are not construing an Act of Parliament; we are construing a bond which the Act of Parliament required to be executed; and in the second place, the words are not to apply to harbour trustees in the bond and to the burgh in the Act. They are to receive their ordinary signification.

I only add that the respondent's application depends for its efficacy entirely on the Act of Parliament of 1853. I think it is most probable that apart from that Act it might have been supported by Sir William Rae's Act, but I think it is satisfactory to find that the Act of 1853 is perfectly sufficient to support the application.

The Court adhered.

Counsel for the Complainers and Reclaimers — Vary Campbell — Greenlees. Agents—Kirk Mackie & Elliot, S.S.C.

Counsel for the Respondent—H. Johnston—G. W. Burnet. Agents—Carmichael & Miller, W.S.

Friday, June 3.

FIRST DIVISION.

[Sheriff of Aberdeenshire.

MILNE *v.* TOWNSEND.

Reparation—Latent Defect in Machine—Duty of Inspector — Onus — Res ipsa loquitur.

In an action of damages where an accident had occurred through the lower strap of a crane snapping owing to a latent defect, it was proved that two years before, the upper strap had snapped from a similar defect; that the defender, the owner of the crane, had not then discarded the lower strap, but had sent the crane to be overhauled by a competent engineer, who had examined and retained the lower strap; that since then the defender's foreman had continued to inspect the crane in the ordinary way, and that sufficient time had not elapsed to necessitate such special inspection as could alone have revealed the defect.

Held that no fault had been established against the defender, who fell to be assoilzied.

Observations upon the *onus* of proof in cases of latent defect, and upon the application of the maxim *res ipsa loquitur* to such cases.

Alexander Milne, carter, 10 Carmelite Street, Aberdeen, brought an action of damages for £500 in the Sheriff Court at Aberdeen against W. C. Townsend, granite and marble merchant, 38 Portland Street, Aberdeen, for the loss of his son, who had been mortally injured on 21st April 1891 by the fall of a crane while in the defender's premises, and had died the following day.

He averred—"The cause of the accident was the snapping or giving way of an iron bar which fastened one of the crane stays to the ground, and the defect could have easily been discovered upon a fit and careful examination of the crane by the defender, and it was the duty of the defender to examine this iron bar so minutely as to enable him to see a crack which was there, and so to prevent the mischief. . . . *Separatim* — If it was not the duty of the defender in ordinary circumstances, it became his duty so to minutely examine the said iron bar after he knew the crane was defective. It broke down on four occasions, and two men were injured by it. When repairing the defects on these occasions it was the duty of the defender to have had the crane made complete in every way, and to have seen that it was put in a fit condition to work, as such a state of things called for the exercise of greater vigilance than ordinary on the part of the defender."

The defender pleaded—"(1) The accident having occurred through a latent defect in the machinery belonging to the defender, the defender is not liable in any reparation to the pursuer."

A proof was allowed, from which it appeared that the defender's crane was erected in 1887; that the sole plate upon which the uprights stood gave way, that the crane did not come down, and that the defect was rectified; that in June 1889 the top strap gave way, and that the crane came down and injured one of the workmen, and that immediately thereafter the defender instructed Mr Sangster, from whom the crane had been got, to put the crane into thorough working order. Shortly before the accident in question, the jib-rope gave way, and the jib came down, but that was not due to any deficiency in the crane. The accident in question was caused by the lower iron strap breaking.

Mr Sangster deponed—"I went over the crane in June 1889, and examined the strap. I examined the lower strap as well as all the other parts of the crane. I satisfied myself at that time that there was no defect in the lower strap. The same lower strap was used in the reconstruction of the crane. I was quite satisfied with the lower strap. . . . I have examined the strap since the breakage. There was a defect in the left hand side of the strap at the lowest hole prior to the accident, but the lower surface adhered after the upper part was fractured. . . . From an examination of the fracture I could not say that it was discoverable. Wood covered the upper surface of the strap, and part of the bolt covered the lower surface of the strap, and I don't think that the crack could be seen by examination. There was no other way to discover a defect of this sort except by heating. I don't think scraping would have made the crack visible, unless there had been some weight upon the crane so as to open the crack. After what I had done to the crane in 1889, I don't think an employer would be looking for a crack in April 1891. We often find in a bar of even the best iron that part of it is fibrous and part crystalline. You can only discover that in breaking it cold. I see that the

strap has been painted. I do not think when it was painted that it would have been possible to discover this crack."

