possession. One finds the following passage in Professor Montgomerie Bell's Lectures (3rd ed. p. 1170)—"Mr Duff says that heritable creditors in possession can grant leases, and no doubt they can do so as long as they continue in possession. But if it be meant that a heritable creditor can grant a lease which will subsist after his debt is paid up and discharged, I see no authority for the doctrine, unless it be in the view of the Court in the *Kildonan* case" (1785 M., 14,135) "that the heritable creditors in possession are to be looked on as the landlords, which I think the Court would hold to a very limited effect only. The creditors' remedy, when the proprietor is not aiding them, is to sell." But the point seems to be set at rest by section 6 of the Heritable Securities (Scotland) Act 1894, which provides that "any creditor in possession of lands disponed in security may let such lands held in security, or part thereof, on lease for a period not exceeding seven years in duration." The pursuer argued that the resolution of 6th May 1910 was in effect at best a mere mandate by the debtor company to the bondholders to collect such rents as might be due and payable by the tenants in the property, and formed no sort of equivalent to a decree of mailles and duties. I do not agree with this view. The creditors had intimated their intention of entering into possession, as they had undoubted right to do, and the company resolved, no doubt very sensibly, that there was no need to force them to take judicial steps, and accordingly stood aside. I consider, agreeing with the Sheriff-Substitute, that after the resolution and the company's intimation to the tenants, the bondholders were in as good a position as if they had taken out a decree of mailles and duties. It was said for the pursuer that, assuming all this, an action of mailles and duties is after all "nothing more than a process for recovery of the rents, and carries nothing more" (*per* Lord President Inglis in *Henderson*, 1875, 2 R. at p. 276 ft.); and accordingly, even a decree in such a process would not place the bondholders "in possession" of the unlet subject No. 118 so as to entitle them to let it. But the bondholders' right to enter into possession depended not on any such decree but on their bond and infeftment, and the statutory effect of these—a right independent of, and counter to, the debtors' title of property. So far as I can see, the debtors never attempted to prevent the creditors from taking possession of the security subjects, but, on the contrary, by their actings virtually put them in possession. In any case they could not have defeated the creditors' right to enter into possession except by paying the debt; the latter were in a position to enforce entry by any competent process, and I do not know that they could in fact have taken possession of No. 118 in any more effective manner than by letting it. I think, therefore, that these defenders must in a question with the pursuer be regarded as heritable creditors in possession of the security subjects, and entitled as such to let part of these as they did. I do not see upon what ground the pursuer can successfully maintain that such was not their position and character, or question the validity of the lease of No. 118. In other words, he has, in my judgment, stated no relevant case for the intervention of the Court. I have dealt with the case upon the lines of the arguments which were presented to us. But the matter does seem to me to be capable of being resolved by an even simpler view of it If the bondholders are, as I think they are, entitled to enter into possession by the statutory virtue of their bond and infeftment, I do not see how the pursuer can effectively oppose them, or anyone (*e.g.*, Mr Frank) who bears their authority, from doing so, apart altogether from any question as to the validity of this particular lease. I should add, in conclusion, that the question of knowledge on the part of one or more of the bondholders of the informal agreement between the pursuer and the company, embodied in the letters of July 1909, seems to me to be immaterial and irrelevant. Assuming such knowledge, it would not, in my judgment, bar these defenders from pleading their rights as assignees of the bank.

For the reasons now stated I agree with the conclusion arrived at by the learned Sheriff-Substitute, and substantially also in his carefully-reasoned opinion.

LORD SALVESEN, LORD GUTHRIE, and the LORD JUSTICE-CLERK concurred.

The Court dismissed the appeal and affirmed the interlocutor appealed against.

Counsel for Pursuer (Appellant)—Morison, K.C.—MacRobert. Agents—Mackay & Young, W.S.

Counsel for Defenders (Respondents)—Sandeman, K.C.—Lippe. Agents—Alexander Morison & Company, W.S.

Friday, March 8.

FIRST DIVISION.

CHRISTIE AND OTHERS *v.* BURGH OF LEVEN.

