which the Lord Ordinary has expressed his opinion. I have never known, and counsel have been unable to produce to us, any action of declarator where the Court gave a declarator as to a right without there being a proper contradictor present. It seems to me that the whole argument we have listened to this morning was vitiated by an assumption as to who the contradictor in this case is. The Insurance Company is not the contradictor as in the question of whom the insurance policy belongs to. The contradictor must be found among the ranks of the parties to whom at various times the policy belonged, and depends upon the question of whether these various steps or links of the chain of title are or are not correct. The Insurance Company have no interest whatever except simply to pay the policy when it becomes a proper claim. Therefore it seems to me that the whole of the cases where declarators have been obtained have really no application to the case before us. I propose to your Lordships that we adhere.

LORD KINNEAR—I am of the same opinion, and I only add that my reasons are stated very clearly by the Lord Ordinary in the last paragraph of his opinion, and I agree in all that his Lordship has said.

LORD DUNDAS—I agree with the Lord Ordinary, and with your Lordships. I confess that I think the case a very clear one. There is no proper contradictor here, and no actual *lis*. As your Lordship has pointed out, it is clear that a multiplepoinding cannot at this time be competently raised, and that, I think, is a conclusive test of the situation.

LORD M'LAREN and LORD PEARSON were not present.

The Court adhered.

Counsel for the Pursuers (Reclaimers)—Morison, K.C.—J. G. Jameson. Agent—F. J. Martin, W.S.

Counsel for the Defenders (Respondents)—Dean of Faculty (Campbell, K.C.)—Spens. Agents—Thomson, Dickson, & Shaw, W.S.

Tuesday, October 29.

FIRST DIVISION.

DENHOLM'S TRUSTEES *v.* DENHOLM.

Succession—Will—Construction—"Horses and Carriages"—Motor Cars.

A testator directed his trustees, after providing certain gifts to a brother, to make over to his wife "my whole other furniture and plenishing including books, plate, pictures, jewellery, ornaments, and bed and table linen, and also my horses and carriages, live stock, plants, and garden and stable implements." He also bequeathed to her his landed estate of X.

At the date when he executed his will he owned horses, a brougham, and a waggonette, but these he subsequently sold and bought two motor cars, which he had at the time of his death.

Held that the bequest carried the motor cars.

By his trust-disposition and settlement dated 22nd October 1890, and recorded in the Books of Council and Session 9th January 1907, the late John Denholm, The Mains, Eastwood, Renfrewshire, assigned and disponed to trustees therein mentioned his whole estate, heritable and moveable, for the following purposes, viz.—"(*First*) For payment of all my just and lawful debts and sickbed and funeral expenses . . . (*thirdly*) I direct my trustees to deliver to my brother Thomas my gold watch, breech loading gun, and all my body clothing, together with all articles of every description belonging to me that are at Greenhill at the time of my decease; (*fourthly*) I direct my trustees to make over to my said wife Kate Gillies or Denholm my whole other furniture and plenishing, including books, plate, pictures, jewellery, ornaments, and bed and table linen, and also my horses and carriages, live stock, plants, and garden and stable implements; (*fifthly*) I direct my trustees to make over to my said wife Kate Gillies or Denholm my lands and estate of Eastwoodmains . . .; and (*lastly*) with regard to the residue of the means and estate hereby conveyed I direct my trustees to divide the same into two equal portions and to pay or convey one portion thereof to my said wife Kate Gillies or Denholm and to pay or convey the other portion thereof equally among my brother Thomas, my sister Janet, and the children of my deceased sister Elizabeth *per stirpes*. . . ."

A question having arisen as to whether the bequest of "my horses and carriages" carried motor cars, a special case was presented, the parties to which were (1) the testamentary trustees, *first parties*; (2) Mrs Denholm, the widow, *second party*; and (3) the residuary legatees, *third parties*.

The case stated—"Mr Denholm resided at The Mains, a small residential estate near Giffnock, about five miles south of Glasgow on the Kilmarnock Road. That estate adjoins and is surrounded on three sides by his estate of Eastwoodmains. He left estate amounting to about £53,000. For many years Mr Denholm kept a brougham and a waggonette and one carriage horse, and occasionally a riding horse, but about four years ago he bought a 10 H.P. Argyll open motor car, and got his coachman trained to drive it. Shortly thereafter he sold his waggonette and horses but retained his brougham, for which he occasionally got a horse on hire. About a year before his death he bought another motor car—a 16 H.P. Argyll brougham motor car—and he then sold his brougham. These motor cars were in his possession at his death, and they are valued for Government duty purposes at £75 and £450 respectively."

