water into such a state that it was fairly drinkable. I cannot otherwise read finding 4—that it was the practice of the crew to do this, and that it was sanctioned by the officers.

But then it is further admitted that if the ship had provided a shelf on which the tins were to be put, and if that shelf had happened to contain the very tin in question—a tin containing caustic soda—and if a sailor had taken the wrong tin, he having no reason to think it was the wrong tin, the ship would in that case also have been liable. Now I cannot distinguish the present case from the one I have just figured. It seems to me that what was done by the crew was just to provide what otherwise the ship would have had to provide, namely, a method of cooling the water. It was just a mere adjunct of the pump, and consequently the respondent cannot be said to have done anything which was either obviously dangerous or which was otherwise than in accordance with the ordinary practice of the ship, known to and recognised by the appellants.

This case seems to me in very sharp contrast with two cases that were quoted and relied on by Mr Jamieson in opening, and also referred to by Mr Horne in his speech, viz., *Keen*, 1914, 7 Butterworth, 542, and *Brice*, [1909] 2 K.B. 804. In both of these cases what was done was done without the employers' knowledge or permission. And the matter was very well put, by contrast with the present case, by Kennedy, L.J., in *Brice*, where he said, p. 810, in disallowing the workman's claim, that this was "a danger of his own choosing, and one altogether outside any reasonable exercise of his employment." By contrast with that case it seems to me that the present case is one where the workman did nothing which was inconsistent with the reasonable exercise of his employment, and that he did not incur any danger of his own choosing.

But then comes the difficulty, namely, that in taking up a can he took one which was not his own. It was the property of the boatswain and the donkeyman, who messed together. I read the case as meaning that he did not apply his mind as to whether it was his own can or not. He did not know that it belonged to anybody else. There was no case, therefore, of wrongously taking another man's property, or even of knowing it was not his own property, but what he did certainly requires explanation, and I find that explanation given in finding 5 by the arbitrator, namely—"That there was a good deal of give and take, so that it was quite common for one man to drink water which had been carried from the pump by some other man." The result, I think, is that a fact of that kind can have no bearing on the question whether the accident arose out of his employment. That was a matter for arrangement between the men, the cans, no doubt, being all identical or at least similar in appearance, and it mattering not the least to the men whether the can that a man at a particular time happened to take was his own or not, the understanding being that the man whose can he took would when it suited his convenience do the same with his can.

In the result, in supporting the arbitrator's judgment, we shall not be going against either the letter or the spirit of the enactment, nor shall we be in conflict with any of the decisions. Some of these decisions I think have gone a good deal further, whatever may be said about certain dicta in them, dicta, however, which must always be read in the light of the circumstances of the particular case.

LORD HUNTER—I think this is a narrow and difficult case. For the reasons stated by Lord Guthrie, however, I do not think that we should hold that there was no evidence upon which the arbitrator could competently reach the conclusion which he did. I therefore agree in the judgment proposed.

LORD JUSTICE-CLERK—In one thing at least I agree with your Lordships—that this is a narrow and difficult case. To my mind the difficulty is only created by the decisions which have been given in the past upon this Act of Parliament. Had this case been brought immediately after the Act was passed I would have had no hesitation whatever in holding that the claimant had not a right to obtain compensation from his master in the present circumstances. But the matter has been so extraordinarily extended by decisions that have been pronounced in the past—decisions which I feel bound to submit to—that I cannot see sufficient grounds for differing from the judgments which your Lordships have delivered.

LORD DUNDAS and LORD SALVESEN were absent.

The Court answered the questions of law in the affirmative.

Counsel for the Pursuer and Respondent—Crabb Watt, K.C.—A. M. Mackay. Agent—E. Rolland M'Nab, S.S.C.

Counsel for the Defenders and Appellants—Horne, K.C.—Douglas Jameson. Agents—J. & J. Ross, W.S.

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*Tuesday, June* 8.