Burgh — Process — Appeal — Competency — Notices as to Formation of Road and Footway in Front of Property—Averment that Road and Property outwith the Burgh —Burgh Police (Scotland) Act 1892 (55 *and* 56 *Vict. cap.* 55), *sec.* 339.

A burgh served notices on an owner of property intimating their intention to have the carriageway of the road in front of his property properly completed, and calling upon him to have the footway formed. The owner appealed to the Court of Session on the ground that the road and his property fronting it were outwith the burgh boundary. *Held* that the appeal was incompetent, the assumption upon

which the right to appeal rested being that the appellant was within the burgh.

Burgh—Boundary—High Water-Mark—Fluctuating or Fixed—Extension of Boundary.

The boundary of a burgh as fixed by the Sheriff was the line of high water-mark. *Opinion per curiam* that the boundary was a fluctuating one, and that, the sea having receded, the burgh included the land recovered.

Smart & Company v. *Town Board of Suva*, [1893] A.C. 301, and *Leith Docks Commissioners* v. *Magistrates of Leith*, 1911 S.C. 1139, 48 S.L.R. 919, *followed*.

Burgh—Road—Private Improvement Expenses—Valuation Roll—Burgh Police (Scotland) Act 1892 (55 *and* 56 *Vict. cap.* 55), *secs.* 133, 137, 365.

Opinion per curiam that to validate notices given by the town council of a burgh under the Burgh Police (Scotland) Act 1892 to frontagers as to the levelling and paving of streets and the formation of footways opposite their properties, it was not necessary that these properties should appear in the burgh valuation roll.

The Burgh (Police) Scotland Act 1892 (55 and 56 Vict. cap. 55) enacts—Section 133—"Where any private street *in which houses or permanent buildings have been erected on one-fourth of the ground fronting the same*, or part of such street has not, together with the footways thereof, been sufficiently levelled, paved, *or* causewayed [or macadamised] and flagged to the satisfaction of the [council] *commissioners*, it shall be lawful for the [council] *commissioners* to cause any such street or part thereof, and the footways, to be freed from obstructions and to be properly levelled, paved, *or* causewayed [or macadamised] . . . to the satisfaction of the [council] *commissioners*." Section 137—"The whole of the costs, charges, and expenses incurred by the commissioners in respect of private streets . . . shall be paid and reimbursed to them by the owners of the lands or premises fronting or abutting on each street, as the same shall be ascertained and fixed by the commissioners or their surveyor, and the whole of such costs, charges, and expenses shall be recoverable as private improvement expenses." Section 339—"Any person liable to pay . . . the expense of any work ordered . . . by the commissioners under this Act, and any person whose property may be affected, or who thinks himself aggrieved by any order or resolution or deliverance or act of the commissioners made or done under any of the provisions herein contained, may, unless otherwise in this Act specially provided, appeal either to the Sheriff or to the Court of Session. . . ." Section 365—"Where by the provisions of this Act the owner . . . of any premises is directed . . . to do any work in relation to the same and the work through the failure or delay of such owner . . . to execute it shall be done by the commissioners, or where expenses are incurred by the commissioners for or in respect of any premises in order to carry out the provisions of this Act, the commissioners shall charge such owner . . . of the premises with [the expenses thereby incurred by them] *the said expenses* over and above any assessments or rates to which such owner . . . may be liable under this Act, and such expenses shall for the purposes of this Act be called 'private improvement expenses,' and may be recovered in the same manner as any assessment under this Act."

The Burgh Police (Scotland) Act 1903 (3 Edw. VII, cap. 33), section 104 (2) (*d*) and schedule, repeals the words in italics and inserts those in brackets, and, section 16, enacts—"The owner of any lands or premises fronting on any private street shall, when required by the town council, form a footway before his property of the breadth sanctioned by the Dean of Guild Court or town council at the time when the street was sanctioned, or, if no such breadth has been specified, of such breadth as the town council shall direct, . . . and shall well and sufficiently construct and (if required) pave such footway . . . all with such material and in such manner and form as the town council may direct. . . ."