James Cosgrove, the defender's fireman, deponed—"I did not discover the defect before the accident. I don't think it could have been discovered. There was nothing to obstruct the view. The crack could have been seen if it was apparent. I never saw it. The crane was warranted to lift three tons. On the day of the accident Milne came with a lorry-load of stone to the yard. I was in the lorry making preparations to fix the dogs into the stone. There was nothing on the crane. It was swung right round, waiting till such time as I prepared the stone, and it came down without any stone on it. The result of the lower strap giving way was that the crane as a whole came down. I have many times examined the strap in question. It was the hole through which the bolt passes which fixes the strap to the concrete that I examined principally. I examined the bolt more carefully than the other parts of the strap. I did not take my knife to it."

J. M. Henderson, a witness for the pursuer, deponed—"I have been an engineer for twenty-six years. The defender's crane was brought to me on April 24th 1891. When I saw the strap after it was newly broken, it showed an old break. The crack was over a third of the surface. It had been there for some little time, because it was discoloured. It is possible that a common blacksmith could have detected it, but it is very difficult to detect a flaw from the exterior. If a person had been scraping it, and looking close, he might have detected it. They might have seen it if they had scraped off the dirt and the paint. I know that this crane gave way a year or a year and a-half before, because I was asked to contract for it, but I put in an offer prohibitive of its being accepted. I did so purposely. I did not wish to have anything to do with that crane. If the crane had been sent to my workshop after the upper strap had broken, I should have thought it necessary to examine the lower strap. I should have heated it, because that is the only practical way of examining it. If a crane had been thoroughly overhauled in June 1889, it would be unusual for the foreman to examine it by scraping between that date and April 1891 if there was nothing to create suspicion. Had I repaired the crane in June 1889 I would not have expected it to be looked to between that time and April 1891. (Q) If you were told that a week before the accident in question the rope had broken and the jib had fallen, would you have considered it necessary to thoroughly overhaul this crane?—(A) I would not have thought it necessary. The rope had nothing to do with the guy or the jib. In taking the case of a young crane, a competent foreman would go over the iron work every two years, and before painting it he would scrape it, and examine it for cracks. That in my opinion would be sufficient supervision."

Upon 14th November 1891 the Sheriff-Substitute (HAMILTON GRIERSON) pronounced the following interlocutor:—"Finds . . . (11) That on the 21st April 1891 the lower strap gave way and the crane came down, killing the pursuer's son; (12) that at the time of the accident there was no stone or other weight attached to the lifting apparatus of the crane; (13) that between the date of the re-erection of the crane and the date of the accident there was nothing in the appearance of the crane, or any part of it, or in the manner in which it worked, to suggest any suspicion to those using it or superintending it that it was defective in any respect in any part of its construction; and (14) that part of the material of the strap, at the part where the breakage occurred, had become crystalline, and that this could not be discovered by inspection of the external surfaces: Finds in law that the defender is not liable to the pursuer in damages in respect of the death of the said pursuer's son: Therefore assoilzies the said defender from the conclusions in the prayer of the petition and decerns: Finds the defender entitled to expenses, &c.

"*Note.*—The result of the cases seems to be that an *onus* lies on the pursuer to prove defect, and that when he has done so the *onus* is on the master to show that he was not negligent in inspection; and when he has discharged that burden, it rests with the pursuer to show that a proper inspection would have discovered the defect. This principle was given effect to in a case very similar to this—*Gavin* v. *Rogers*, November 30, 1889, 17 R. 206. No doubt the cases of *Fraser* v. *Fraser*, January 6, 1882, 9 R. 896, and *Walker* v. *Olsen*, June 15, 1882, 9 R. 946, seem at first sight irreconcilable with this view. But they are explained in *Macfarlane* v. *Thomson*, December 6th, 1884, 12 R. 232, and shown to be really in accordance with the principles enunciated in *Macaulay* v. *Buist & Company*, December 9, 1846, 9 D. 245.