## FIRST DIVISION.

## CARRON COMPANY *v.* FRANCIS AND OTHERS.

*Landlord and Tenant—Local Government—County—Burgh—Small Dwelling-House—Occupier—House Letting and Rating (Scotland) Act* 1911 (1 *and* 2 *Geo. V, cap.* 53), *secs.* 1, 7 (2), (6).

A firm of coalmasters were proprietors of a number of houses which they let out to their employees on lease. The leases were terminable by either employer or employee on a week's notice, and were also terminable by the employers at their option in certain contingencies, *inter alia*, on the employee leaving or being dismissed from their service. No employee was entitled or

bound to take a house because he took service with the firm, and if he desired to vacate his house he was free to do so without affecting his employment. The amount of the house rent was deducted from the wages of the employee. *Held* that the employees, not the firm, were the occupiers of the houses in question, and so that the houses were small dwelling-houses in the sense of the House Letting and Rating (Scotland) Act 1911, sec. 1, and the firm entitled to a deduction of 2½ per cent. on the occupiers' assessments recovered from them in terms of section 7 (6) of that Act.

The Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55), section 4, enacts—"The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction—that is to say, . . . (21) 'Occupier' shall mean tenant or sub-tenant, or any person in the actual occupancy; and shall not include a lodger or a person in the occupation as tenant of a furnished house let for a less period than one year, but shall include a person by whom such furnished house is so let."

The House Letting and Rating (Scotland) Act 1911 (1 and 2 Geo. V, cap. 53) enacts—Section 1—"In this Act—The expression 'small dwelling-house' means a dwelling-house in a burgh or special district in which this Act is in operation, entered in the valuation roll at a yearly rent or value of ten pounds or under if the population of the burgh or special district is less than twenty thousand; . . . but shall not include any dwelling-house occupied by the owner thereof, or in which the owner resides, or any dwelling-house used as an inn or hotel, or any dwelling-house let along with land for agricultural, pastoral, or horticultural purposes, or any dwelling-house let in conjunction with a shop, workshop, stable, or byre; nor shall it include any dwelling-house let under any contract or lease current at the passing of this Act prior to the expiration of such contract or lease. . . . The expression 'owner' and 'occupier' have the meanings assigned to them respectively in the Burgh Police (Scotland) Act 1892. . . ." Section 7—". . . (2) Subject as hereinafter provided, the owner of a small dwelling-house shall be responsible for all assessments liability to pay which is imposed on the occupier thereof, and the same shall not be recovered or recoverable by the assessing authority from the occupier, but shall be recovered by the assessing authority from such owner in the same manner as provided for under existing Acts with respect to the recovery of assessments from owners, and the assessing authority shall be entitled to recover occupiers' assessments from the owner for the year from Whitsunday to Whitsunday, notwithstanding that the house may not be occupied throughout the year, and for that purpose to issue to the owner through their collector or other officer appointed by them any notice, schedule, demand note, or intimation which, under existing Acts, may be issued in respect of the year's assessments to the occupier. . . .' (6) Every assessing authority shall, in respect of the occupancy of small dwelling-houses, allow to owners from all occupiers' assessments levied on and recovered from them in place of the occupiers (less any repayments in pursuance of a claim under this section) a deduction to cover cost of collection on the following scale, that is to say—In the City of Glasgow, two pounds ten shillings per centum; and elsewhere such deduction, not exceeding two pounds ten shillings per centum, as may be fixed by the Sheriff on the application of the assessing authority, or any ten or more persons having an interest, after such intimation by advertisement or otherwise as he thinks fit, and after such inquiry, if any, as he may deem necessary. . . ."

The deduction to be allowed to owners in Lanarkshire in terms of sub-section (6) of section 7 of the said "House Letting and Rating (Scotland) Act" has been fixed by the Sheriff at two and a-half per cent.

Carron Company, incorporated by royal charter, Carron, Stirlingshire, *first parties;* Sidney Herbert Francis, 65 Renfield Street, Glasgow, Assessor under the Lands Valuation Acts for the Lower Ward of the County of Lanark, *second party;* and the County Council of the County of Lanark, *third parties*, brought a Special Case in the Court of Session.

