order ostensibly does—has assumed to give authority to the Board to enter, and has gone to other work and makes no further move. The Board by way of avoiding the *impasse* asks that, as the landowner, impelled by the statutory limitations on him, has presented *ob majorem cautelam*, on 22nd May 1913, a petition for nomination of an arbiter, on which, however, in the circumstances no step has yet be taken, I should at once make an appointment, even *invito* the landowner. I think that that would not clear the ground even if it was competent, and that it is at present wholly incompetent.

The Land Court must return and complete its duty under the statute, and then it will be time for the landowner to apply for the appointment of an arbiter.

When the Land Court pronounces the statutory order, and not till then, will the Board be automatically and legally entitled to enter into possession and will not require such an order as that on which they have acted, but which the Land Court had no statutory authority to pronounce. A perusal of that portion of the order of 18th April 1913, viz., "And further find and declare that the applicants (*i.e.*, the Board of Agriculture) are entitled, as from the date of intimation of this order by the sheriff-clerk, to make this order effective by entering on the said farm of Lindean other than the portions thereof above expressly excluded, and executing and carrying on all works which may in their judgment be required for the erection or adaptation of dwelling-houses, steadings, offices, or other buildings thereon, or for the division, preparation, or adaptation of the land or for the provision of drainage or water supply or for similar purposes, with a view to the constitution of new holdings thereon, and the registration of new holders in respect thereof, reserving all claims of damage or compensation competent to the respondents or any of them," shows how entirely the situation has been misapprehended, while what follows, viz., "Appoint the applicants to lodge with the principal clerk within fifteen days after intimation of this order (1) an amended plan showing the number of holdings and the boundaries and acreage of each holding which they propose should be constituted on the said farm of Lindean other than the portions thereof above expressly excluded; and also (2) a statement specifying such terms and conditions, if any, as they desire shall be made by the Court terms and conditions of the tenure of the said holdings, and allow the respondent C. H. Scott Plummer, Esq., to lodge a statement with regard to these matters, if so advised, within ten days thereafter, and with these findings continue the application for further procedure"—shows how inchoate the matter was even in the face of the order.

I have some difficulty as to how best to deal with the petition—to continue or to dismiss it.

It is premature at present—though looking to the terms of the Land Court's order I think it was justified—and I think it better to dismiss it. There is no knowing how the position may develop meanwhile, and whether or not a similar petition will ultimately be Mr Scott Plummer's proper course. But the situation having been created, in consequence of the action of one public body, by another public body, I think that the private individual is entitled in the circumstances, and in this the first case in which it has been necessary to consider the compulsory provisions of the Act, to his expenses against the former. It might have been otherwise if the respondents had not sought to take advantage of the petition in their own interest.

An interlocutor was pronounced dismissing the petition but finding the respondents the Board of Agriculture liable in expenses.

Counsel for Petitioner—J. A. Christie. Agents—Mylne & Campbell, W.S.

Agent for Respondents — Sir Henry Cook, W.S.

Thursday, October 30.

SECOND DIVISION.

[Sheriff Court at Glasgow.

GAUNT *v.* M'INTYRE.

Reparation — Negligence — Property — Defective Condition of Premises—Lighting of Common Stair — Glasgow Police Act 1866 (29 *and* 30 *Vict. cap. cclxxiii*), *sec.* 361—*Relevancy.*

The Glasgow Police Act 1866, sec. 361, enacts—"The proprietor or proprietors of every land or heritage having an access by a common stair shall provide and maintain suitable gaspipes and brackets, lamps and burners, in such common stair to the satisfaction of the inspector of lighting . . . and placed as the said inspector . . . may direct, . . . and the Magistrates and Council shall cause them to be supplied with gas and lighted during the same hours as the public street lamps, and for each burner the proprietor or proprietors shall pay to the Magistrates and Council such sum not exceeding ten shillings per annum as the Magistrates and Council shall from time to time direct, and the said sum shall be recoverable by the proprietor from the occupiers in proportion to their respective rents, and be deemed to be a debt recoverable as and in the same way as rent."