"Now, the crane in question was thoroughly overhauled in June 1889, and from that date until the date of the accident it worked without fault (for the accident to the jib may be left out of the case). This is important, and receives additional weight from the observation of the Lord Chancellor in *Hawson* v. *Barrett*, 4 Times L.R. 449, cited in Beavan on Negligence, p. 421, note 5. I am clearly of opinion that there is no evidence to show that this crack was observable, and that the inspection by the foreman was sufficient in the circumstances. The evidence goes to show that there was no crack in the lower surface prior to this accident. I was also referred to *Francis* v. *Cockrell*, L.R., 5 Q.B. 184, 501, and to *Heske* v. *Samuelson*, L.R., 12 Q.B.D. 30; see also, *Harpers* v. *Great North of Scotland Railway Company*, July 9, 1886, 13 R. 1139, and *Rooney* v. *Allans*, July 17, 1883, 10 R. 1224."

The pursuer appealed to the Sheriff (GUTHRIE SMITH), who upon 9th February 1892 recalled the judgment of the Sheriff-Substitute and pronounced the following interlocutor:—"Finds it proved that on 21st April 1892 a crane in the defender's

yard fell in consequence of its being defective and insufficient, and killed the pursuer's son, who was lawfully on the premises at the time, and that said insufficiency was due to the fault of the defender: Finds the defender liable in damages, assesses the same at the sum of £150, for which decerns: Finds the defender liable in expenses, &c.

"*Note.*—. . . . Such being my conclusion on the facts, I think the defender must be held responsible for the insufficiency of the crane. The cases cited in the note to the interlocutor under review were chiefly cases of master and servant, inapplicable to the relation which here subsists, which was not that of master and servant. The lad who was killed was a stranger lawfully on the premises for the purpose of transacting business. The law holds that he came by the owner's invitation and on the representation that it was safe for him so to do. The owner does not, indeed, insure his safety. He does not warrant that no accident shall occur; but he undertakes to do his best to prevent it. The responsibility is much the same as arises when a loose tile falls from the roof of a house and injures someone on the street below. The obligation imposed on the owner of the property to indemnify the person injured is as old as the civil law, but with the qualification expressed in the text—"*Si ædificii vitio id acciderit non si volentia ventorum vel qua alia ratione quæ vim habeat divinam*" (Dig. xxxix., 2, 24, sec. 24). There may, indeed, be a difference between the degree of care to be taken of the general public and the more limited public with whom you do business. But the difference is not great, and the mode in which the question is to be determined is the same in both cases. We must apply the principle which was applied in a case from this Court—*Walker* v. *Olsen*, 9 R. 956—namely, *res ipsa loquitur*. A crane does not come down when lifting nothing without some cause. It is not for the injured person to explain what the cause was. It is for the owner to show that the crane was not defective when first put up, and that there had been no want of supervision to detect any supervening flaw. I acquit the defender of any failure on the latter head. I think his foreman did examine it periodically without detecting any signs of weakness; but I think he has failed to prove that in the selection of material for its construction adequate care was taken to insure its strength and guard against the possibility of accident when it was re-erected in 1889.

"The only other question is, whether when such a failure has been proved, is it enough for the owner to say that he put it into the hands of a competent tradesman to be put into thorough repair? The case of *Cleghorn* v. *Taylor*, 18 D. 664, read along with *Tarry* v. *Ashton*, 1 Q.B.D. 314, decides that the person injured has no concern with the tradesman. The owner is the person with whom he has to deal, and I have accordingly been obliged to find the defender liable in damages."