The Case stated, *inter alia*—"1. The first parties are lessees of certain minerals in the estate of Cawder (otherwise Cadder), in the parish of Cadder and county of Lanark, under a lease dated 8th and 11th April and 7th May 1892, whereby Archibald Stirling of Keir let to the said first parties, for a period of forty-five years from Martinmas 1890, with breaks in the tenants' option at Martinmas 1895 and every fifth year thereafter, the said minerals, and also the whole colliers' houses on the lands so let so far as belonging to the said Archibald Stirling.

"2. The said houses consisted of, *inter alia*, houses then known as Nos. 1 to 12 Blackhill Row, Nos. 47 to 57 Shanghai Row, Nos. 90 to 99 Valley Row, and Wilderness Cottage—in all thirty-four houses. The said lease provided that the first parties should purchase the said houses at their entry at the price of £500. This was done by the first parties.

"3. Since entry the said first parties have built over 200 houses on the ground included in the said lease in addition to the thirty-four houses above referred to.

"4. On entering the employment of the first parties as a miner or otherwise at the first parties' works at Cadder, an employee [who takes a house from the first parties] is required to sign a document, a copy of which is printed in the appendix, and is held to form part of this Special Case. In terms of the said document, an employee of the first parties who is in the occupation or possession of any house or garden or both, of which the first parties are proprietors or lessees, agrees, *inter alia*, (1) 'that he shall hold said house or garden or both only from week to week during the term he continues in said service or em-

ployment, counting from the first pay day after his entering the said service or employment'; (2) that the occupancy as aforesaid shall be terminable by either employer or employee upon one week's notice; (3) that upon the expiry of the period of the said notice, or in the option of the first parties, in the event of such employee contravening any of the rules and regulations posted up at the said works, or upon his ceasing to work at the said works or to be in the service or employment of the first parties, or being dismissed therefrom, he shall be held bound to remove from said house or garden or both, and to have authorised summary ejection at the first parties' instance therefrom; (4) that he shall be held liable to pay all damage that may be done to the said house during his occupancy thereof; (5) that he shall use his house only for the accommodation of his own family, and shall not take in thereto any lodger or lodgers without the special consent in writing of the first parties or their representatives at these works; (6) that in terms of the Truck Acts, 1831 to 1896, the first parties are entitled to deduct from the wages to be earned by him in their employment, *inter alia*, the amount of his house rent as weekly tenant if he occupies any house or garden or both as aforesaid.

"5. This document is dated and signed by the employee, and his signature is attested by two witnesses. The house rent which is deducted by agreement from the employee's wages includes a sum representing occupier's rates, the whole rates for each house being paid by the first parties. The first parties do not make it a condition of employing any man that he shall occupy one of their houses, and if any employee who occupies one of these houses desires to vacate it he is free to do so without affecting his employment. The employment is not exercised at or in connection with the said houses, but at the first parties' collieries, which are some distance from the houses. The first parties have no control in virtue of the contract of employment over the said employees except during working hours and when actually employed. The first parties have no higher right than landlords in the ordinary case have to enter the said houses during the occupation thereof by their employees so long as the employees' right of occupation is not validly terminated in terms of the agreement.

"6. The first parties were entered by the second party in the valuation roll for the county of Lanark for the year 1913-14 for the houses purchased and built by them, their names being entered in the columns of the said roll relative to 'proprietors' and 'occupiers'; their employees who occupy, on the terms set out in paragraphs 4 and 5 hereof, houses or gardens or both, purchased or built by the first parties, were entered as 'inhabitant-occupiers not rated.' The 'tenants' column in the said roll was left blank. The terms of the entries in the said roll (the form of which is prescribed by the Registration Amendment (Scotland) Act 1885 (48 Vict. c. 16), and section 29 of the Local Government (Scotland) Act 1889 (52 and 53 Vict. c. 50), were, *mutatis mutandis*, uniform in all cases—an entry in the said roll which is typical of all the other entries relating to the said houses occupied as aforesaid is printed in the appendix, and is held to form part of this Special Case. The first parties have for several years claimed either that the ordinary occupiers' column should be left blank, or, alternatively, that their employees occupying said houses as aforesaid should be entered on the valuation roll as tenants and occupiers, but the second party has consistently declined to accede to these views, and has insisted on entering the first parties both as proprietors and occupiers, and their employees as inhabitant-occupiers. The first parties appealed against the said entries in the valuation roll for the year 1913-14 to the Lower Ward Valuation Committee of the County Council of Lanark, and claimed to have the roll rectified as above stated, but the said appeal was refused. Similar entries have been made in the valuation roll for the year 1914-15. . . .

