented that the Court would consider itself entitled to draw the inference that there was an agreement to dispense with notice.

The ground of judgment in the present case is that on no view of the facts and circumstances can it be said that the appellants here, as tenants of the farm, did bring themselves within the provisions of the Agricultural Holdings Act with regard to compensation for improvements by way of drainage. Upon that point the argument stated by Mr Johnston appeared to me to be quite conclusive. Speaking for myself, I may say that I do not think that our attention at the outset was sufficiently directed to the important finding at the top of page 5 of the case, from which it appears quite plainly that all that was done by the tenants and by the landlord upon the occasion when the drainage improvement was executed was done entirely in conformity with the custom on the estate. The cartage and laying of the drains was done by the claimants at their own expense, and the tiles, for which the order was given from the estate office by the factor to the claimants, were charged against and paid for by the estate. The arrangement to which appeal is made, and from which the Court is asked to draw the inference that there was an agreement between the landlord and tenants to dispense with the statutory notice was an arrangement which was made without any reference at all to the Act of Parliament. If it were the case, as was contended by the appellants, that the object of requiring such notice to be given is merely in order that the landlord may have knowledge of what is being done, then it might be possible to lay a foundation for the argument on behalf of the appellants. But this is not the purpose of the statutory notice; on the contrary, its purpose is to certiorate the landlord that what is being done is being done on statutory conditions. And when one bears in mind the facts which have been found by the arbiter in this case, I think it is impossible to hold as to this work, which was done upon the footing of the estate custom, that there are any facts which can be regarded as inferring an agreement on the part of the landlord that no notice should be given to him, as required by the statute. I think the Court would be slow in any case in construing any agreement which has no reference to notice at all as equivalent to a dispensation with notice under the provisions of the Act of Parliament. Accordingly upon that matter I think the arbiter was mistaken in the view which he took, and that upon this point the judgment of the Sheriff-Substitute should be affirmed.

With regard to the other matters which were brought up by way of appeal on the part of the landlord, I am of opinion that the Sheriff-Substitute has also taken a sound view. The first of these matters arises on the second question which is put, namely—"In respect of the terms of the notice, dated 26th April 1913, given by the claimants to the respondent, are the claimants barred from founding on any other alleged previous circumstances to supersede a similar notice prior to the sale of 13th February?" That arises under the provisions of section 10 of the Act. That section provides:—"Where the landlord of a holding, without good and sufficient cause, and for reasons inconsistent with good estate management, terminates the tenancy by notice to quit," then "the tenant upon quitting the holding shall, in addition to the compensation (if any) to which he may be entitled in respect of improvements, and notwithstanding any agreement to the contrary, be entitled to compensation for the loss or expense directly attributable to his quitting the holding which the tenant may unavoidably incur upon or in connection with the sale or removal of his household goods or his implements of husbandry, produce, or farm stock, on or used in connection with the holding." As a proviso to that the Act of Parliament says—"Provided that no compensation under this section shall be payable (*a*) unless the tenant has given to the landlord a reasonable opportunity of making a valuation of such goods, implements, produce, and stock as aforesaid."

The argument was, that inasmuch as there was a sale of part of the tenants' stock on 13th February 1913, and as the tenants through their agents, as we were informed, wrote on 26th April 1913 a letter stating that "in terms of section 10 of the Act we hereby give you notice that you can now have an opportunity of inspecting the goods, implements, and stock on the farm of Bal-

gowan," and that inasmuch, also, as that letter was written after part of the stock had been realised, the tenants are barred from maintaining that they gave the landlord a reasonable opportunity of making a valuation of the goods. I think that is a quite untenable position. The question must be determined, not with reference to anything that was written or said on behalf of the tenants, but with reference to the proper construction of proviso (*a*), section 10. Therefore so far as the second question is concerned I think there is no difficulty at all.

The third query raises the question of the construction to be put upon sub-section (*a*). The Court is asked—"On the facts found by me to be admitted or proved, am I entitled to find that a reasonable opportunity was given to the landlord by the tenants of making a valuation prior to the sale of 13th February 1913, in terms of section 10, proviso (*a*)?" No question, of course, could arise with regard to the second sale, which was on the 17th May 1913, because that was after the letter of 26th April, and therefore the question arises only in regard to the first sale on 13th February 1913.

