either survived by children or survived by a widow but no children. I doubt if such application can fairly be regarded as an extension of the doctrine of vesting subject to defeasance; but if it is, then I think it is a necessary one. For the reasons now stated I think that heads (*a*) and (*c*) of the first question should be answered in the negative; and it will probably be sufficient for practical purposes to answer head (*b*) in the affirmative, though, for the sake of theoretical completeness, such words as "or leaving no children but a widow" might perhaps have been added at the end of that head of the question.

[*His Lordship here dealt with questions not reported.*]

LORD SALVESEN—I have had the advantage of reading Lord Dundas' opinion, in which I entirely concur. I confess that I have never been enamoured of the doctrine of vesting subject to defeasance. But it is now firmly fixed in the law of Scotland by a series of decisions, and has been approved by the House of Lords. I see no difficulty in applying that doctrine to the present case. On the contrary, I think it is a logical necessity that we should do so. The mere fact that there are alternative events, on the occurrence of either of which the gift which has vested subject to divestiture may be divested, does not seem to me to afford any sufficient reason for not applying the rules laid down in the cases cited by your Lordship.

The LORD JUSTICE-CLERK concurred.

LORD ARDWALL was absent.

The Court answered heads (*a*) and (*c*) of the question in the negative, and head (*b*) in the affirmative.

Counsel for First and Fourth Parties—Blackburn, K.C.—Leadbetter. Agents—Mackenzie & Black, W.S.

Counsel for Second Parties—Murray, K.C.—Macmillan. Agents—Fyfe, Ireland, & Company, W.S.

Counsel for Third Parties—MacRobert. Agents—Young & Falconer, W.S.

Counsel for Fifth Parties—Moncrieff. Agents—Mackenzie, Innes, & Logan, W.S.

Counsel for Sixth Party—Gentles. Agents—L. & J. M'Laren, W.S.

Counsel for Seventh Party—T. G. Robertson. Agents—T. & R. B. Ranken, W.S.

Counsel for Eighth Party—Lord Kinross. Agents—Guild & Shepherd, W.S.

Tuesday, June 13.

FIRST DIVISION.

BOYD (LIQUIDATOR OF WEIR & WILSON, LIMITED) *v.* TURNBULL AND FINDLAY.

Agent and Client—Hypothec—Law Agents' Lien over Title-deeds—Company—Winding-up — Retention of Title-deeds by Creditor's Law Agents—Companies Consolidation Act 1908 (8 *Edw. VII, c.* 69), *sec.* 174.

The liquidator of a company who had sold the subjects to a bondholder demanded production of the title-deeds from the latter's law agents, to whom they had been sent in connection with the preparation of the bond, in order that he might deliver them to the purchaser. The bond contained the usual clause of assignation of writs, and also a clause under which the writs were expressly delivered to the bondholder. The agents having refused to deliver them on the ground that they would thereby lose their right of lien as against their own client, the liquidator presented a petition to the Court under section 174 of the Companies Consolidation Act 1908 for their delivery.

Held that as the titles had been given to the bondholder for a limited purpose, viz., for the purpose of making good his security they could not be retained by his agents in security of all accounts between them *hinc inde*, and application *granted*.

The Companies (Consolidation) Act 1908 (8 Edw. VII, c. 69) enacts, sec. 174—"(1) The Court may, after it has made a winding-up order, summon before it any officer of the company or person known . . . to have in his possession any property of the company. . . . (3) The Court may require him to produce any books and papers in his custody or power relating to the company; but where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding-up to determine all questions relating to that lien." Sec. 193 (1)—"Where a company is being wound up voluntarily the liquidator . . . may apply to the Court to determine any question arising in the winding-up. . . ."

On 10th May 1911 John Boyd, C.A., Glasgow, liquidator of Weir & Wilson, Limited, manufacturers, Douglas Park Bolt Works, Hamilton, presented a petition to the First Division in terms of sections 164, 174, and 193 of the Companies Consolidation Act 1908 (8 Edw. VII, c. 69), for delivery of the titles to the property belonging to the company, then in the hands of Turnbull & Findlay, writers, Glasgow. From the facts stated in the petition it appeared that Weir & Wilson, Limited, having resolved on a voluntary winding-up, the petitioner was appointed liquidator; that on entering upon his duties he dis-