"In terms of section 11 of the House Letting and Rating (Scotland) Act 1911, the third parties duly adopted the said Act, and it then became applicable to, *inter alia*, the North Cadder Special Water District. All the said houses purchased or erected by the first parties, with the exception of Nos. 1 to 12 Blackhill Row, are situated within the said special district. The said special district contains a population of less than 20,000, and the rent of each of the houses within the said special water district is less than £10 a-year. The houses are all occupied by employees of the first parties, on the terms stated in the agreement referred to in paragraph 4 hereof, and are not let under any contract or lease current at the date when the said House Letting and Rating (Scotland) Act came into operation in the said district. . . .

"In the demand-notes for occupiers' rates issued in respect of the said houses to the first parties by the third parties for the year 1913-14, no deduction was allowed to the first parties as owners of the said houses to cover the cost of the collection of occupiers' rates. The third parties on being requested by the first parties to make a deduction, declined to allow any deduction, contending that, as the first parties were entered in the said valuation roll as occupiers, each of the said houses must be held to be occupied by owners, and therefore none of the said houses is a small dwelling-house within the meaning of the House Letting and Rating (Scotland) Act. The first parties remitted to the third parties the amount of the occupiers' rates as levied, under deduction of a sum equal to 2½ per cent. of the amounts so levied, which deduction they contend they are entitled to under the said House Letting and Rating (Scotland) Act 1911. The third parties acknowledged receipt of the amount so

remitted, and treated this payment as a payment to account, intimating that a balance was still due by the first parties. . . .

"The first parties *contend* (1) that they should not be entered in the said valuation roll as occupiers in respect of the said houses; (2) that each of the said houses is a small dwelling-house within the meaning of section 1 of the said House Letting and Rating (Scotland) Act 1911; and (3) that they are accordingly entitled to make the said deduction of 2½ per cent.

"The second party *contends* (1) that the occupiers of the houses are the Carron Company, who occupy the houses by means of their servants, the actual inhabitants of the houses. (2) That the inhabitants of the houses are the servants of the Carron Company, inhabiting the houses by virtue of their service or employment, and that as such they are correctly entered in the inhabitant-occupiers (not rated) column in the valuation roll.

"The third parties *contend* (1) that the employees of the first parties are inhabitant-occupiers within the definition of section 3 of the Representation of the People Act 1884, and are accordingly not liable to the third parties as the assessing authority for the occupiers' assessments in respect of the said houses. (2) That the first parties are occupiers of the said houses within the meaning of the Valuation Acts, and are liable to the third parties as the assessing authority for the occupier's assessments in respect of the said houses. (3) (*a*) That the said dwelling-houses are not small dwelling-houses in the sense of section 1 of the House Letting and Rating (Scotland) Act 1911, in respect that the said houses are occupied by the first parties as owners within the meaning of said section or otherwise; (*b*) in the event of its being held that the said employees are the occupiers of the said houses within the meaning of said Act, there is no liability imposed on said employees to pay occupier's assessments to these parties, and there is no responsibility therefore imposed on the first parties by section 7 (2) of said Act, and that accordingly the first parties are not entitled to the deduction of 2½ per cent. under section 7 (6) of said Act."