An action by the visitor of one of the tenants of a tenement house in Glasgow against the owner of the tenement for personal injuries alleged to have been caused by the defective lighting of a common stair, *held irrelevant*, on the ground that, there being at common law no duty on the owner of a tenement to light a common stair, the pursuer did not aver that the owner had failed to fulfil the statutory duty

imposed by section 361 of the Glasgow Police Act 1866.

Mrs Catherine Gaunt, Glasgow, *pursuer*, with consent of her husband, brought an action in the Sheriff Court at Glasgow against Malcolm M'Intyre, Glasgow, owner of the property forming 456 Gairbraid Street, Maryhill, Glasgow, *defender*, for £500 damages for personal injuries sustained by her.

The pursuer averred, *inter alia*—"(Cond. 3) The said property 456 Gairbraid Street, Maryhill, the property of the defender, is four storeys in height. The ground floor is occupied by shops and the upper flats are occupied as dwelling-houses. To get to the dwelling-houses there is first the entrance by the common close forming 456 Gairbraid Street; then by three flights of stairs to the various landings; the first stair leading to the first landing, upon which landing there are entrances to three dwelling-houses; the second flight of stairs leading to the second landing, upon which landing there are also entrances to three dwelling-houses; and the third flight of stairs leading to the top landing, upon which landing there are also entrances to three dwelling-houses. (Cond. 4) These stairs leading to the various landings are lighted after dark by one gas jet of light upon each landing, but such gas jets are situated in an obscure corner, recess, or angle of the stair landing and never gave a proper light. At the time of the accident after mentioned the gas burners in the jets were so worn and done that they gave no light, or at least such an obscure faint light as failed to show the true position and nature of the stairs to be ascended or descended, or to guide a person having necessity or business to ascend or descend the said stairs with safety. The said jets, gas pipes, and burners are the property of the defender, who is bound to maintain and renew them from time to time as may be required. It was the duty of the defender to see that the said pipes and burners were sufficient, and were in a proper state to give reasonable and sufficient light to enable members of the public requiring to ascend or descend said stair to do so in safety. The defender failed in this duty as stated. The section of the Act mentioned in answer is referred to. (Cond. 5) On the 3rd day of January last 1913, between ten and eleven o'clock at night, the pursuer, who stays at 484 Gairbraid Street, a few doors west of the tenement belonging to the defender at 456 Gairbraid Street, went to visit an old friend of hers, a Mrs Brookmire, wife of and residing with Robert Brookmire, who resides in a house on the top flat of the tenement 456 Gairbraid Street, and is a tenant of the defenders in the said property. For this purpose and with this object in view pursuer entered by the common close and ascended the stairs, reaching the top flat in safety. (Cond. 6) After knocking at Mrs Brookmire's door and satisfying herself that Mrs Brookmire was not at home she returned to descend the stairs. The stairs were very dark, but she descended the top stair safely. When descending the second stair to reach the first landing from the street floor, she tripped and fell down three steps on to the first landing, sustaining a severe shock to her system, fracturing the bones of her ankle and leg and sustaining other injuries to her person. (Cond. 7) The second stair where she slipped and fell consists of thirteen steps, each about 4 feet in length, between perpendicular walls, with a breadth (excepting the three lowermost steps) of about one foot. The three lowermost steps where the accident occurred are known as wheeling steps, having a breadth on the one side of 12 inches or thereby, and tapering to about 4 or 5 inches on the right-hand side coming down. The light of the said stair was so obscure, and the burner in the jet which was intended to light said stair at this place was so old and defective and gave so little light, that it was quite impossible to see clearly the state of the steps of the stair which the pursuer was descending. . . . (Cond. 11) The said stair at the place where pursuer tripped and fell was of a very dangerous design and construction. The three wheeling steps, which were the only kind of that description in the property, tapering as they did towards the right-hand side in descending the stair, were dangerous to persons having reason to ascend or descend them, and such steps were not protected by hand railings or bannisters of any kind and were unlighted or so obscurely lighted as to be a danger specially to strangers in the dark, which the pursuer was. The defender was in fault in not having the said wheeling steps protected by railings or bannisters, and he or his factors were also in fault in not having such dangerous stairs and steps properly lighted, and the gas jets and burners renewed from time to time so that the said stairs and landing would have been properly lighted. The peculiar design and construction of the stairs, the fact that no railings or bannisters were provided, and the defective light on the stair and landing, for all which the defender is responsible, were, or one or other of them was, the cause of the pursuer's accident. In reference to the statement in answer, the only occasion on which the pursuer had previously visited the property was during the daytime. (Cond. 12) Before the accident to the pursuer occurred the defender's factors, for whom the defender is responsible, were repeatedly warned of the obscurity of and defectiveness of the light on the stair landing, and they promised, but failed, to have it looked into and put right. *In particular, Mrs Ann M'Leod or M'Millan and Mrs Jessie Forsyth or Lawson, both tenants of the defender, and residing on the landing at which the accident occurred, and Elizabeth Lawson, the daughter of the last-named tenant, on several occasions during the six months preceding 3rd January* 1913, *the date of the accident, complained to a clerk in the employment of the defender's said house factors, Messrs Graham, Primrose, & Todd, of the defective nature of the stair lighting at the place where said accident occurred,*