Robert Maitland Christie, Esq., of Durie, Leven, and John Somerville, merchant, Leven, and others, *appellants*, appealed to the First Division of the Court of Session against certain orders, resolutions, and notices served on them by the Provost, Magistrates, and Councillors of the burgh of Leven, *respondents*, under the Burgh Police (Scotland) Acts 1892 to 1903. Christie was proprietor of a small piece of ground on the north side of Promenade Road, Leven, and of nearly the whole ground on the south side thereof. The other appellants were feuars of parts of the estate of Durie whose feus fronted Promenade Road. The whole of the buildings on their feus were situated on the north side of the road, and there were no buildings on the south side. The respondents had, in pursuance of certain resolutions of the Works Committee of Leven Town Council, approved at a meeting of the Town Council held on 2nd October 1911, served on 17th November 1911 on the appellants as owners in the sense of the Burgh Police (Scotland) Acts 1892 to 1903, of premises situated at and fronting or abutting on the private street known as Promenade Road, Leven, a notice intimating that the respondents had resolved, in terms of the Burgh Police (Scotland) Acts 1892 to 1903, and in particular section 133 of the Burgh Police (Scotland) Act 1892 as amended by the Burgh Police (Scotland) Act 1903, to cause the carriageway of Promenade Road within the burgh of Leven to be freed from obstruction and to be properly levelled, macadamised, flagged, channelled, and completed with fences, &c., all in terms of certain plans, sections, and specifications therein mentioned. The respondents had also served similar notices of the same date upon the appellants by virtue of the Burgh Police (Scotland) Act

1903, and particularly section 16 thereof, requiring them to cause the footways before their properties on the north and south sides of the street to be formed in the manner therein specified.

The note of appeal set forth, *inter alia*—"7. By interlocutor, dated 15th January 1867, the then Sheriff of Fife and Kinross found the boundaries of the burgh of Leven on the south side to be as follows:—'Commencing at the south-east corner of Leven Bridge thence by the line of high water-mark as far eastward as Scoonie Burn, thence by the west side or margin of Scoonie Burn up to the south fence or boundary of the Leven and East of Fife Railway.' 8. The sea has gradually receded opposite the town of Leven, owing in great part to the erection of the new docks at Methil, in connection with which walls have been thrown out seawards, thus altering the flow of the currents eastwards *ex adverso* of the burgh of Leven. The sea, however, still occasionally washes up upon what is now known as Promenade Road when spring tides coincide with easterly and south-easterly winds. The greater portion of the road, which is now called Promenade Road, is situated below the high water-mark as it existed in 1867. In particular, the *solum* of the said road *ex adverso* of the properties of the appellants Robert Gerrett [and others] is to seaward of the line of high water-mark in 1867 and outside the burgh of Leven. Practically the whole of the property on the south of said road belonging to the appellant Robert Maitland Christie is to seaward of said high water-mark and outside said burgh. . . . 10. . . . Admitted that the buildings erected on the feus lying on the north side of Promenade Road have been entered in the valuation roll as being within the burgh of Leven, and that assessments have been paid in respect thereof. . . . Explained that the *solum* of the ground on which the buildings were erected was above high water-mark in 1867. . . . Explained that the appellant Robert Maitland Christie has never paid any burgh assessments in respect of his property lying to the south side of Promenade Road. Said property is entered in the valuation roll as 'landward,' *i.e.*, outside the burgh, and is not assessable or assessed by the respondents. Said property was so entered at the time of the resolution and notices appealed against. The appellant Robert Maitland Christie is assessable and assessed in respect thereof by the county authorities."