The defender appealed to the First Division of the Court of Session, and argued—No fault had been proved on the part of the defender, who was not liable, as the defect was latent—*Harpers* v. *Great North of Scotland Railway Company*, July 9, 1886, 13 R. 1139. The judgment of the Sheriff proceeded entirely upon the previous history of this crane, and upon the defender's not discarding the lower strap when he discovered that the upper strap had become crystalline. But the previous accidents were in no way connected with the one in question, and the defender had no reason to suppose that because one piece of iron was in an uncommon state, the rest of the iron must be in a similar condition. Should he have discarded all the iron about the crane? He did the wisest thing possible, for he sent the crane to be thoroughly overhauled by Sangster, a competent engineer, who says he examined it and passed the lower strap. The Sheriff had also unwarrantably proceeded upon the maxim *res ipsa loquitur* so as to relieve the pursuer of the necessity of proving his case. But it was for the pursuer to prove that the accident was caused by a latent defect which could have been detected by such inspection as the defender was bound but had failed to make—*Macfarlane* v. *Thomson*, December 6, 1884, 12 R. 232, and *Gavin* v. *Rogers*, November 30, 1889, 17 R. 206, both later than the cases of *Fraser* and of *Walker* relied on by the pursuer. This he had not done. All the witnesses were agreed that only heating could have detected the flaw, and that it would have been unreasonable to expect anyone to make such an inspection of the crane within two years of a complete overhaul. Similarly the crack—if it had anything to do with the accident, which was doubtful—could not have been detected without removing the paint, which it was quite unnecessary to do so soon. The Sheriffs were agreed that the defender's foreman had carefully inspected the crane in the ordinary way.

Argued for the respondent—Even where the exact cause of the accident was unexplained, fault through negligence on the part of the owner of the defective apparatus might be inferred from the accident itself—*Fraser* v. *Fraser*, January 6, 1882, 9 R. 896; *Walker* v. *Olsen*, June 15, 1882, 9 R. 946; *Kearney* v. *London, Brighton, and South Coast Railway Company*, June 15, 1870, L.R., 5 Q.B. 411—*aff.* 6 Q.B. (Exchequer Chamber) 759. Here the accident had been caused by the iron becoming crystalline, and that such would probably happen, and should have been guarded against, was made plain to the defender in 1889. He was in fault in continuing to use this strap after what happened then; it should have been discarded—see Henderson's evidence *supra*. The crane must have been very defective, for, although calculated to support 3 tons, the upper strap broke at a strain of 5 cwts. and the lower with no weight on at all. The defender was liable for any accident that might have been anticipated—*Beveridge* v.

Kinnear & Company, December 21, 1883, 11 R. 387; *Findlay* v. *Angus*, January 14, 1887, 14 R. 312; *Cormack* v. *School Board of Wick and Pulteneytown*, June 21, 1889, 16 R. 812. A person was bound to have his premises and machinery so as to be safe for the public legitimately using them—*Brady* v. *Parker*, June 7, 1887, 14 R. 783—and it was no defence to say he had employed a capable tradesman—*Cleghorn* v. *Taylor*, February 27, 1856; *Campbell* v. *Kennedy*, November 25, 1864, 3 Macph. 121; *Tarry* v. *Ashton*, January 24, 1876, L.R., 1 Q.B.D. 314; *Francis* v. *Cockrell*, February 21, 1870, L.R., 5 Q.B. 184. Besides, Sangster here did not say he had applied heat, although he said that that was the only thorough method of testing. If he had employed that method the defenders would have elicited the fact from him. More careful and more frequent inspection would have discovered the defect.