and also warned him that if such defect were not remedied an accident would take place. The name of the clerk referred to is unknown to the said Mrs M'Millan, Mrs Lawson, and Elizabeth Lawson. He was, at the time when such complaints were made and warning given, collecting rents in said property on behalf of the defender and acting as the representative and on behalf of the defender. Said clerk was in the habit of collecting such rents at the end of each month, and said complaints were made regularly on each call. On or about the month of December 1912 *the said Elizabeth Lawson was sent by her mother to report to the said factors that a friend of theirs had fallen on the said stair at the same place as the pursuer as a result of the defective lighting, and to request that such defect should be remedied. No attention was paid to these complaints or warnings until after the accident condescended upon. Since the accident to the pursuer the lights on the stair landings have been put right.*" [The sentences in italics were added during the hearing of the appeal.]

The defender averred, *inter alia*—"Ans. 4 denied. The duty of lighting the stair in question is not upon the defender, but upon the Corporation of Glasgow, in terms of section 361 of the Glasgow Police Act 1866."

The defender pleaded, *inter alia*—"(2) The pursuer's averments are irrelevant and insufficient to support the conclusions of the action."

On 9th June 1913 the Sheriff-Substitute (BOYD) sustained the defender's second plea-in-law and dismissed the action.

Note.—"[*After dealing with a contention for the pursuer founded on the alleged faulty construction of the steps, which was not maintained on appeal*]—Besides the alleged faulty construction, the pursuer relies on the absence of a handrail and on defective light. With regard to the latter it is well known that in Glasgow it is the duty of the landlord to provide gas pipes and burners in such stairs, and it is the duty of the Corporation to provide gas and men to light the burners (Glasgow Police Act 1866, section 361). But in respect of both these grounds of complaint I do not think the pursuer presents a relevant case. There was no contractual relation between her and the landlord. She was a mere visitor or licencee in her use of this stair. Before the pursuer could succeed I think she would require to show that the landlord had a duty to her of which he was in breach. I do not think she does so. No doubt she had the implied permission of the landlord to use the stair, but I think that was no more than a permission to use the stair as she found it, with all its risks. It is true that even towards a member of the public the landlord is not entirely devoid of responsibility. If he permits the public to use a stair he must not do anything wrong, as, for instance, in removing part of a step or a landing for purpose of repair, and leaving the breach unfenced in the dark. Such a proceeding would amount to laying a trap for the unsuspecting user (*Gautret* v. *Egerton*, 1867, L.R., 2 C.P. 371; *Cameron* v. *Young*, 1908 S.C. (H.L.) 7, 45 S.L.R. 410). But there is nothing in this record that comes near such negligence. The pursuer complains that the light was defective and there was no handrail. It may be that these would have made the stair safer, and that the absence of them was a certain amount of imperfection in the equipment of this stair, and even contributed to her accident, but if she chose to use the stair for her own purpose I think she went taking the risks of all such imperfections without laying any liability on the landlord for any accident which might happen. (*Driscoll* v. *Commissioners of Burgh of Partick*, January 10, 1900, 2 F. 368, 37 S.L.R. 276; *Fleming* v. *Eadie & Son*, January 29, 1898, 25 R. 500, 35 S.L.R. 422.)"