Argued for the appellants—The lands in question appeared in the county roll and were assessed by the county authorities, and the resolutions and notices of the Town Council were therefore incompetent—Valuation of Lands (Scotland) Act 1854 (17 and 18 Vict. cap. 91), secs. 1, 7, 37, and 38; Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55), secs. 4 (16), 9, 137, 340, 365, and 366, as altered by the Burgh Police (Scotland) Act 1903 (3 Edw. VII, cap. 33); Local Government (Scotland) Act 1894 (57 and 58 Vict. cap. 58), sec. 45 (1). Further, the area subject to the Town Council being in a police burgh could not be increased by accretion, because it was defined by a statutory process which was similar in effect to a bounding charter. The lands of the appellants were outwith the boundary fixed by that process in 1867, viz., high water-mark, and high water-mark was not a fluctuating boundary. In all the Scotch cases dealing with property this had been recognised, and the present case being administrative was really *a fortiori* of these—*Smart* v. *Magistrates of Dundee*, 1797, 3 Pat. 606, 8 Brown's Cas. in Parl. 119; *Lord Advocate* v. *Wemyss*, July 31, 1899, 2 F. (H.L.) 1, 36 S.L.R. 977; *Kerr* v. *Dickson*, November 28, 1840, 3 D. 154, and July 18, 1842, 1 Bell's App. 499; *Berry* v. *Holden*, December 10, 1840, 3 D. 205; *Todd* v. *Dunlop*, June 8, 1841, 2 Rob. App. 333; *Hunter* v. *Lord Advocate*, June 25, 1869, 7 Macph. 899, *per* L.P. Inglis at p. 906 (if he had had as a boundary, &c.), 6 S.L.R. 593; *Blyth's Trustees* v. *Shaw Stewart*, November 13, 1883, 11 R. 99, 21 S.L.R. 83; *Magistrates of Montrose* v. *Commercial Bank of Scotland, Limited*, June 11, 1886, 13 R. 947, *per* the Lord Ordinary (Kinnear) at p. 950, 23 S.L.R. 682. The case of *Smart & Company* v. *Town Board of Suva*, [1893] A.C. 301, was not authoritative, and was contrary to the Scotch decisions. If the burgh wished to extend its boundaries a competent method of doing so was provided under the Boundaries of Burghs Extension (Scotland) Act 1857 (20 and 21 Vict. cap. 70)—*Dunoon Commissioners* v. *Hunter's Trustees*, February 16, 1895, 22 R. 379, 32 S.L.R. 285. Further, all parties were not called. The County Council should have been made a party to the case—*North British Railway Company* v. *North-Eastern Railway Company*, December 17, 1896, 24 R. (H.L.) 19, 34 S.L.R. 179; *Leith Docks Commissioners* v. *Magistrates of Leith*, 1911 S.C. 1139, 48 S.L.R. 919.

Argued for the respondents—Under the Burgh Police (Scotland) Act 1892 the private improvement assessment was put on the owner irrespective of the valuation, and the valuation roll was not the criterion of its imposition. It might include subjects which would not be in the valuation roll at all, *e.g.*, servitudes or a narrow strip of land. Section 137 of the Burgh Police (Scotland) Act 1892, as altered by the schedule of the Burgh Police (Scotland) Act 1903, expressly put this assessment on the frontage of the road to be improved. It was fixed by the Commissioners, and no assessor had anything to do with it. It was competent to assess owners for these expenses, who were not subject to the general rate—Muirhead on Municipal and Police Government in Burghs in Scotland, p. 6. Further, it was clearly settled that the boundary of a burgh could change, and it did not matter whether the boundary was high or low water-mark. Though there might be some difference where it was a question of property, there was none in the case of administrative areas—*Forth Bridge Railway Company and Others* v. *The Assessor of Railways and Canals in Scotland*, 1890, 1 Poor Law Magazine, 147; *Leith*

Docks Commissioners v. *Magistrates of Leith* (*cit. sup.*); *Smart & Company* v. *Town Board of Suva* (*cit. sup.*)—where the circumstances were almost exactly the same as in the present case—*Fisherrow Harbour Commissioners* v. *Musselburgh Real Estate Company, Limited*, January 23, 1903, 5 F. 387, 40 S.L.R. 296; *Campbell* v. *Brown*, November 18, 1813, F.C.; *Young* v. *North British Railway Company*, August 1, 1887, 14 R. (H.L.) 53, 24 S.L.R. 763. If appellants wished to make the County Council a party to the proceedings they should have brought a declarator.

At advising—

LORD PRESIDENT—This is an appeal by certain persons who have been served with notices under the Burgh Police Acts of 1892 and 1903 as owners of premises on the south side of Promenade Road, Leven, requiring them to make in a proper manner the carriageway of that road, and to make a foot-pavement upon it. Promenade Road may be described as the road that forms the sea-front of this portion of the burgh, and the question to a great extent turns upon whether the appellants' lands are in the burgh. The appellants object to these orders upon several grounds, which I will presently deal with, and they take an appeal to your Lordships under the provisions of the Acts of 1892 and 1903.