covered that the titles of the heritable subjects belonging to the company had been delivered to Turnbull & Findlay in order that they might prepare a bond and disposition in security over them in favour of Samuel Platt, Limited, engineers, Wednesbury, to secure a debt due by the Company to the said Samuel Platt, Limited; that the petitioner had applied to them (Turnbull & Findlay) for delivery of the titles to enable him to complete his title to the property and to sell the same, but that they had refused delivery on the ground that they had an account amounting to £65 incurred to them in connection with the preparation of the said bond and other matters, and could not deliver them until the said account was paid; that he (the petitioner) had intimated to them that he was prepared to accept the titles on a borrowing receipt, to be returned on demand and without prejudice to any rights which they might have, but that his request had not been complied with; that he was unable to proceed with his duties until the titles were delivered; that the property had been advertised for sale on 24th May 1911, and that the titles were required for exhibition to intending purchasers. He further stated that he was not in a position at present to admit any right of lien as to the said titles, but that he was willing that any such lien should not be prejudiced by their delivery to him.

The respondents lodged answers, in which they stated—"The respondents hold the said documents as agents for and on behalf of the said Samuel Platt, Limited, and are not entitled to part with them without their clients' express authority. The said bond and disposition in security has not been discharged. The said feu-disposition has been recorded, and the petitioner can obtain an extract thereof. He can also obtain a certificate of search. These should be sufficient for his present purpose. The account of expenses incurred to the respondents by the said Samuel Platt, Limited, in connection with the said services rendered by them amounts to £53, 16s. 5d., and is still unpaid, and the said documents are held by the respondents, subject to a right of lien in respect of said account. If the prayer of the petition is granted, the respondents will lose their right of lien as against their clients the said Samuel Platt, Limited."

Argued for petitioner—*Esto* that a law-agent could retain titles as against his own client, he could not do so as against third parties, for his right of retention was a limited one. The agent of a prior bondholder could not retain the titles of the security subject to the effect of preventing a sale by a postponed bondholder. In any event the liquidator was entitled to the production craved without prejudice to the lien claimed by the respondents — *Liquidator of Donaldson & Company, Limited* v. *White & Park*, 1908 S.C. 309, *per* Lord Dundas (Ordinary), at p. 312, 45 S.L.R. 231; *National Bank of Scotland, Limited* v. *White & Park*, 1909 S.C. 1308, 46 S.L.R. 948; *in re South Essex Estuary Company*, (1869) L.R., 4 Ch. App. 215.

Argued for respondents--The respondents were willing to hand over the titles, provided their right of lien would not be in any way prejudiced. Here, however, their right of lien would be destroyed by parting with them, and therefore they were not bound to do so—*Malcolm* v. *Carmichael*, March 9, 1854, 16 D. 825; *Bain* v. *Duncan*, January 21, 1892, 29 S.L.R. 335; *Drummond* v. *Muirhead and Guthrie Smith*, February 13, 1900, 2 F. 585, 37 S.L.R. 433; *Fergusson* (*Liquidator of Bain & Company, Limited*) v. *Stevenson & Brownlie*, 1903, 10 S.L.T. 456.

On 19th May the Court, without delivering opinions, ordered the respondents to deliver the titles to the petitioner within two days, reserving always any lien that might be competent to them (the respondents) over said titles, and ordained the petitioner to redeliver them to the Clerk of Court within four days thereafter, and continued the petition.

Thereafter on 6th June the petitioner presented a note to the Court stating that the subjects had been sold to the bondholder, and that in order to carry through the sale and obtain payment at the price he required to hand over the titles to the purchaser. The Court, on an undertaking by the petitioner's counsel that the respondents' right of lien (if any) over the price would be reserved, granted warrant to the Clerk of Court to deliver the titles to the petitioner, without prejudice, in terms of sec. 174 of the Companies Consolidation Act 1908, to any lien which the respondents might have over the said titles, and also over the price to be received by the petitioner for the said subjects.

The case was further heard on 13th June, when counsel for the liquidator stated that the price of the subjects had now been received by his client, and he therefore craved the Court to determine whether the respondents were entitled to receive any part of it in virtue of the lien claimed by them.

He argued—A law agent's lien was only pleadable against the client who had employed him. It could not be pleaded against a third party—(1) where such third party had derived his right through the client, and (2) where the documents in question were the exclusive property of the client at the time they were handed to his agent. Here there was no contract between the liquidator and the respondents, and the latter therefore had no right of retention against him—Menzies on Conveyancing, 872; *Scott* v. *Thomson*, December 6, 1854, 17 D. 124; *Smith* v. *Lamont*, May 13, 1858, 20 D. 912; *Pelley* v. *Watken* [1851], 1 De Gex, M. & G. 16; *Pratt* v. *Vizard* [1833], 5 B. & A. 808.