The pursuer reclaimed, and argued—The pursuer's averments were relevant. The pursuer had averred with sufficient specification the defects in the lighting of the staircase which had caused the accident. The proprietor of a tenement was responsible for the safe condition of a common stair, and the safety of a stair depended as much on its efficient lighting as on its safe construction. In the present case the defective condition of the lighting constituted a trap for the public, and the proprietor having invited the public to use the stair, was therefore liable for its unsafe condition—*Kennedy* v. *Shotts Iron Company*, 50 S.L.R. 885, 1913, 2 S.L.T. 121; *M'Martin* v. *Hannay*, January 24, 1872, 10 Macph. 411, 9 S.L.R. 239; *Miller* v. *Hancock*, [1893] 2 Q.B. 177, *per* Esher, M.R., at p. 179; *Smith* v. *London and St Katherine Docks Company*, 1868, L.R., 3 C.P. 326, *per* Byles, J., at p. 331. A common stair was like a highway—*Milne* v. *Smith*, July 6, 1814, 2 Dow 390; Bevan, Negligence, 3rd ed., p. 449. It was outside the rules which determined the responsibility of a landlord to his tenant, and accordingly the decision in *Cameron* v. *Young*, *cit.*, did not apply—*Mellon* v. *Henderson*, 1913, 1 S.L.T. 257, *per* Lord Hunter at p. 259. *Davidson* v. *Sprengel*, 1909 S.C. 566, 46 S.L.R. 413, was different, because in that case the pursuer, the father of the injured child, knew of and acquiesced in the danger. *Driscoll* v. *Commissioners of Burgh of Partick*, *cit.*, was different, because in that case there was no light at all, and therefore there was no danger, but in the present case the danger was caused by the existence of a treacherous light. *Fleming* v. *Eadie & Son*, *cit.*, was different, because in that case the premises were under repair, and accordingly the injured party should have been on his guard. *Gautret* v. *Egerton*, *cit.*, was different, because that was the case of a mere licencee. The Glasgow Police Act 1866 (29 and 30 Vict. cap. cclxxiii), sec. 361, did not remove the proprietor's liability. Under that section he was bound to supply the fittings for the gas, and was therefore responsible for their defective condition.

Argued for the respondent—The pursuer's averments were irrelevant. The only ground of liability of a landlord was

founded on contract—*Cavalier* v. *Pope*, [1906] A.C. 428—but there was no contractual relationship here between the pursuer and the defender. A landlord was only liable if he had the control of the premises—*Cameron* v. *Young*, *cit.*; *Cavalier* v. *Pope*, *cit.*, *per* Lord Atkinson at p. 433—but the landlord here had no control over the stair. He could not admit or exclude persons. If therefore the tenant had no right of action against the landlord, the tenant's guest could not have a higher right. The guest must take the stair as he found it. The landlord had no duty at common law to light the stair, and at common law he was only liable if the unsafe condition of the stair constituted a trap to anyone using it, or if he had been guilty of fraud—*Gautret* v. *Egerton*, *cit.*—but in the present case there was no trap and no fraud. In any event the pursuer here knew of the danger and must be held to have accepted the risk—*Davidson* v. *Sprengel*, *cit.*; *Driscoll* v. *Commissioners of Partick*, *cit.*; *Fleming* v. *Eadie & Son*, *cit.* The only duty which the Glasgow Police Act 1866, sec. 3, imposed on the landlord was that of providing gas fittings to the satisfaction of the inspector, and in the absence of any averment to the contrary it must be assumed that the landlord had fulfilled the duty.

LORD DUNDAS—This is an action of damages for personal injury. It appears that the pursuer met with an accident in a common stair in the property of the defender while coming down from an upper storey of the tenement where she had gone to visit one of the tenants. The question we have to decide is whether the pursuer has stated a relevant case against the defender. The Sheriff-Substitute has held that the pursuer's averments are irrelevant, and I have come to the conclusion that he is right.