The following excerpt from the valuation roll of Lanarkshire was printed as an appendix to the Case—

| No. | Description and Situation of Subject. Description | No. | Situation | Proprietor | Tenant | Occupier | Inhabitant Occupier —not rated (48 Vict., cap. 3, secs. 3 and 9) | Annual Value of Dwelling House (Local Govt. (Scotland) Act 1889) | Feu-Duty or Ground Annual | Yearly Rent or Value |
|---|---|---|---|---|---|---|---|---|---|---|
| 70 | House | 100 | Jellyhill Row | Carron Company, *per* J. C. Brodie & Sons, W.S., 5 Thistle Street, Edinburgh | ... | Proprietors | George Malcolm, roadman | £4 13 | ... | £4 13 |

The *questions of law* were—"1. Are the first parties occupiers in respect of said houses within the meaning and for the purposes of the Valuation Acts? 2. Are the first parties' employees inhabitant-occupiers of said houses within the meaning and for the purposes of the Valuation Acts? 3. Are said houses small dwelling-houses in the sense of section 1 of the House Letting and Rating (Scotland) Act 1911? 4. On the assumption that the third question is answered in the affirmative, are the first parties as owners of said houses (*a*) liable to the third parties as the assessing authority under section 7 (2) of the House Letting and Rating (Scotland) Act 1911, for the occupier's assessments in respect of said houses? (*b*) entitled to the deduction of 2½ per cent. in terms of section 7 (6) of said Act."

Argued the first parties—The houses in question were not occupied in virtue of a contract of service in the sense of the Representation of the People Act 1884 (48 and 49 Vict. cap. 3), section 3. The contract of service and the contract of lease were entirely separate, the service being the occasion and not the cause of the lease, and their only connection was that the lease must terminate with the service. It was admitted that one might occupy in the person of another, but none of the cases in the books covered the facts here—*Weatherhead* v. *Moffat*, November 8, 1878, 6 R. 20; *Lunan* v. *Allan*, November 13, 1880, 8 R. 13, 18 S.L.R. 69; *Whitelaw* v. *M'Gowan*, December 22, 1905, 8 F. 332, 43 S.L.R. 346. The employees could be nothing else than tenants at common law, and it was intended to create a weekly tenancy. Alternatively, if they were not tenants they were householders, and therefore excluded the firm as occupier.

Argued for the second and third parties—The true question was whether the employees got their houses in virtue of their contract of service, which need not be contained in one document only. If the continuity of occupation depended on the continuity of service, then the employees had no title to the houses at all—*Rose* v. *Grant*, December 19, 1868, 7 Macph. 309, 6 S.L.R. 37; *Forbes* v. *Webster*, December 19, 1868, 7 Macph. 310, 6 S.L.R. 41; *Dalgleish* v. *Andrews*, December 19, 1868, 7 Macph. 310; *Murray* v. *M'Gowan*, October 20, 1869, 8 Macph. 4, 7 S.L.R. 78; *Urquhart* v. *Adam*, December 9, 1904, 7 F. 157, Lord Kinnear at 162, 42 S.L.R. 178. Through all these cases, though decided on previous Acts, the principle continued the same, namely, that a precarious possession without a title at all was not equivalent to tenancy.

At advising—

Lord President—The main question—in my opinion the sole question—in this case is whether the houses in the North Cadder Special Water District, erected or purchased by the Carron Company, are small dwelling-houses within the meaning of the House Letting and Rating (Scotland) Act of 1911. I am of opinion that they are. It is common ground that they fall within the definition in the section unless it can

be predicated of them that the Carron Company are not only the owners but the occupiers of the houses. *De facto* they are not the occupiers of the houses, but it is contended that *de jure* they are the occupiers within the meaning of the Valuation Acts.

To determine that question we must turn, in my opinion, to the form of agreement signed by the employees of the Carron Company, which discloses clearly the conditions of tenancy where a miner is minded to have a house and where the Carron Company are minded to let a house to a miner in their employment. It is not a contract of service; it is a simple missive of lease. It expresses clearly a weekly tenancy, terminable by a week's notice on either side, and, to use its own words, it "authorises summary ejection" where the tenant does certain things, amongst others ceases to be in the employment of the company. It prescribes certain things which the tenant may not do during the period of his tenancy, and, finally, the tenant, if he should be a miner, agrees that the amount of his rent as a weekly tenant (in connection with the employment) of this house is to be deducted from his weekly wage.