Argued for respondents—The titles here had been expressly delivered to the bondholders, and where that was so their law agents could plead a right of retention against them—*Dobie* v. *Scales*, May 19, 1831, 9 S. 609; *Malcolm* v. *Carmichael* (*cit. sup.*); *Bain* v. *Duncan* (*cit. sup.*); *Ogle* v. *Story*

[1833], 4 B. & A. 735; Poley on Solicitors, 331.

LORD PRESIDENT—The question raised in this case is a very simple one. The firm of Weir & Wilson, which afterwards became Weir & Wilson, Limited, borrowed money from Samuel Platt, Limited, and in security of this loan they granted a bond and disposition over heritable property belonging to them, which consisted of their works at Hamilton, in favour of Samuel Platt, Limited.

Samuel Platt, Limited, employed an agent, and that agent on their behalf prepared the bond and disposition in security. That bond and disposition in security contained the usual clause of assignation of writs, and also contained a clause, not unusual but not at all necessary in a bond and disposition in security, namely, a clause under which the property writs were expressly delivered to the bondholder. Thereafter the company of Weir & Wilson, Limited, was wound up, the liquidator of the company has effected a sale of the subjects, and wishes to give the titles to the purchaser. That sale, naturally, is under burden of the bond and disposition and security. As it happens, the purchaser is the bondholder, and the bondholder, as bondholder, therefore does not raise any objection to the titles being delivered to him in his capacity as purchaser; but the agent for the bondholder appears and says that he has a lien over the titles in respect of the law agent's lien, and that he proposes to enforce this lien for all business accounts outstanding between him and his clients.

I am of opinion that there is no ground for upholding such a lien. I think the ordinary positions which arise under such transactions are well understood. A person who grants a bond and disposition in security must grant an assignation of writs. The purpose of that assignation is to enable the lender to make good his security, which he may do either by way of diligence or by the more extreme course of enforcing the power of sale contained in the bond. I think that, if nothing else is said, such an assignation is all the borrower is bound to grant. It is not uncommon that the parties stipulate that the titles of the property should also be handed over by the borrower to the lender, the object of that, as is well explained by Mr Menzies, being to avoid the hypothec of the law agent of the proprietor. If such a bargain is made, I have no doubt that the lender is not bound to redeliver these titles to the borrower except upon his debt being paid, and I have no doubt that that right of retention of the titles is good not only against the proprietor but against anyone whose right is derived from that proprietor or borrower. But still the possession of the titles remains exactly as it was, namely, for the purposes of security only. A person having a right for a limited purpose is not entitled to use it for more than that limited purpose. I know of no authority, and I see no principle, on which a securityholder, having got the titles for the purpose of making good his security, should be allowed to give them to his law agents for the purpose of raising up a fund of credit with his own law agents for all accounts between him and them *hinc inde*.

LORD KINNEAR—I am entirely of the same opinion.

LORD SKERRINGTON—I agree with your Lordship.

LORD JOHNSTON and LORD MACKENZIE were absent.

The Court found that the respondent had no lien over the titles in question, repelled the answers, and decerned.

Counsel for Petitioner—Lyon Mackenzie—Aitchison. Agents—Dove, Lockhart, & Smart, S.S.C.

Counsel for Respondents — Wilson. Agents—Fraser & Davidson, W.S.

Tuesday, December 6, 1910.

FIRST DIVISION.

[Sheriff Court at Airdrie.

TRAYNOR *v.* ROBERT ADDIE & SONS.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, c.* 58), *sec.* 1 (1) —*"Arising out of and in the Course of the Employment"—Inference from Proved Facts—Disobedience of Order.*

T., a miner, whose duty it was to work at a certain place in a mine, was informed by the fireman that he could work at another place called X till ten o'clock that morning, but that he was not to remain there longer, as after that hour blasting operations would commence from the opposite side, from which a new passage was being opened up. T. worked at X till about ten, when he left and went to his regular working-place, about 65 feet distant, where he remained till eleven, when he was left there working by his mate. About 11·45 a shot was fired opposite X. T. was killed by this shot, and his body was found among the *debris* at X. T. did not require to pass X to get to the pit bottom, and the order to be away from X was in force when the accident occurred. It was not proved what led T. to go to X, but it might have been to fetch a pick which had been left there by his mate. T.'s representatives having claimed compensation, the arbiter assoilzied the defenders, holding that T. had not been injured in the course of his employment.

Held that there was evidence on which the arbiter might reasonably find as he did, that the Court therefore could not interfere with his decision, and appeal *dismissed.*

Mrs Ellen Gallagher or Traynor, widow of Charles Traynor, miner, Coatbridge, for