There was not at our Bar any serious argument to the effect that the stair was defective in structure. It was conceded, and I think rightly, that "wheeling steps" are not uncommon, and are not in themselves a source of danger. Similarly the absence of a hand-rail as a structural defect was not in itself made much of at the Bar. The kind of case that was made for the pursuer in argument was that the fault lay in some deficiency in the lighting, having regard to the surrounding circumstances which I have mentioned. When I consider the pursuer's averments carefully, as one is bound to do, I do not find them satisfactory. Even at the end of the excellent argument we have heard I do not quite know what is the precise defect attributed to the lighting. The first part of condescendence 4 rather points to this, that the light was from the beginning insufficient, either because the lights were badly placed or because the burners were defective. That, however, is met by section 361 of the Glasgow Police Act, alluded to on record, because it is provided by that section that the lighting appliances have to be provided and maintained and the lights placed to the satisfaction of the inspector of lighting of the Corporation of Glasgow. Then, again, so far as complaint is intended to be made about some emerging defect, we are told that the burners were "worn and done,' and "gave no light, or at least" only "an obscure faint light." But there is no explanation at all of the kind of wearing-out that is meant, or why there was less light than there should have been, and none of the details are given which one would have liked to know. One notices that the last words of condescendence 12 inform us that since the accident to the pursuer the lights "on the stair landings have been put right." But there, again, a mysterious silence is maintained as to how they were "put right." One cannot help thinking that if the pursuer knew exactly what the case was that she wanted to present, she would in her allegation of fault have set forth something of what required to be done, and was done, to put these things right which were wrong before. But nothing of that sort is said.

Apart, however, from the mere matter of the form of averment, when we come to consider the question of fault which lies at the root of the action, one must ask, what is the duty of the landlord here? because it must depend upon that whether there is fault on his part or not. I do not think it can be said to be any duty of this landlord to keep a full light always there during the hours of darkness—a light up to the standard perhaps desired by his tenants or something of that sort—when one recollects that he is, by the terms of the section of the Police Act to which I have referred, bound to maintain the lighting of the stair to the satisfaction of the Corporation. That is the standard of his duty. He is bound to keep this stair lighted to the satisfaction of the Corporation's inspector. Now the inspector or his men, one must assume, were about this stair continually, and were about the stair, no doubt, upon the very night in question. The presumption surely is that the lighting as it existed was in conformity with the legal requirement and not in disconformity, and there is no word said or suggested to the contrary here. That seems to dispose of the question of the landlord's duty, and his alleged violation of it or fault. It appears to me that a person in the position of the pursuer, going into a stair of this kind, must take it as she finds it, and goes there subject to the risk of the condition of the stair, unless, of course, a case could be averred of something of the nature of an invitation into a "trap," as it is sometimes called in the cases. Here I do not think there is any suggestion, at all events any effective suggestion, of anything like a trap. It is true that condescendence 12 as amended contains some definite averments of complaints made by tenants to the defender's factor, but one has to consider whether that amendment has in any way bettered the pursuer's situation. I do not think myself that it has. There is a very vague and I think insufficient statement about an alleged report, through the

medium of a child, of some sort of accident that had occurred. I do not attach any importance to that—it is too vague. But it is said with some specification that complaints were made by the tenants to the factor. That might be in the ordinary case a very important averment, but here it seems to me to lose all its importance when one refers to the consideration that the standard of this landlord's duty in regard to lighting was that which I have indicated, namely, lighting to the satisfaction of the Corporation of Glasgow. There is here no suggestion that that standard was not maintained, and that that duty was not performed. It is not said or suggested that any complaint was made by or on behalf of the inspector of lighting to the defender or his factor.

I think that is all one need say about this case. I agree with the result at which the Sheriff-Substitute has arrived, and I think we should affirm his interlocutor.

LORD SALVESEN — I am of the same opinion. Reading this record as favourably as I can for the pursuer in the light of the argument submitted by his counsel, I think it comes to this, that his complaint is that the burner in this particular stair had become so obstructed or otherwise defective that the light which the gas-jet gave was less than it had previously given, and was not sufficient properly to light the part of the stair on which the pursuer fell.