The second party contended that on a just construction of the testator's settlement the motor cars in question were bequeathed to her. On the other hand the third parties contended that the motor cars formed part of the residue of the trust estate.

The questions of law were—"(1) Is the second party entitled to the said motor cars in virtue of the bequest in her favour contained in the said fourth purpose of the said trust-disposition and settlement; or (2) Do the said motor cars fall to be included in the residue of the testator's estate under the last purpose of the said trust-disposition and settlement."

Argued for the second party—The word "carriage" included motor cars. *Esto* that at the time the testator made his will he did not possess motors, still having an apt word to convey them in his settlement he did not think it necessary to alter the terms of the bequest. It was clear from the will as a whole that the testator meant his widow to enjoy the estate of Eastwoodmains fully equipped as regarded the house, the gardens, and the stables, and also with the same means of locomotion as he himself had. The decision of Kekewich, J., in the case of *In re Platt* ("The Times," April 20, 1907) that a bequest of horses, carriages, harness, and saddlery did not convey motors, was not adverse, for in that case the testator had at the time of his death both horse-carriages *and* motors. Moreover, there was in that case no general bequest of plenishing, and the word "carriages" as there used clearly indicated horse-drawn vehicles. Under the Revenue Acts carriage duty was payable on motors.

Argued for the third parties—The bequest of horses and carriages had been adeemed by change of circumstances. Where, as here, the subject bequeathed was very clearly indicated and was not in existence at the testator's death, the bequest was in law held to be adeemed—*Ashburner* v. *Macguire*, 1786, 1 W. & T.'s Equity Cases 780, at pp. 808, 812, 819. At the date of the execution of his will motor cars could not have been in the testator's contemplation. The word "carriages" was clearly associated with horses, and meant vehicles drawn by horses. Reference was also made to *in re Gibson*, 1866, L.R., 2 Eq. 669.

At advising—

LORD PRESIDENT—The parties in this special case are on the one hand the trustees and the residuary legatees of the late Mr John Denholm, and on the other the truster's widow; and the question arises on the interpretation of a clause in his trust-disposition and settlement. That trust-disposition and settlement was dated in 1890, but Mr Denholm did not die until 1907. He thereby made over all his property, heritable and moveable, to trustees, and then he proceeded to state the trust purposes. The first direction to his trustees was to pay a legacy to a certain gentleman, and the second was to deliver to his brother Thomas certain specific articles which may be described as articles particularly appropriate to a man. Then he proceeded in the fourth purpose to direct his trustees "to make over to my said wife my whole other furniture and plenishing, including books, plate, pictures, jewellery, ornaments, and bed and table linen, and also my horses and carriages, live stock, plants, and garden and stable implements." He next bequeathed to his wife the lands and estate of Eastwoodmains, and finally gave directions as to his residue.

Now, the point is whether under the bequest in this fourth purpose the wife has, or has not, right to two motor cars, which were in the premises of the deceased at the time of his death. At the time of the execution of the will in 1890 the testator was not in possession of any motor cars. That was not much to be wondered at, because although motor cars had as a matter of fact been invented in 1890, there were very few indeed of them in the United Kingdom at that time. But as time went on motor cars became common, and the deceased Mr Denholm first bought one motor car and relinquished part of his stable establishment, and afterwards got a second motor car and gave up keeping horses altogether, so that at the time of his death he did not have any means of locomotion except motor cars, one being an open car and the other a brougham or landaulette. The whole point is whether these motor cars fall within the expression which I have read.

Of course this is a matter of intention, and the first observation I have to make is that one cannot read the testator's settlement without seeing that he wanted, speaking generally, his wife to have the whole moveable property that was connected with the enjoyment of his house, all except those special articles which would not have been appropriate to a lady, namely, the breechloading gun and bodyclothing, which he gave to his brother Thomas. That being the testator's intention, the only question which remains is whether the words he used were sufficient to give effect to that intention, and that depends upon whether the word "carriage" can be held to include motor cars. I think one is entitled to construe the word "carriages" in the will of the testator in the light of what the testator himself had done, and I think that the testator when alive showed that he had come to consider these motor cars as his carriages. The word "carriage" itself is certainly wide enough to cover any form of vehicle in which you are carried, though it has secondary significations which vary according to the context. It may be admitted that the ordinary sense of the word "carriage" is a carriage drawn by horses, but to show how its meaning varies I may take this illustration. I do not suppose that anyone would doubt that a dog-cart would fall under the designation of "carriages," and yet there is as little doubt that if a person who kept a dog-cart and a landau or barouche sent round to his stable and said, "I want the carriage," that would be regarded as equivalent to an order to send the barouche or landau, and not the dog-

cart. I accordingly think that the word "carriage" is a term sufficiently elastic to include motor cars, and that when this gentleman allowed his will to remain unaltered, knowing that he had actually replaced his horse carriages by motor carriages, he intended the bequest of his carriages to include his motor cars. I am therefore for answering the first question in the affirmative and the second in the negative.