Now it is once more common ground that this is an occupancy in connection with the service with the Carron Company, but in my opinion it is equally clear that it is not an occupancy by virtue of service with the Carron Company. Of course no miner is entitled to have a house because he takes service with the company, and no miner is bound to take a house because he takes service with the company. In the words of the counsel who opened this case, service is the occasion and not the cause of the miner's occupation of a house. And the parties are agreed that the Carron Company "do not make it a condition of employing any man that he shall occupy one of their houses, and if any employee who occupies one of these houses desires to vacate it he is free to do so without affecting his employment." And further, that the Carron Company "have no control in virtue of the contract of employment over said employees except during working hours and when actually employed."

The occupation of a house, in short, is not made any part of the miner's contract of service; it is not made any part of the miner's remuneration for his work in the pit. It is noticeable that in their own contract the parties describe the occupant as the weekly tenant of the house, and, in my opinion, an examination of the conditions set out in the form of agreement justifies that description. It appears to me to be a mere travesty of the relationship of the parties, as disclosed in the form of agreement, to say that the Carron Company occupy these houses by means of their servants, the actual occupants of the houses. It is the miners and the miners alone who are the occupants.

The decisions under the Franchise Act appear to me to have no relation to the questions which we have to decide here; but I have nothing, for my part, to say against decisions which clearly lay down that if a man has a house as part of his contract of service, then it is service and not tenancy which is the proper category of law under which to describe his relationship to the owner of the house.

If these views are sound, then it follows that we ought to answer the first question of law put to us in the negative. The second question, as Lord Skerrington has pointed out, it is not necessary to answer; for my part I would be quite prepared to answer it in the negative. The third question I answer in the affirmative, and the first branch of the fourth question, I think, in the affirmative, because I propose that we should answer the second branch in the affirmative.

LORD MACKENZIE—I concur. The question that we have to answer really is whether these houses are occupied by virtue of any service or employment. I think the answer to that should be in the negative on the construction of the terms of the agreement; and when one comes to that conclusion, all the consequences following from the statutory provisions necessarily have effect.

LORD SKERRINGTON—The parties have put four questions to the Court, but everything turns upon the answer which ought to be given to the first question. In other words, who are the occupiers here—the employers (the Carron Company) or their servants?

In order to answer that question we have to read the agreement which forms the title of occupation. And reading that agreement it seems to me as plain as anything can be that the Carron Company are not the occupiers of these premises.

I further think that the franchise statutes have no bearing one way or the other upon the question which we have to answer, and that we have nothing to do with the construction of the Franchise Acts and in particular with the Representation of the People Act of 1884. At the same time I do not doubt that section 3 of that statute, which introduced the service franchise, did correctly lay down what I understand to be the common law of this matter, namely, that where a person occupies premises purely in virtue of some employment and not in virtue of a contract of lease (either express or implied) he must be deemed to be a servant who occupies in name and on behalf of his master, and that he must not be held to have an independent occupation of his own as tenant.

LORD CULLEN—I concur. I do not think it a true description of the position of the employees to say that they occupy the houses by virtue of their employment. The terms of their employment include no reference to the occupation of the houses. I think the true position to be that they occupy the houses as tenants under leases which they hold, not in virtue of their employment, but in consideration of stipu-

lated rents, plus certain superadded conditions agreed to by them as conditions of their tenancy, one of which conditions makes the leases terminable on the cessation of their employment.

The Court answered the first question of law in the negative, the third question and both branches of the fourth question in the affirmative, and found it unnecessary to answer the second question.

Counsel for the First Parties—Constable, K.C.—W. H. Stevenson. Agents—John C. Brodie & Sons, W.S.

Counsel for the Second and Third Parties—Hon. Wm. Watson, K.C. — Aitchison. Agents—Ross Smith & Dykes, S.S.C.