At advising—

LORD PRESIDENT—The Sheriff has found it proved that this crane fell "in consequence of its being defective and insufficient, and that said insufficiency was due to the fault of the defender," and he has fully explained the grounds of his judgment. I desire specially to refer to the passage in his note where he says—"*Res ipsa loquitur*. A crane does not come down when lifting nothing without some cause. It is not for the injured person to explain what the cause was. It is for the owner to show that the crane was not defective when first put up, and that there had been no want of supervision to detect any supervening flaw. I acquit the defender of any failure on the latter head. I think his foreman did examine it periodically without detecting any signs of weakness, but I think he has failed to prove that in the selection of material for its construction, adequate care was taken to insure its strength and guard against the possibility of accident when it was re-erected in 1889." Now, as that passage is somewhat absolutely expressed, it is perhaps well to say that I do not read it as intended to lay down a general doctrine of law, and certainly as such it could not be supported. It is certainly not, as a general rule, for the owner to show that his appliances are not defective when an accident occurs, the burden of proof is on the person coming to the Court and alleging fault. Accordingly I read this somewhat general statement along with the more specific passage on the preceding page, where the learned Sheriff says—"According to Mr Garvie, a witness for the defender, who examined the lower strap after the break of 1891, the right hand side at the breakage was fibrous, and the left hand side crystalline, and there was a crack distinctly visible which had existed for a length of time. Assuming, then, that the pursuer's witnesses are wrong in thinking that the strap was too light for the work it had to do, I see no answer to the argument that Mr Sangster, when he had the defender's instructions to give the crane a complete overhauling, should have discarded both the old straps, and not run the risk of again employing the one which had not given way, but which has led to a second accident exactly the same as the first."

Now, the first question to be determined is, what was in fact the cause of the collapse of the crane? The Sheriffs are at one on this matter, for the Sheriff takes the same view as that expressed by the Sheriff-Substitute in his fourteenth finding in fact, which is to the effect that the strap broke through the iron becoming crystalline. I am willing to take that view of what is more or less a speculative question. It appears that the iron did become crystalline and it seems to have been the general opinion of the witnesses that that would account for the accident. I say this because the case on the record does not specify that as the cause of the accident. Indeed, there is exceeding vagueness in the theory of the pursuer as stated on record. It is very much just the view suggested in the more general passage in the note of the Sheriff, *res ipsa loquitur*. Condescendence 3 says—"The cause of the accident was the snapping or giving way of an iron band which fastened one of the crane stays to the ground, and the defect"—it is not stated what the defect was—"could have easily been discovered upon a fit and careful examination of the crane by the defender."

Taking the case, then, as I have said, on the assumption of both the Sheriffs, that the strap broke from its internal portion collapsing through the crystallisation of the iron, where was the fault on the part of the defender? The reasoning of the Sheriff rests on the fact that another strap in a different part of the crane had given way previously, and the cause of its failure had been found to be the crystallisation of the iron. He says, inasmuch as one strap had collapsed through the iron becoming crystalline, there was fault on the part of the defender in not removing the other strap which would in all likelihood crystallise also. I cannot assent to this reasoning. *Prima facie*, the two pieces of iron have no connection with each other except in so far as they both are artificially made parts of one structure. That does not raise the inference that because one piece is bad, the other must have a similar infirmity. There is no evidence in support of that conclusion, which, apart from evidence, seems a somewhat crude and superstitious apprehension, rather than a scientific deduction. The defender, I think, took a more practical view of the case when he handed the crane over to Sangster, a very competent engineer, to be overhauled; he says that he examined the strap now in question, passed it as sound, and used it in the reconstruction of the crane. In doing so the Sheriff finds the defender was in fault. A curious feature of the case is, that a very close inspection in 1889 could at most only have detected a crack, and that crystallisation probably did not exist in 1889 but existed for a very much shorter period. The pursuer's case therefore fails unless the defender was bound to discard

all the iron on the crane because one piece was found to be in a somewhat uncommon condition. The defect was latent, and the facts do not sustain the view of the Sheriff, that in reconstructing the crane in 1889 there was any negligence on the part of the defender or on the part of Sangster in retaining this strap as part of the renewed crane.

The defect being latent, it was for the pursuer to establish either that it was in the original structure and that the defender was bound to examine and test for such defects on the crane coming into his possession, or else (on the theory that it was a supervening defect) he was bound to make out that there was a duty of periodical inspection which would have revealed its existence, and that the defender failed to provide such periodical inspection. On the first point the pursuer has failed. There was very little argument upon the second, the witnesses agreeing that if there was a thorough inspection made in 1889 there was no need to have another inspection before 1891 when the accident happened.