It appears to me that under sub-section (*a*) there is no duty on the part of the tenant to do anything. There is no provision that he is to give intimation. What is said is that he is to give the landlord "reasonable opportunity," and what "reasonable opportunity" is must, of course, depend on the circumstances of each case. But to say that the landlord in the present case had not reasonable opportunity is, I think, hopeless on the facts of the case; because the necessary notice under sub-section (*b*) was given by the claimants so far back as 24th May 1912, and the first of the sales was not until 13th February 1913. The notice given on 24th May was in terms of proviso (*b*) of section 10 of the Act. Therefore the landlord had due notice that the tenants intended to claim compensation under the the section so far back as 24th May 1912. If after his making a request thereafter for a reasonable opportunity to make a valuation of the goods on the premises the tenants had obstructed him and prevented him from getting what under sub-section (*a*) he was entitled to get, then there would have been ground for complaint. So also if the tenant had hurried on a sale so that the landlord had no reasonable opportunity of making a valuation. On the facts in the present case I think the landlord had no ground of complaint.

That leaves only the last question, which is—"On the facts found by me to be admitted or proved, am I entitled to find that the sum proposed to be awarded as loss in connection with the sales of dairy stock and implements are loss and expense unavoidably incurred by the tenants upon or in connection with said sales, and directly attributable to their quitting the holding." Upon that matter the proposed finding of the arbiter was—"That the claimants sustained loss and expense directly attributable to their quitting the holding, unavoidably incurred by them in connection with the sale of their stock, implements, and dairy utensils; that from the evidence led, and my own knowledge, I assess the loss sustained on these sales as follows"—and then he assesses the amount at £195. That does not seem to be an excessive sum in view of the fact that the amount realised from the two displenishing sales was something like £3400 *prima facie*.

The ground upon which the arbiter proceeded was apparently that—as disclosed in the statement of facts—"the sale of the dairy stock was a good sale so far as public displenishing sales go, and that at least fair values were obtained for the various animals so far as such sales go. It was, however, proved to the arbiter's satisfaction that during the tenancy the claimants had built up by selection and breeding a good milking herd, the value of which as a herd to the tenants was greater than the *cumulo* value of the component units sold at a displenishing public sale to individual purchasers. It was further found proved that the implements and dairy utensils were sold at break-up prices, and did not realise anything approaching their value. It was also proved that the tenants did not receive at the public sale the full value of the horses and brood mares sold."

Now I am of the opinion that the judgment upon that point of the Sheriff-Substitute should be affirmed, and the plainest and most obvious ground is that we have no materials in the case for coming to any other conclusion. Even supposing the argument which was submitted to us on the construction of section 10—upon the meaning to be attached to the words "loss and expense"—were sound, I do not know how we could possibly give effect to it, or turn it into pounds, shillings, and pence in the present case. I do not for my part see that there are any grounds stated in the case for holding that the arbiter acted *ultra vires* in coming to the conclusion that he did. This being the case, it is probably not the proper occasion for going into a discussion of what exactly is the meaning of "loss and expense." When the arbiter has found that the loss or expense is directly attributable to the tenants quitting the holding, and is unavoidably incurred by them in connection with the sale of their stock, I am unable to see that he has done anything that he was not warranted in doing under the Act.

Prima facie the term "expense" would appear to me more applicable to the case of the removal of stock, and to refer to the cost attending the removal. In a case of this kind what the tenant would be entitled to would be not merely the expense of the sale but the loss through deterioration of the stock upon a sale, and the elements which are mentioned by the arbiter are certainly relevant to be taken into consideration. I think that in the absence of a special averment of facts which would show that injustice had been done to the landlord, I should say that the arbiter as a rule would take the facts as he found them, and if there had been a sale he would deal with the matter on the footing of a sale,

and if a removal on the footing of a removal. He was not bound to enter into speculative matters. For example, if he entered into the question of what would have been the result if instead of selling their stock, &c., the tenants had removed to an adjoining farm, he would be entering into the region of speculation. However, it is not necessary to express a concluded opinion upon these points, because in order to decide the present question it is enough to say that there is no material upon which we can hold that the arbiter has acted *ultra vires*. Therefore on the whole matter I am of opinion that we should adhere to the decision of the Sheriff-Substitute.

