Tuesday, May 26.

(Before the Lord Chancellor (Loreburn), Earl of Halsbury, Lord Ashbourne, Lord Robertson, and Lord Collins.)

DICK AND OTHERS *v.* DICK'S TRUSTEES.

(In the Court of Session, May 29, 1907, 44 S.L.R. 680, 1907 S.C. 953.)

Succession—Trust—Uncertainty.

Terms of a residuary bequest which, being challenged upon the ground of uncertainty, was *held* not to be void.

This case is reported *ante ut supra.*

Dick and others, claimants and reclaimers, appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—I do not think it is necessary in the least to invoke in this case the rule that charitable bequests are an object of peculiar favour, because I do not think the points put by Mr Cripps had any real substance.

With regard to the first question, whether the trustees have an option to apply any part of this fund otherwise than to the charitable purpose designated by the will, I do not think that is the true construction of the clause. I think the words which are used "any part or parts thereof" have relation to the time or times when the distribution may become practicable by reason of the fund becoming available.

With reference to the second point made by Mr Cripps, whether the bequest is bad because there was an option to retain indefinitely and so frustrate the trust or so render uncertain its objects, I do not think that is the meaning of the clause. The word "indefinitely" appears to me really to be redundant, meaning the same in substance as the words "for such time or times as they may think fit." Of course the administration of a trust is always subject to the control of the Court if there is maladministration. Even if the word "indefinitely" meant something much more than that, I am by no means satisfied that the will could be set aside on that ground, but the point does not arise.

EARL OF HALSBURY—So far as I am concerned I think the Lord Ordinary's judgment perfectly satisfies everything that ought to be said upon the subject.

LORD ASHBOURNE—I agree.

LORD ROBERTSON—I concur.

LORD COLLINS—I agree.

Appeal dismissed.

Counsel for Appellants—Cripps, K.C.—Orr, K.C.—Munro. Agents—Inglis, Orr, & Bruce, W.S., Edinburgh—John Kennedy, W.S., Westminster.

Counsel for Trustees under Settlement of 1902—Clyde, K.C.—Cullen, K.C.—Scott Brown. Agents—Henry Robertson, S.S.C., Edinburgh—Crowders, Vizard, Oldham, & Company, London.

Counsel for the Trustees under prior Settlements—Lees, K.C.—Vernon—W. Ingram. Agents—W. & F. Haldane, W.S., Edinburgh—Neish, Howell, & Haldane, London.

Tuesday, May 26.

(Before the Lord Chancellor (Loreburn), Earl of Halsbury, Lord Ashbourne, Lord Robertson, and Lord Collins.)

TOAL *v.* NORTH BRITISH RAILWAY COMPANY.

(In the Court of Session, October 31, 1907, 45 S.L.R. 45, 1908 S.C. 48.)

Reparation—Railway—Negligence—Passenger on Platform Knocked Down by Open Carriage Door—Duty of Railway Servants—Relevancy.

The pursuer in an action of damages for personal injuries against a railway company averred that about 6 p.m. on a November day he, having alighted from a train and standing on a platform of the station, was knocked down by the open door of one of the carriages of the train which the railway servants had failed to close in the execution of their duty before the train was restarted, the station being so dark that he could not see if the doors were closed.

Held (*rev.* judgment of the First Division) that the action was relevant to go to trial.

This case is reported *ante ut supra.*

Toal, the pursuer, appealed *in forma pauperis* to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—The question here is whether the pursuer avers, and offers to prove, facts from which a jury might legitimately infer that this accident was caused by the neglect of the Railway Company, and I do not suppose that your Lordships will conjecture whether or not that is the right conclusion, for it is really the province of the jury not only to ascertain the facts but to draw their own inferences from the facts that are ascertainable. I find in this case the pursuer says that the duty of the defenders was to close the door of the carriage before it started; that it was their duty to do so on the occasion of this accident; that they did not close the door and so swept the pursuer from the platform on to the rails; and further, that the station was so dark that the pursuer could not see whether the doors were closed or not.

What was the duty of the Railway Company in this matter, and what they did or omitted to do, is for a jury to determine. Accordingly, with the most sincere respect for the opinion of the Court of Session, I am constrained to the view that in this case there is material from which the proper tribunal might conclude that the accident was due to the neglect of the defenders.

I will not express any opinion of my own upon the subject, because I think it is not

my province to deal with matters of fact, but the province of the constitutional tribunal.