I am of opinion that we should recal the interlocutor of the Sheriff and revert to that of the Sheriff-Substitute.

LORD ADAM—In this case the question of *onus* is not important, because we know the facts and we must decide the case according to the facts ascertained.

A person who meets with an injury and claims reparation must show that there was fault on the part of the defender. It has been held in some cases, as the Sheriff says, that *res ipsa loquitur*, but the *res* can only speak so as to throw the inference of fault upon the defender in some cases where the exact cause of the accident is unexplained. That does not arise in the least here, because the cause of the accident has been ascertained to have been the state of the iron of the strap which was defective in two respects. Its substance had crystallised, and there was an external crack. It is, however, material to note that these two states have no connection with each other. As regards the crystalline nature of the iron, that was beyond doubt a latent defect which nothing less than heating would have disclosed, and it was probably that state of the iron which led to the accident and not the crack, which apparently was merely a surface crack. If there is no doubt that the crystalline nature of the iron caused the accident, the question of the crack is immaterial. But suppose the question of the crack were important, it is said examination would have disclosed it, and for not so examining it the defender must be held responsible. That that examination would have revealed it is more than doubtful. The foreman was in the habit of examining it, and the evidence for the pursuer as well as for the defender provides that if the crane came back from a competent engineer in 1889 as it did, there was no need before 1891 for such an examination as would alone have disclosed the crack, viz., an examination by scraping off the paint. I think therefore there was no fault on the defender's part on that ground.

The fault found by the Sheriff was not insufficient examination or that examination would have disclosed defects in the crane, but he finds fault in the defender's treatment of the crane in 1889. At that time one of the four straps was found to be in a similar state to that in which this strap was at the date of the accident, and he says a man of skill ought to have drawn the inference that the other three straps were in a similar condition, and ought *de plano* to have discarded them all. Whether he would carry his argument so far as to say he ought to have discarded all the iron about the crane, and not merely the four straps, I do not know. I cannot follow that reasoning, and I cannot affirm the Sheriff's view that there was fault on the defender's part in not rejecting all the straps in 1889. I think we must believe Sangster when he says that he then examined all the straps including this one, and that there was no fault in the defender after that continuing to use them. I am of opinion we should revert to the judgment of the Sheriff-Substitute.

LORD M'LAREN — Everyone will agree that when a pursuer comes into Court with a claim for damages for personal injuries he must prove the negligence which he avers. I do not think that the Sheriff meant to lay down any law to the contrary, but there are expressions in his note to the effect that it is enough for a pursuer to prove that there was a fault in the machinery—it may be a latent defect—and then it is for the defender to exonerate himself of responsibility for the fault. That is an inversion of the true rule, and although here the question of *onus* is not material since we know the facts, it may be material in other cases.

Where the defect is latent the pursuer must prove that it was known to the maker or user, or that it was discoverable by careful inspection. The crane here was a comparatively new one. It was erected in 1887, four years before this accident happened, and in consequence of one of the guy-straps having given way in 1889 the crane was taken to pieces and re-erected. At that time it was given back to the defenders as substantially a new crane, and two years thereafter the accident in question occurred. One of the pursuer's witnesses, Henderson, says that "in the case of a young crane a competent foreman would go over the iron work every two years." Now, as only two years had elapsed since the crane had been overhauled, it is evident from the pursuer's own case that there was no omission of necessary supervision or inspection. The cause of the breakdown was, as far as we can see, the general disintegration of the iron of the strap when passing into a crystalline state. But whatever the cause was the injury appears to have been the result of a pure misadventure, for which no one is responsible.

LORD KINNEAR concurred.

The Court sustained the appeal and assoilzied the defender.

Counsel for Pursuer and Respondent—Rhind—Baxter. Agent—William Officer, S.S.C.
Counsel for Defender and Appellant—Jameson — Dundas. Agents — Henry & Scott, W.S.