LORD DUNDAS and LORD GUTHRIE concurred.

The LORD JUSTICE-CLERK and LORD SALVESEN were absent.

The Court dismissed the appeal and affirmed the interlocutor of the Sheriff-Substitute.

Counsel for the Appellants—Constable, K.C. — Keith. Agents — Simpson & Marwick, W.S.

Counsel for the Respondents—Johnston, K.C.—C. H. Brown. Agents—E. A. & F. Hunter & Company, W.S.

HOUSE OF LORDS.

Tuesday, July 14.

(Before Earl Loreburn, Lords Dunedin, Atkinson, Shaw, and Parmoor.)

NASMYTH'S TRUSTEES *v.* NATIONAL SOCIETY FOR THE PREVENTION OF CRUELTY TO CHILDREN, AND OTHERS.

(In the Court of Session, December 17, 1912, 50 S.L.R. 271, and 1913 S.C. 412.)

Succession — Testament — Proof — Designation of Beneficiary—Extrinsic Evidence.

A Scotsman, resident in Scotland, by a Scots testament left a number of legacies to Scotch charities. He also left a legacy to "The National Society for the Prevention of Cruelty to Children." This legacy was claimed by a society having its headquarters in London. It was also claimed by a Scotch society whose correct designation was "The Scottish National Society for the Prevention of Cruelty to Children," on averment that it was the society the testator meant. This it endeavoured to establish by inference from the testator's domicile, his other bequests, his knowledge of the society.

Held (*rev.* judgment of the Second Division) that in the absence of clear proof of a contrary intention the accurate designation of the London society must be given effect to, and that society *preferred*.

This case is reported *ante ut supra*.

Following upon the interlocutor of 17th December 1912, under interlocutor of 20th March 1913, a proof was taken before Lord Salvesen, the import of which appears in the opinions of their Lordships of the Second Division, who on 5th July 1913 pronounced an interlocutor preferring the Scottish National Society for the Prevention of Cruelty to Children to the fund *in medio*, with expenses.

LORD JUSTICE-CLERK — There can be no doubt that this is not a very easy question in some respects, and it is the more difficult because the circumstances of the case are highly complicated—indeed, so complicated that I doubt if any gentleman, even if he got a book and made excerpts of everything about the Society, would thoroughly understand it.

The effect of what is proposed on the part of the Society of London is that a desire for the protection of children uttered by a Scotsman, and a bequest given by a Scotsman to aid that desire, is to be of no benefit whatever to any Scottish child, or to any society that protects children in Scotland, but that the money is to be carried off to London and none of it is to be applied for any Scottish purpose whatever. Now that is rather a strong thing to ask for, but of course one always says if it is the law it must be carried out.

This Society carries on work in London, and is no doubt under its charter a National Society for the Protection of Children. But it is a National Society which recognises that it has nothing to do with Scotland. It has no duties in Scotland; it says it has none, and it does not fulfil any. But the peculiarity of this case is that in the two societies which had been formed there was a movement for affiliation; and the Scottish Society was most willing to affiliate with the English Society upon one condition, very expressly indicated, that if any Scottish testator left money to the Society it was to belong to the Scottish branch. When things were in that position this gentleman left a sum of £500 to the National Society for the Prevention of Cruelty to Children, and that sum necessarily, if he had died before 1907, must have come to Scotland. About that there cannot be a shadow of doubt. By the arrangement and the condition which the English Society agreed to that money would have come to Scotland.

Then it turned out that there was some legal difficulty about this affiliation. Apparently counsel both in England and in Scotland advised that they had no right to make it, and it was abrogated; but in no way did that alter the work that was carried on, because the work was carried on in England by the English people and in Scotland by the Scottish people. But there was nothing to indicate to the testator that any change had taken place at all. This affiliation subsisted until 1907. Now at the time that the testator made his will, could it be suggested for a moment that he did not intend the money to go to Scotland? If