The principal objection is that, taking Mr Christie as the leading opponent, he says that he has no lands at this place within the burgh. The meaning of that is that the burgh was defined, when it was delimited by the Sheriff, as bounded on the south by the high water-mark. The sea has receded, and Mr Christie says that the ground in respect of which the notices have been served is not in the burgh at all, because it is outside the high water-mark as it was when the burgh was delimited.

The point was not taken in argument, but I am of opinion, and I understand all your Lordships agree, that we might dispose of these appeals upon the very simple ground that they are incompetent, and that for this reason. The whole scheme of appealing against these orders made by a burgh is upon the hypothesis that the people aggrieved are within the burgh. Where the objection of the aggrieved person is that he is not within the burgh at all, it is not the proper subject of an appeal. If he is outside the burgh he might just as well be at Wick as within a few feet of the burgh, and the present question would be properly raised by simply taking no notice of the order at all. The Town Council would then do the thing themselves and would proceed to recover the cost, either by an ordinary action to which there would be a defence, or by taking advantage of the summary process by which assessments are recovered, and which is by statute made applicable to such a debt, and thereupon the aggrieved persons would suspend. Technically, therefore, I am of opinion that these appeals might be dismissed because they are incompetent. But the whole matter has been argued before your Lordships, and I think it would be a great pity to dismiss the matter here, and therefore while that will be the formal judgment, I proceed to give my opinion upon the merits of the case as they were argued.

The points were twofold. First, it was said this is a bad notice altogether, because there are no lands of the appellants *ex adverso* of this street which are in the burgh valuation roll. At first sight I was inclined to think that argument was a formidable one, but on further consideration I do not think it is. This is not an assessment; it is quite obvious why you can only recover assessments upon lands in the valuation roll and not upon any others, because, of course, the assessment is levied at a certain rate per pound, and unless your lands are fairly valued, then in a question with your neighbours you may have to pay more than your fair share, and accordingly in the Burgh Police Act there is provision made for levying assessments according to the valuation roll. But this is not an assessment at all; this is, first of all, a command to do a certain thing, and then the sanction of not doing it is that the Town Council proceed to do it themselves, and then having done it recover from you the cost. No doubt it is called private assessment, but it is not assessment in the proper sense of the word, because you have to pay the cost irrespective of what your valuation is. It does not matter what your valuation is; what you have to pay is the cost of the road and the pavement *ex adverso* of your frontage. That is simply a sum of money and nothing else, and although that cannot be charged against you unless you are a proprietor of lands and heritages within the burgh, I do not think it is necessary that your lands and heritages should be in the valuation roll. That disposes of the first point.

The second point is one which I have indicated, namely, that Mr Christie says, "I am not in the burgh at all," and we have had a very careful and learned argument upon the question of sea boundaries, in which the learned counsel tried to show that there is a very great difference between a high water-mark boundary and a low water-mark boundary. The low water-mark, he admitted, followed the sea—the high water-mark, he maintained, did not. We are dealing here with a line which was fixed to delimit an administrative area. The Sheriff undoubtedly fixed the high water-mark, and therefore the whole question, I think, is this, whether a delimitation by high water-mark means a fluctuating boundary or a stationary boundary? I think that has been fixed by a decision of the other Division in the case of *Leith Docks Commissioners* v. *Magistrates of Leith* (1911 S.C. 1139). That, I think, is a direct authority that there may be an administrative boundary which is a fluctuating boundary. If you once reach that, it does not seem to me to matter whether the fluctuating boundary is high or low water-mark, because both these boundaries do in certain cases fluctuate in fact. That

view is also in accordance with the case of *Smart & Co.* v. *Town Board of Suva*, [1893] A.C. 301, which concerned a boundary fixed by proclamation in Fiji. There does not seem very much difference for the purposes of the present question between fixing a boundary by a proclamation or fixing a boundary under the various Burgh Police Acts. Accordingly, although I think the appeals fall to be dismissed upon the technical point, I also think they fail upon the merits, so that, after what I have said, I think it will be quite unnecessary that the appellants here should proceed to take the course which would have otherwise been open to them, to raise the present question in a suspension.

