The contract upon which they claimed was not in their favour. The alleged debt was an illiquid claim for damage, for which in an ordinary action decree could not be given *de plano*. The petitioners' title depended on whether there was a legal contract and that depended upon whether they were entitled to sell under the Defence of the Realm Regulations. The offer of a composition was subject to the reservation that all claims should be examined. If that had been done many of the claims might have been cut down, and since that offer the whole circumstances might have changed. *Brightman & Company, Limited* v. *Tate*, 1919, 35 T.L.R. 209; *Sykes* v. *Bridges, Routh, & Company*, 1919, 35 T.L.R. 464, were referred to.

LORD PRESIDENT — This petition is brought for the judicial winding-up of the respondent company. The question for our consideration is whether there is an honest and *bona fide* dispute between the parties as to the indebtedness of the respondent company. If there were a *bona fide* dispute between the parties as to that fact we should dismiss the petition; if there were no *bona fide* dispute we should grant the petition; but in the existing state of doubt there is a middle course open to us, and I propose to your Lordships that we should adopt that middle course, viz., to sist procedure in this petition so as to afford the petitioners an opportunity to constitute their debt by an action in Court.

LORD MACKENZIE—I am of the same opinion. There is no doubt that if the respondents' counsel had seen his way to give consent there might have been inquiry into the facts in the present proceedings and delay might thereby have been avoided.

But I am certainly not disposed to create a precedent, and for the Court to order an inquiry in the present proceedings would be to establish a precedent. Therefore I think that the ordinary course should be followed and the petitioners left to constitute their claim. I am of opinion that this is a case in which the petition should not be dismissed.

LORD SKERRINGTON—I agree with your Lordship that the petition must remain in Court and that the petitioners should be given an opportunity to constitute their claim. It seems to me that it is entirely a question for the Court whether the inquiry should be in a separate action or in this petition. If the respondents' counsel had indicated that he thought it in the interests of his clients that the inquiry should for the sake of speed take place in this Court, that would have been a material circumstance for us to consider, but he has not asked us to take that course. In the whole circumstances I think that the petitioners should constitute their claim in the ordinary way.

LORD CULLEN—I agree in the course of procedure which your Lordship proposes.

The Court *in hoc statu* sisted the process.

Counsel for the Petitioners—Constable, K.C.—Hamilton. Agents—Lindsay, Howe, & Co., W.S.

Counsel for the Respondents—Sandeman, K.C. — Gentles. Agents — Webster, Will, & Co., W.S.

Friday, June 6.

FIRST DIVISION.

[Lord Hunter, Ordinary.

BUCHANAN *v.* GLASGOW CORPORATION.

Reparation — Negligence — Tramway — Unauthorised Acts of Strangers—Natural and Probable Result—Liability for Injury to Passenger Thrown off Tramway Car by Rush of Passengers to Board Car.

A passenger on a tramway car was on the platform and about to alight at an "all car" stopping-station. The car failed to stop. She was jolted off the platform by a rush of persons who desired to board the car, sustained injuries, and now brought an action against the corporation which ran the cars, averring that crowds of workmen from adjoining works in order to get home as early as possible were in use to collect at the stopping-station and to rush on to cars arriving there even although such cars did not stop, that that practice was known to the servants of the corporation in charge of the cars, and that she had been injured by such a rush. *Held* that those averments were relevant to infer liability on the corporation.

Mrs Martha Adam or Buchanan (with consent), *pursuer*, brought an action against the Corporation of Glasgow, *defenders*, concluding for £250 damages for personal injuries.

The defenders pleaded, *inter alia*—"1. The pursuer's material averments being irrelevant and insufficient to support the conclusions of the summons, the action should be dismissed."

For the *averments* which were amended in the Inner House see *infra*.

On 22nd November 1918 the Lord Ordinary (HUNTER) found that there was no issuable matter set forth in the record, disallowed the issue proposed, and assoilzied the defenders from the conclusions of the action as laid.

Opinion.—"This is an action for personal injuries brought by a Mrs Buchanan against the Corporation of Glasgow. It seems that on 18th March 1918 the pursuer boarded one of the tramway cars belonging to the defenders at Renfrew for the purpose of proceeding to Shieldhall. Shieldhall is on the main road to Govan, and about two miles from Renfrew Cross, where she boarded the car. Her intention of course was to get out at Shieldhall, which is a station where there is a notice to the effect that 'All cars stop.'

"According to the pursuer's averments, on the occasion in question the car did not stop, the driver driving right past the stopping-place. She then says that a number of men were standing at the station waiting for the car, and when they saw it did not stop they made a rush for the car, with the result that the pursuer was jostled and injured. Now she asks me to approve, for trial by a jury, of a simple question in the issue as put—whether she was injured in her person through the fault of the defenders.