EARL OF HALSBURY—I am entirely of the same opinion. I abstain from expressing any opinion of my own on the point, which is simply a question that the jury will have to determine. It is enough for me to say that in my view there was a case to be properly submitted to a jury, and it was for them to determine it.

LORD ASHBOURNE—I agree.

LORD ROBERTSON—My opinion is that this appeal must be allowed. I differ with the greatest reluctance from a tribunal so able and experienced in administering this particular jurisdiction, but I think in this instance they have gone too fast.

I must not, however, be supposed in the least degree to hold that because the parties are not agreed as to the facts therefore a case must go to trial. That is a much cruder view than has ever been accepted by the Scotch Courts or by your Lordships in Scotch Appeals. Much time and money have been saved by a more critical view of the case presented by the claimant. When a case comes, as this one did, from the Sheriff Court for trial by jury the duty of the Court of Session is to see before a jury is summoned that there is a case to try. This means an ascertainment of the gist or gravamen of the action. The mere fact that in what is probably an unnecessarily detailed averment of circumstances there is a dispute about facts is in no way decisive of the right to go to trial. If the defender can demonstrate that, assuming all the pursuer says, he has no case, then the Court has habitually, and most rightly, ended the litigation. This, however, is a delicate jurisdiction, because it depends in dubious cases on the language very often obscure applied to facts very often equivocal.

As I think this case must go to trial I do not enter into any analysis of the points in the case, for that would merely prejudice the trial. My interposition at all is merely because in my humble judgment it has got to be remembered that the Scotch system obliges the pursuer to show his hand and state his case before he is allowed to go to trial, and thus compels the Court, when invited, to ascertain the value of the case thus stated. In the present instance I think the Court have criticised the statements too severely and nicely.

LORD COLLINS—I am of the same opinion.

Their Lordships reversed the judgment appealed from with costs on pauper scale.

Counsel for the Appellant—Munro—J. A. Christie. Agents—Thomas Scanlan & Company, Glasgow — St Clair Swanson & Manson, W.S., Edinburgh — Warlow & Patey, London.

Counsel for the Respondents—Solicitor-General (Ure, K.C., M.P.)—Forbes Lankester, K.C. Agents — James Watson, S.S.C., Edinburgh—John Kennedy, W.S., Westminster.

COURT OF SESSION.

Wednesday, May 20.

FIRST DIVISION.

[Sheriff Court at Aberdeen.

PARISH COUNCIL OF STRICHEN *v.* GOODWILLIE.

Sheriff — Jurisdiction — Appeal — Competency — Burial Grounds (Scotland) Act 1855 (18 *and* 19 *Vict. cap.* 68), *secs.* 10 *and* 32.

The Burial Grounds (Scotland) Act 1855, section 10, allows in certain events "an appeal to any of the Lords Ordinary of the Court of Session, whose decision shall be final, such appeal always being presented within fourteen days of the date of the sheriff's judgment." Section 32 enacts—"No interlocutor or deliverance of a sheriff under this Act, excepting as herein provided, shall be in any way subject to review, or to be set aside by reason of any defect of form therein, or in the procedure on which it followed."

Held that the only appeal allowed by the Act was the appeal to the Lord Ordinary provided for in section 10, and that there was no appeal from the Sheriff-Substitute to the Sheriff.

Sections 10 and 32 of the Burial Grounds (Scotland) Act 1855 are sufficiently quoted in the rubric.

The Parish Council of the parish of Strichen, in the County of Aberdeen, presented a petition in the Sheriff Court at Aberdeen, in which they prayed the Court "to appoint a time from and after which" a certain piece of ground "shall be deemed part of the burial ground of the said parish of Strichen; to grant sanction to the petitioners under such restrictions and conditions as they think proper to sell the exclusive right of burial, either in perpetuity or for a limited period in said ground, which the petitioners have resolved, subject to such sanction, to wholly appropriate for that purpose and for the other exclusive rights mentioned in section 18 of the Burial Grounds (Scotland) Act 1855; and to approve of the fees and payments in respect of interments in said burial ground fixed by the petitioners; and to find any party opposing the prayer of this petition liable in expenses."

The petition was opposed by the Reverend Richard Goodwillie, the minister of the parish of Strichen, on the ground of certain alleged irregularities on the part of the petitioners. On 15th November the Sheriff-Substitute (A. J. YOUNG) pronounced an interlocutor granting the prayer of the petition and fixing the 1st December 1907 as the date from which the ground in question was to be deemed part of the burial ground of the parish.

On 16th November the respondent appealed to the Sheriff.