LORD KINNEAR—I am of the same opinion. The first point that was taken by the residuary legatee was that the testator had no motor cars in his possession at the time of making his will, and that what he meant by the word "carriages" must be ascertained by reference to his actual possession at that date. If that were sound it would, as a logical consequence, prevent the widow from receiving any of the other articles, which were left to her in the same sentence, except on condition of showing that they belonged to the testator at the time of making the will. But the contention appears to me to be entirely without foundation. I do not come to that conclusion upon any rule of law as to the date at which a will should be held to speak, but as mere matter of construction of the plain meaning of the words used in this particular will. We cannot construe a particular clause in a will disjoined from the rest; but we must take in the whole deed in order to see what the testator really means; and the first thing that strikes one in this settlement is that the testator clearly intends to dispose, not of the property which he had at the time, because he might have changed it considerably before his death, but of the whole real and personal property of every kind and description which should belong to him at the time of his death. That is the description, at the outset, of the property he means to dispose of. When he comes to deal with the particular kind of property with which we are concerned now, he begins, in the first place, by leaving certain things to his brother Thomas, and he says that the trustees are to deliver to his brother Thomas "my gold watch, breechloading gun, and all my bodyclothing, together with all articles of every description belonging to me that are at Greenhill at the time of my decease." I understand that Greenhill was the house where his brother lived. Well, then, he was to have all the articles that are at Greenhill "at the time of my decease." Then he goes on to make the provision in question for his wife. He says that she is to have all the other furniture and plenishing, including certain specified things. Now, it seems to me plain on the collocation of these two sentences that the time he had in view in both was the same time. My brother is to get all the things at the time of my death that are in Greenhill, but as for the other things my wife is to have them. What other things? The other things at the time of my death besides the articles and furniture and so on which are at Greenhill and which go to my brother. Therefore it seems to me that the only question that really requires consideration is whether the words in which he bequeathes to his widow his "carriages" are wide enough to cover the only kind of carriage which he had at the time of his death, that is, motor cars. I have no hesitation in agreeing with your Lordship that, according to the ordinary use of language, a "motor car" is a "carriage," because a "carriage" is, as your Lordship said, simply a vehicle for carrying persons.

It is perfectly true, and I entirely agree with the observation of your Lordship, that in ordinary language people very often do use the term "carriage" to describe a particular kind of vehicle in order to distinguish it from some other kind, which nevertheless also falls within the general signification of the word "carriage"; as in the instance your Lordship stated, it is perfectly common and natural that a man should describe a barouche or a landau as a carriage in order to distinguish it from a waggonette or a dog-cart. But when he uses the term, not for the purpose of distinguishing between particular articles which may fall within the meaning of the general word, but for describing all the articles which might possibly be described by it, then it must receive its most comprehensive meaning. I have no doubt at all that it ought to receive its comprehensive meaning in this case, both because I think that is the plain meaning of the words used, and also because when you read the will, as it is right we should read the will, with reference to the statement before us as to the things possessed by the testator at the time of his death, we find that the carriage that he himself was using at the time, and the only carriage, was a motor car. That the intention of the testator was to put his widow in the same kind of enjoyment of his house and furniture and means of locomotion as he himself had enjoyed during his life, seems to me to be plain upon a fair construction of the will. I therefore agree with your Lordship's proposal as to the way in which the questions should be answered.

LORD DUNDAS—I am of the same opinion. It seems clear that the testator, when he subscribed his settlement in 1890, intended to bequeath to his widow the whole accessories, both indoors and out of doors, requisite to her comfortable enjoyment of the landed estate she was to possess. In the latter category were included "my horses and carriages." Mr Denholm owned at that time a horse or horses, and also a brougham and a waggonette. But when he died in January 1907 he had parted with his horses, his brougham, and his waggonette, and had acquired in their stead two motor cars. It is, to my mind, impossible to suppose that Mr Denholm, though he altered his style of private locomotion in accordance with the march of modern times, intended to alter, and indeed to delete, the bequest to his wife of a comfortable, though not absolutely necessary, item of her enjoyment of the estate which he bequeathed to her. Nor do I think

that, looking to the admitted circumstances of his establishment as regards the modes of vehicular conveyance successively employed by him, we shall in the slightest degree strain the language of his settlement if we decide, as your Lordships propose to do, that the motor cars fall within the expression of his bequest of "carriages." It seems to me, therefore, that the first question put to us should be answered in the affirmative and the second in the negative.