"I am of opinion that I should not be justified in allowing such an issue as that. The nature of the fault is elaborated in condescendence 3. She there says it was the duty of the driver to stop at Shieldhall, so that she could alight, and that passengers wishing to travel with the car could get on. The driver of the car, she says, knew that there were some people waiting at the 'stopping-place to board the car as passengers, that there was room for them, that the intending passengers would attempt to board said car, and that there would be a rush for this purpose, which would prove dangerous to anyone on the platform who intended to leave the car at said stopping place. In consequence of the driver's failure to perform his duty as aforesaid the intending passengers rushed on to the car while it was in motion, and so jostled the pursuer that she lost her grip of the rod and was thrown' on to the ground.

"The relevancy of the pursuer's case must be decided with reference to that last sentence. If there was a proper logical connection—as of cause and effect—between the action of the driver and the accident to the pursuer, then it would not be possible for me to withdraw the case from the jury however extravagant I might think the pursuer's averments. In my opinion, however, there is no real connection between failure on the part of the driver of the defenders' car to stop at the station and the injury to the pursuer. The injury to the pursuer arose from the fact that some men jostled her in the act of getting on to the car which did not stop.

"I think it is unreasonable to say, as the pursuer says, that it was natural for the driver to anticipate that the people would rush to get on to the car if it did not stop, and that they would jostle the pursuer in consequence. Failure to stop does not amount to an invitation to people to rush on to a car at a stopping-place. But the pursuer supports her case by a reference to two authorities. The first and the principal one is the case of *Scott's Trustees* v. *Moss*, 17 R. 32. In that case Mr Moss, the defender, had occupation of a recreation ground, and had advertised that a descent from a balloon would be made by a scientific airman. The result of this advertisement was to cause an immense crowd to gather, not merely of people paying for admission to the recreation-ground, but of people gathering in the vicinity. The scientific airman did not descend at the exact place anticipated. He came down in a neighbouring field that was cultivated. The result was that the interested spectators who had not paid anything to the defender ran into this field and did considerable damage to crops and fences. An action of damages was brought against Mr Moss for what had occurred. The Lord Ordinary (Trayner) considered the action irrelevant, but in the Inner House a different view was taken, and an issue was adjusted for trial by jury.

"In that case the Lord President pointed out that the case was a singular one and without precedent. But he explained that the nature of the complaint by the pursuers was 'that these people entered the field and broke down the gates and fences and destroyed the crops,' and that 'Mr Moss ought to have foreseen that the descent would have been made in some field adjoining the recreation grounds, and that the natural and almost inevitable consequence of that would be that the crowd would break into the field and destroy the crops. No doubt it could not easily be foreseen that the descent would be made in that particular field; but on the other hand the recreation grounds were surrounded by cultivated land, and it could very easily be foreseen that the descent would take place on some piece of cultivated ground in the immediate vicinity.'

"Well, I do not see in this case how you could say—as the Lord President said there—that the defenders could contemplate, as a natural and probable result of their not stopping the car, that a crowd would board the car and jostle the pursuer who was on the car. If it could be held that that was a probable and natural result of their action, it seems to me that a case against the defenders might equally have arisen if it had been alleged that the car had stopped, that it was full, and that a number of people rushed on to the car, with the result that someone inside the car was crushed. Upon similar reasoning to that adopted by the pursuer one might have said that the defenders ought to have realised that this would occur, and ought not to have stopped at the stopping-place at all. In the present case the real cause of the pursuer's injury was a wilful act on the part of other people, which I do not see the defenders were bound to anticipate at all.

"The other case that was referred to has even less direct bearing. It is the case of *Marshall* v. *Caledonian Railway Company*, 1 F. 1060. There, in the process of constructing a tunnel under a street, a railway company found it necessary to take down the wall of a covered area from which the cellar to a shop was lighted. In rebuilding the wall the company left an opening of about 14 inches by 7, through which one of their workmen got access to the area, and then to the cellar and shop, and committed a theft. They were held responsible for the loss sustained. The ground of liability was that it was a natural consequence of their negligence — of which the pursuer was entitled to make complaint—that the theft was committed. But for their negligence the thief would not have got through and stolen the property he took. I do not think

that case has any direct bearing upon this one.

"These are the only two cases upon which the pursuer relies for maintaining an action, the ground of which, as far as I know, among the great many actions for damages for personal injuries brought against this particular Corporation, is probably unique.

I shall therefore dismiss the action."