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*Thursday, June* 10.

FIRST DIVISION.

MACDONALD'S TRUSTEE *v.* MEDHURST AND OTHERS.

*Process — Special Case — Insanity—Application for Appointment of Curator ad litem to Party to a Special Case — Competency.*

An application for the appointment of a curator *ad litem* to a party to a special case, who was insane, *refused* as unnecessary in that the insane person was adequately represented by persons who were parties to the case.

*Question* whether the application was competent.

*Observations per* Lord Johnston on the practice of the appointment of curators *ad litem* and its competency.

Robert Urquhart, sole surviving trustee acting under an antenuptial contract of marriage entered into between the Reverend William Macdonald and Miss Louisa Hoyes, *first party*, Mrs Norma Gordon Hunter or Medhurst, *second party*, and the said Mrs Norma Gordon Hunter or Medhurst and others, *third parties*, brought a Special Case for the opinion and judgment of the Court. In Single Bills counsel for the first and second parties stated that Dr Donald Macdonald, one of the parties of the second part, was an inmate of a lunatic asylum, and asked the Court to appoint a curator *ad litem* to him.

Counsel referred to *Swan's Trustees* v. *Swan*, 1912 S.C. 273, 49 S.L.R. 222, and *Mackenzie's Trustee* v. *Mackenzie*, 1908 S.C. 995, 45 S.L.R. 785.

At advising—

LORD PRESIDENT—When this Special Case was moved in the Single Bills an application was made to the Court for the appointment of a curator *ad litem* to a Dr Donald George Gordon Macdonald, who is designed as lately at 17 Hamilton Avenue, Aberdeen, presently at the Asylum, Banstead, Surrey.

I am of opinion that the application ought to be refused, on the ground that it is in the circumstances unnecessary, inasmuch as the interest of Dr Macdonald is adequately represented by persons who are parties to this case.

The motion when made was supported by reference to a decision in the Second Division of the Court in the case of *Swan*, 1912 S.C. 273, 49 S.L.R. 222, in 1912. On examination of the authorities it was found that the decision in question was in apparent conflict with a prior decision in the same Division of the Court, and further, that doubts existed regarding the competency of the application.

Now my brother Lord Johnston has been at pains to formulate the doubt and the reasons which have given rise to the doubt, and has expressed them in a written opinion which he would have delivered had he been present with us to-day, and which I shall by-and-by hand to the reporters.

Although his Lordship agrees with me in thinking that the application here is unnecessary, I think it desirable that the profession should know that doubt exists regarding the competency, and that in future a motion such as this will not be granted as a matter of course without discussion, and accordingly I invited Lord Johnston to give expression to his views upon the competency of the application.

For my own part I desire expressly to reserve my opinion on the question of competency. My sole reason for thinking that this application should be refused is that in the circumstances I regard it as unnecessary.

LORD MACKENZIE—I agree with your Lordship, and have come to that conclusion after having had an opportunity of reading Lord Johnston's opinion.

LORD SKERRINGTON—I agree with both your Lordships.

LORD JOHNSTON — [*Written Opinion handed to Reporters*]—While I agree with your Lordship that this motion may be disposed of on the specialties of the case, it presents a question which cannot be permanently avoided, and which will one day require the attention of both Divisions, if not of the whole Court. I concur with your Lordship that it is better to postpone it until it arises in a case which compels its decision. But as it is one of wide bearing on the practice of our Courts in the matter of the representation of minors and pupils in contentious litigation, I am, with your Lordship's approval, to lay before the Court a statement showing generally how the matter at present stands, which may possibly be of use to the Court and to the profession when the question again comes before the Court.

The circumstances of the present case are that by her marriage contract in 1860 Miss Louisa Hoyes, afterwards Mrs Louisa Macdonald, conveyed certain securities to trustees for behoof of herself and her husband, the Rev. William Macdonald, in liferent and the issue of the marriage in fee, but with a destination-over, in event of no issue and of Miss Hoyes not entering into a second marriage, in favour of three ladies,