LORD M'LAREN and LORD PEARSON were not present.

The Court answered the first question in the affirmative and the second in the negative, and decerned.

Counsel for the First and Second Parties—C. H. Brown. Agents—Smith & Watt, W.S.

Counsel for the Third Parties—G. D. Valentine. Agent—Henry Smith, W.S.

Friday, October 18.

FIRST DIVISION.

[Lord Ardwall, Ordinary.

NORTH BRITISH RAILWAY COMPANY AND ANOTHER *v.* CALEDONIAN RAILWAY COMPANY.

Railway — Running Powers — Siding — "Sidings Constructed at the Commencement of this Act or any Renewals Thereof" — Lateral and Vertical Deviation — Identity of Subject—The Caledonian and General Terminus Railways Amalgamation Act 1865 (28 *and* 29 *Vict. cap. clxvii*), *sec.* 15.

In 1857 a railway company, in fulfilment of a feu-contract granted by it, constructed a siding from a branch of its railway to the plot of ground feued. In 1865 the railway company was purchased by another company, and the amalgamating statute conferred on certain other railways statutory running powers over "all or any of the . . . sidings or branches . . . constructed at the time of the commencement of this Act or any renewals thereof."

The siding as originally constructed ran to and along the south side of the plot of ground, and branched off another siding which continued further on, but in 1895, to suit the then tenants, the latter siding, which otherwise had become useless, was diverted into the south-west corner of the plot of ground, and the former siding was stopped at the south-east corner and turned in there. In 1901, the tenants having left and having removed whatever belonged to them, the siding was little if at all used, and ended in a bifurcation and somewhat short of the plot of ground. In 1903 a new owner acquired the plot of ground and erected warehouses thereon, and at his request a siding was again laid, but it was at a lower elevation, to the extent of five feet at the entrance to the plot of ground, and it also deviated laterally, the greatest amount of deviation being ten feet. The owning company refused running powers.

Held that as the siding was for the accommodation of the same subjects, its identity with the original siding was not affected by the lateral or vertical deviation, or by any temporary disuse, and consequently that it came under "sidings constructed at the time of the commencement of this Act or renewals thereof" over which running powers were conferred.

The Caledonian and General Terminus Railways Amalgamation Act 1865 (28 and 29 Vict. cap. clxvii) transferred to the Caledonian Company the undertaking of the General Terminus and Glasgow Harbour Railway Company.

Sec. 15 thereof enacts—"The Glasgow and South-Western Railway Company, the City of Glasgow Union Railway Company (including all companies and persons lawfully using the City of Glasgow Union Railway), the Edinburgh and Glasgow Railway Company, the Monkland Railways Company, and the Committee of Management of the joint line of railway between Glasgow and Paisley, respectively, may, from and after the commencement of this Act, but subject to the regulations and bye-laws of the Company in force for the time, run over and use with their engines and trains (and all proper servants accompanying such engines and trains), for traffic of all kinds, the above railways and works; (that is to say) each of the four companies above named (including as aforesaid), and the said Committee, may so run over and use the railways by this Act vested in the Company, and the Glasgow and South-Western Railway Company and the said Committee may so run over and use so much also of the railways vested in the Company by the Caledonian Railway 'General Terminus Purchase Act 1854,' as is necessary for conveying traffic between the joint line and the railways vested in the Company by this Act, and each of the four companies (including as aforesaid) and the said Committee may so run over and use all or any of the stations, sidings, or branches of the last-mentioned railways constructed at the time of the commencement of this Act or any renewals thereof, . . . on paying to the company for running over the said railways, accommodation and appliances, or any part thereof, the tolls and rates following. . . ."

Under and in virtue of the North British and Edinburgh and Glasgow Railway Companies Amalgamation Act 1865 (28 and 29 Vict. cap. cccviii), secs. 2 and 61, the North British Railway Company are in right of the powers conferred by the above enactment on the Edinburgh and Glasgow Railway Company, and the Monkland Railways Company.