The pursuer reclaimed and obtained leave to amend the record. In the record as amended, the amendment being in square brackets, she *averred, inter alia*—"(Cond. 2) On or about 18th March 1918 the pursuer boarded one of the defenders' cars at Renfrew about 12·35 p.m., for the purpose of proceeding to Shieldhall, on the main road to Govan, to meet her husband, who is employed in the Scottish Co-operative Wholesale Society Works, Shieldhall. Shieldhall is about two miles from Renfrew Cross, where the pursuer boarded the car. On the route there are several stations where a notice is displayed stating 'All cars stop here', and there are others at which a notice is displayed to the effect that 'Cars stop here if required.' The defenders' servants stop the cars at the 'all cars stop' stations without being asked by passengers to do so. The station at which the pursuer wished to get out was Shieldhall, which is an 'all cars stop here' station. As the car was approaching Shieldhall station the pursuer, who had been travelling in the downstairs portion of the car, proceeded to the rear platform to be ready to alight when the car stopped at the said station. While standing on the platform the pursuer had a grasp of the upright rod there. Instead of stopping at Shieldhall as he ought to have done, the driver of the car drove right past it. A number of men standing at Shieldhall station waiting for the car, seeing that it was not going to stop, made a rush for the car and jumped on to it. The rush of these men getting on to the car caused the pursuer to lose her grasp of the upright rod, and she was knocked off the car on to the street, and sustained severe injuries as after condescended on. (Cond. 3) The accident to the pursuer was due to the fault and negligence of the defenders' servants, for whom they are responsible. It was the duty of the driver of the car to have stopped at Shieldhall, which is an 'all cars stop here' station, so that passengers such as the pursuer who wished to alight might get off, and also to allow passengers who wished to travel with the car to get on. [The said stopping-station is situated just at the Shieldhall Works of the Scottish Co-operative Wholesale Society, Limited. Large numbers of workers are employed at these works, and at meal hours these workers, together with others from the docks in the vicinity, are in the habit of collecting at the said stopping-place with the view of entering the first available car, so that they may reach their houses in the shortest possible time. At the said hours it is regularly the case that the cars on the route in question become overcrowded at the said stopping-place, and it often happens that numbers of people waiting to enter a car at the said stopping-place are thus unable to do so. It is usual under these circumstances for some of those waiting at the stopping-place to make, in their endeavours to enter the first car arriving there, a rush on to the rear platform, and it was a probable and likely result that this would occur (as in fact it did occur) although the car should be in motion. The said accident took place during a meal hour. The defenders' driver or conductor knew, or ought to have known, that there was a crowd of people waiting at said stopping-place to board the car as passengers, that there was room for them, or at least for some of them, and that it was likely that the intending passengers would attempt to board the said car even when it was in motion, and would make a rush for this purpose, which if the car did not stop would prove dangerous to anyone on the platform who intended to leave the car at the said stopping-place.]"

Argued for the pursuer (reclaimer)—That the pursuer should be jostled off the platform whereby she sustained injury was a reasonable and probable result of the defenders' fault in failing to stop the car. The rush of passengers only became dangerous because the car was in motion, and in the circumstances averred that danger ought to have been foreseen and guarded against by the defenders' servants, or was foreseen by them and was ignored. *Scott's Trustees* v. *Moss*, 1889, 17 R. 32, 27 S.L.R. 30; *Fraser* v. *Caledonian Railway Company*, 1902, 5 F. 41, 40 S.L.R. 43; *Macgregor* v. *Glasgow District Railway Company*, 1901, 3 F. 1131, 38 S.L.R. 480; *Marshall* v. *Caledonian Railway Company*, 1899, 1 F. 1060, 36 S.L.R. 845, were referred to.

Argued for the defenders (respondents)—The pursuer had been injured as the result of the actings of third parties. The defenders were not liable therefor unless they were bound to anticipate such actings and to take precautions against them. The pursuer had failed to aver circumstances which placed a duty upon the defenders to anticipate what had happened. The defenders accordingly were not liable—*Guille* v. *Swan*, 19 Johns (N.Y.) 381, quoted in Beven, Negligence, p. 65; *Cobb* v. *Great Western Railway Company*, [1893] 1 Q.B. 459, [1894] A.C. 419; *M'Dowall* v. *Great Western Railway Company*, [1903] 2 K.B. 331. *Scott's Trustees* v. *Moss* (*cit.*) was distinguished, for in that case the defenders' actings were an invitation for the crowd to assemble.