LORD KINNEAR concurred.

LORD JOHNSTON—I agree in the opinion which your Lordship has just expressed. But looking to the provisions of the statute I think this appeal was really incompetent. This depends on a comparison between certain sections of the Act of 1892 (55 and 56 Vict. cap. 55). Section 137 provides that the expenses of such works as are here in question shall be ascertained by the commissioners and shall be recovered as private improvement expenses. Section 143 gives right to anyone who thinks himself aggrieved in this matter of streets and foot-pavements to appeal to the Sheriff in manner provided in the Act. And section 365 gives the commissioners the right to recover these private improvement expenses in the same manner as any assessment under the Act. When the terms of the latter section are looked at it is perfectly clear that the expenses there dealt with are to be recovered over and above any assessment to which the owner or occupier may be liable under the Act. Quite apart from the general consideration that it is impossible that a statute of this sort should indirectly extend the jurisdiction of the magistrates beyond their own boundaries, the latter section makes it quite clear that the proprietors whom they are empowered to charge with private improvement expenses are those only whose properties they are entitled to assess. Then when you turn to the appeal section 339 you find there that it is made quite clear that the person who is entitled to appeal under that section is some person who is bound to pay or contribute in respect of an order or resolution which the magistrates could competently pronounce. Accordingly the appeal there provided is a very limited appeal. It is an appeal either to the Sheriff or to this Court direct. There is no appeal from the Sheriff. But this provision does not cover a direct challenge of the magistrates' jurisdiction over the property in question. I think it is quite clear that this case should have been thrown out had an objection to competency been taken. This is not the process by which to raise the real question in the case. But I agree with your Lordship in holding that as no objection was taken and the matter has been debated, the opinion of the Court should be given upon it.

But there is another point on which I desire to reserve my opinion, and that is as to the effect of the terms of section 133 of the Act of 1892 under which this demand by the Town Council is made, and section 141 of the same Act. The latter section provides that in a case of this sort—I am taking the case of Mr Christie alone—where there are no buildings, &c., *ex adverso* of his part of the road, the Town Council are not entitled to charge him with the whole expense if they cause the foot-pavement to be constructed *ex adverso* of his piece of ground, and therefore I think it is right to reserve my opinion upon the bearing of these two sections one upon another, and whether the limitation of section 141 does not apply here.

LORD MACKENZIE—I agree with your Lordships. There is one point which was put to us, and that was whether tar macadam, which is the material to be used in the formation of this roadway, is macadam within the sense of this Act. I only mention it in order to express the view that I do not think there really can be any difficulty about that. If by the progress of science it has been found out that macadam can be laid down in a more effective way by covering the pieces of metal with a coating of tar, that is just macadam.

Another point was stated — that the requisition was served at such a time of the year as to make it impossible for the work to be done. It was explained that the reason for that was that an earlier notice proved abortive, and therefore there was delay, but, as I understood, counsel at the Bar stated that if there was any difficulty in regard to that there would be no unreasonable insistence by the Police Commissioners on the work being done, but that they would give reasonable time to allow the work to be carried out.

With regard to the point upon the boundary, your Lordships' opinion is as to the legal effect of a boundary fixed by high water-mark, leaving, of course, open any question of fact that there may be between the parties as to how much is included within the high water-mark, and the correct line along which that mark should run, because although a plan was presented to us with a ine laid down upon it I am not sure whether that line was agreed upon between the parties. Any question of fact as to where the exact line should be is reserved and is open to the parties at a future stage.

On the point which my brother Lord Johnston has suggested with regard to footways a distinction is drawn between the footway to the north and that to the south. The requisition is for the footway to be formed in a permanent manner on the north side, and that for the reason that there are houses abutting. On the south there are no houses abutting, and therefore, as the notice runs, the footway is only to be formed in a temporary

manner. If my recollection serves me right, that is in accordance with the provisions of section 16 of the Act of 1903 (3 Edw. VII, cap 33), and therefore I think there is no substantial difficulty with regard to that matter.