Tuesday, June 7.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

ROBERTSON *v.* ROBERTSON'S TRUSTEES.

Trust-Disposition and Assignation — Divestiture of Truster—Contingent Right of Beneficiary—Subsequent Revocation.

A truster by trust-disposition and assignation conveyed certain subjects, including certain policies of insurance, to trustees for the purpose, *inter alia*, of paying a sum of £500 to his nephew out of the proceeds of the policies to be received after his death. It was declared that the beneficiary should have no vested interest until payment. The truster bound himself to keep up the policies. He completely divested himself of the estate conveyed, and reserved no power to revoke. Subsequently, on the narrative that the obligation in favour of his nephew was quite gratuitous, that his nephew's circumstances had improved while his own estate had become materially reduced, and that to give effect to the provision of the trust in question would unfairly prejudice his wife and children, who would now necessarily be seriously affected by the change in his circumstances, he revoked the said gift. The truster having died, and his trustees having received payment of the proceeds of the policies, it was *held* that the nephew was entitled to receive payment of £500, the truster having had no right to revoke the provision in his favour.

The late John Robertson, Elmwood Villa, Pollokshields, Glasgow, by trust-disposition and assignation, dated 21st November 1881, and recorded in the Books of Council and Session the 4th day of February 1890, on the narrative that he was, at the date of granting said deed, in solvent circumstances, and that he regarded himself as morally and legally liable to the persons thereinafter named for the sums thereinafter mentioned, and that he was desirous of making a suitable provision for his wife and children, with consent of his wife, the said Mrs Jane Ross or Robertson, disponed and made over to her, and James Robertson and David Robertson, his two sons, and William Mathie, No. 15 South Park Terrace, Hillhead, Glasgow, and to their legal successors, as trustees for the ends, uses, and purposes therein mentioned, and to their assignees and disponees, certain heritable subjects, stocks, and insurance policies, and bound himself to make payment to the trustees of the future contributions required to keep the said insurance policies in force, and delivered up the policies to them to be used as their own proper writs and evidents. By the trust-disposition and assignation the truster declared that his trustees should hold and apply the trust-estate thereby created, and the annual interest or produce thereof . . . "(Third) in payment to my nephew James Henderson Robertson, Paterson Street, Glasgow, of the sum of £500 sterling, . . . which payment . . . I direct my trustees to make so soon as they receive payment of the proceeds of the insurance policies." These policies were all payable after the truster's death. The truster further declared "that none of the provisions hereinbefore made in favour of any person shall become vested interests in such persons until the terms of payment thereof." The trust-deed contained no power of revocation, but the trust-disposition and assignation was delivered to the trustees, who all accepted office, conform to minute dated 23rd November 1881, and the deed was then intimated by the trustees to the insurance companies, and the trustees also completed titles in their favour to the heritable properties conveyed to them by the trust-disposition and assignation.

On 7th September 1887 John Robertson, with consent and concurrence of Jane Ross or Robertson, his wife, executed a deed of revocation with the following narrative:—"Considering that since the granting of the trust-disposition and assignation the value of my estates, heritable and moveable, has been so materially reduced as to render the provisions therein contained in favour of certain friends and relatives, out of proportion to the residue which would remain as a provision for my wife and children, and considering further that the circumstances of some of the friends and relatives have since the granting thereof improved to such an extent as to relieve me of the feeling of obligation to make provision for their support to the extent therein provided, and that in the case of my nephew James Henderson Robertson the considerations which led to my making a provision in his favour have ceased to exist; and considering further that the provisions therein in favour of the said James Henderson Robertson and the beneficiaries after mentioned were purely gratuitous on my part, and were made solely because of favour and affection for them, and that the same have not become vested interests in them." By the said deed of revocation John Robertson, *inter alia*, revoked, rescinded, and recalled the direction to his trustees to pay to his nephew James Henderson Robertson the sum of £500 sterling, and declared that he should not be entitled to participate in any part of his means and estate falling under the said trust-disposition and assignation or outwith the same. The deed of revocation