LORD PRESIDENT—Even in its present shape this is to my mind an exceedingly narrow case, and if I had been called upon to consider the relevancy of the action on the pleadings as they stood before the Lord Ordinary, I should certainly have agreed with the conclusion at which he arrived. But the pursuer has now made an extensive and substantial amendment upon the record, and from the averments as they now stand, if established by evidence, I am of opinion that fault may be inferred against the defenders. Whether or no fault ought to be inferred is a question for the jury. To a

jury therefore I am prepared to send this case.

LORD MACKENZIE, LORD SKERRINGTON, and LORD CULLEN concurred.

The Court recalled the interlocutor of the Lord Ordinary and remitted to him to proceed as accords.

Counsel for the Pursuer—T. G. Robertson —R. Macgregor Mitchell. Agents—Paterson & Salmon, S.S.C.

Counsel for the Defenders—Sandeman, K.C. — Gentles. Agents — Simpson & Marwick, W.S.

Saturday, June 14.

SECOND DIVISION.

WARRACK'S TRUSTEES *v.* WARRACK.

Trust—Trust-Disposition and Settlement—Ship—Powers of Trustees—"Wasting Securities"—Division of Returns between Capital and Income—Finality of Appropriation.

A testator died leaving a trust-disposition and settlement whereby he conferred discretionary power on his trustees, in the event of any of his means being invested in "wasting securities," as to what proportion of the returns therefrom they might treat as income. The trust estate included shares in several steamships, the dividends from which the trustees had allocated annually as between capital and income. On the sale or loss of some of these steamships the trustees, as a result of their greatly enhanced value, received sums amounting to more than the initial value of these shares. The sums which had been set aside to capital out of the returns were more than represented by the physical deterioration of the ships at the time of their loss or sale. The trustee being in doubt as to whether the shares in the ships in question were wasting securities in the sense of the trust-deed, and whether they were entitled to revoke their previous allocations of the returns therefrom as between liferenters and fiars, brought a special case for the opinion of the Court. *Held* (1) that the shares in question were wasting securities in the sense of the trust-deed, (2) that the trustees were therefore entitled to apportion the annual returns therefrom as between capital and income, and (3) (*dis.* Lord Salvesen) that the apportionments being in form final appropriations of the dividends to capital in so far as they were not paid over to the parties entitled to the income, the trustees were not entitled to withdraw thereafter from the capital account and pay over as income any part thereof.

John Warrack, shipowner, 43 Constitution Street, Leith, and others, the trustees acting under the trust-disposition and settlement of the late John Warrack, shipowner, Leith, who died on 3rd July 1907, *parties of the first part;* Charles Cumming Warrack and others, the surviving liferent beneficiaries under the said trust-disposition and settlement, *parties of the second part;* and the said John Warrack and others, the fiars or contingent fiars of a share or shares of the residue of the testator's estate, *parties of the third part*, brought a Special Case to determine in what way were to be treated, so far as regarded the liferent of the second parties and the fee of the third parties, certain sums received in respect of shipping shares forming part of the trust estate.

The *trust-disposition* conveyed to the first parties the testator's whole estate, and, *inter alia*, provided—". . . I empower my trustees in their discretion to allocate and hold (with power to vary) for any beneficiary or prospective beneficiary (whether liferenter or fiar) the whole or any part of any investments for the time being held by them, and I declare that in paying out any residuary beneficiary in whole or in part my trustees shall have the sole right to decide whether such payment out shall be made in cash or by transfer of investments or other unrealised assets, and if wholly or partly by the transfer of investments or other unrealised assets, the values to be put on such investments or other unrealised assets for transfer shall be fixed by my said trustees, and their decision shall be final: Declaring further that the amount of capital to be retained from the income of which to pay any annuity or other payment out of income under these presents shall be a matter solely in the discretion of my trustees: I empower my trustees to delay the realisation of the whole or any part of my estate for such time as they in their discretion (and as to which they shall be the sole judges) shall think fit, and in particular I specially authorise my trustees to hold for the benefit and at the risk of my estate the whole or any part of my shares in steamships or steamship companies so long as the steamships, the share in which are so held, remain under the management of the firm of John Warrack & Company, shipowners and merchants, Leith, and either the said John Warrack junior or the said James Howard Warrack remains a member of that firm. . . . In the event of any part of my said estate being at the date of my decease invested or being thereafter invested by my trustees in wasting securities, the proportion of the return from such wasting investments which shall be treated as income, or whether the whole or any part of such return shall be treated as income for the purposes of these presents, shall be matters entirely in the discretion of my trustees and as to which they shall be the sole judges. . . ."

The *Case* stated—"3. The testator, who had for many years carried on the business of shipowner at Leith, was at the date of his death largely interested as a shareholder in the various steamers managed by his