The Court dismissed the appeal as incompetent.

Counsel for Appellants—Sandeman, K.C. —J. A. Christie. Agents—Mylne & Campbell, W.S.

Counsel for Respondents—D.-F. Dickson, K.C.—D. P. Fleming. Agents—Lewis & Somerville, W.S.

Saturday, March 9.

EXTRA DIVISION.

DAVIDSON'S TRUSTEES *v.* DAVIDSON.

Process—Special Case—Questions of Law—Form.

Observations per curiam on the proper method of stating questions of law in a special case.

George Gilbert Ramsay and others, trustees of the late Miss Grace Davidson, Rannagulzion, Perthshire—*first parties*—and others presented a Special Case for the opinion and judgment of the Court of Session.

At advising—

LORD DUNDAS—I agree with the opinion just delivered by your Lordship, and have nothing further to say about the merits of the case. I desire merely to add a few observations which occur to me, arising out of the way in which the questions of law have here been stated. They are nominally thirteen in number, but if regard is had to divisions and subheads, amount to at least two dozen. One of your Lordships, I think, remarked during the discussion that they resemble an examination-paper set to the Court more than anything else. It may be that such prodigality of interrogation (which seems to me to be growing more and more common in practice) is the outcome of an over-zealous attempt to satisfy some supposed requirement or *desideratum* of the Court, but I think it is both unnecessary and undesirable. There ought not to be any undue difficulty about stating the questions of law in special cases within reasonable compass if broad considerations of sense and expediency are kept in view. Each of the questions should, of course, embody a proposition of law, and not (as sometimes occurs) more or less of fact, or of mere arithmetic. The questions come substantially in place of the pleas-in-law which counsel for the various parties would have had to frame if the dispute had arisen in the form of an action of some sort. It is generally convenient that they should be capable of a categorical answer—yes or no; but this is not indispensable; and if for any sufficient reason another form is adopted, the answer can be (and often is) given by way of a finding in appropriate terms. The questions ought to raise the legal issues which the parties wish to have determined; but I do not think it is necessary or desirable for counsel to endeavour (as was perhaps intended in this case) to anticipate and cover in specific detail the whole gamut of possible contingencies which may arise as affecting the individual interests of each and every party to the case. On the other hand, it would obviously not do for counsel to table to the Court a deed or deeds of some sort, with a few relative dates and facts, and a bare general "question of law," such as, "Upon a sound construction of the said deeds, who are the parties amongst whom the estate should be distributed, and at what time or times, and in what shares or proportions, and subject to what (if any) conditions, restrictions, or limitations?" Between the two extremes indicated, a reasonable medium must in each case be aimed at. It sometimes happens that during the arguments a suggestion from the Bench may indicate, as the true legal solution of some point, one which is not specifically covered by any of the questions stated, and the parties agree in adjusting and adding a new question to meet the situation. But I do not think it is necessarily the Court's duty or function to investigate and determine, *ex proprio motu*, all the possible legal aspects of a special case; it is for the parties to present the questions of law which they seek to have decided, and for the Court (primarily at least) to answer these, and these only. It would not, I apprehend, be difficult to point to reported cases where a solution—I do not say the correct solution, but at least a very plausible and attractive one—of some problem of vesting or the like has apparently escaped the notice of all concerned, and which, if the parties had suggested it, might have affected the result of the decision. The proper statement of questions in a special case, just as of pleas-in-law, or of declaratory (or other) conclusions in the summons of an action, is a matter requiring skill, care, and discrimination, but I do not see why it should present any special or peculiar difficulty. I shall say no more, and these few observations, which are, of course, merely the expression in a general way of my own individual views, are obviously not intended as an exhaustive treatment of this interesting topic of practice and procedure.

LORD KINNEAR and LORD MACKENZIE concurred in the foregoing observations.

Counsel for the Parties—Blackburn, K.C. —Leadbetter—Cooper, K.C.—Chree—Jameson—T. G. Robertson—Ramsay. Agents—Mackenzie & Black, W.S.—John C. Brodie & Sons, W.S.—L. & J. M'Laren, W.S.—T. & R. B. Ranken, W.S.—Russell & Dunlop, W.S.