I apprehend there is no duty at common law on the part of the proprietor of a tenement to light the stair, which is the access of his tenants to their respective houses. They may lawfully take a house in a stair which there is no means of lighting at night, and they cannot complain if when passing up and down the stair in the dark they meet with an accident for no other reason than that in the dark it is more difficult for a person to maintain his footing. For public reasons, however, Parliament has enacted that in a large city such as Glasgow there shall be imposed upon the proprietor of every tenement in which there is a common stair the duty of providing and maintaining gas pipes and burners, which are to be placed there under the instructions of the inspector of lighting, and are to be maintained by the proprietor to his satisfaction. For the failure of that statutory duty, which is no doubt enacted for the benefit of the tenants, who have to pay, as I understand, for the gas consumed in the common stair, I think the proprietor might be liable, even to a person like the pursuer, who was not a tenant but merely a visitor to one of the tenants. She had a perfect right to go up and down that stair in order to visit her friend, and a proprietor who lets a house at the top of a stair is bound to assume that other people besides his tenants will use it.

But then I think it is not sufficient to aver that the light was defective in the opinion of the tenants, or that the tenants complained that the light was defective. To make a relevant case it is necessary to aver that the appliances were not to the satisfaction of the inspector, who is the statutory judge of their sufficiency, and for a very obvious reason. The Corporation of Glasgow can only charge 10s. per annum for the gas consumed by each of these jets, and they have an interest in seeing that no more gas passes through a particular burner than will leave them a reasonable profit on the gas supplied. If it were left to the individual discretion of the landlord or the tenants to fix the size of the burners, no doubt they would adopt the largest burner which could be fitted on to the particular pipe, and would have the largest amount of light in the common stair that they could get. I think that is a very good reason why the statute has enacted that the appliances shall be supplied and maintained to the satisfaction of the inspector of lighting.

In these circumstances the landlord having, as we must assume, in the absence of any averment to the contrary, fulfilled his initial duty of putting pipes in the places directed by the inspector of lighting and supplying burners to his satisfaction, I think the landlord is entitled to assume that all is well with his appliances, unless he receives some complaint, not from the tenants, but from the person to whose satisfaction the appliances are to be maintained, to wit, the inspector. One of the inspector's men must daily visit the house to light the jets, and I should imagine it to be one of his duties to report to the inspector if in his opinion the lighting is inadequate in any particular stair.

Now there is no suggestion of anything of that kind having occurred here — no suggestion of any failure to comply with the statutory duty imposed by the section of the Act to which we were referred. In these circumstances I think the pursuer's case is absolutely irrelevant.

LORD GUTHRIE—I concur. The pursuer and the defenders have raised a number of general questions. But I shall assume in favour of the pursuer a possible liability against the landlord in connection with such an accident as this; and I shall also assume that she is not personally barred by her previous knowledge and use of the stair. It seems to me sufficient to advert, as your Lordships have done, to the terms of section 361 of the Glasgow Police Act 1866, which I think disposes of the case made on inadequate lighting. It is admitted that no independent case can be made on the absence of a handrail and on faulty construction of the stair.

The Glasgow Act might have been expressed in one of two ways. It might have said that the landlord shall adequately light the stair. In that case it might have been sufficient for the pursuer to say that the stair was inadequately lighted — first, because the light was in an improper place, and second, because it was not large enough or bright enough properly to light the stair. But by contrast this Act says that the landlord's duty is to conform to the instructions of the inspector of lighting, first, in

respect to the position of the lights, second, in respect to the kind of burners that are to be provided, and third, in respect of the way in which these are to to be maintained.

The pursuer might have countered that case and averred herself out of the Act by alleging that the provisions of the Act had not been followed. But all that she says is, "The section of the Act mentioned in answer is referred to," thereby I think justifying the assumption that the Act was complied with. The pursuer's case is quite consistent with the inspector having been there that morning, or the night before when the burners were lighted, and having passed everything as in his opinion sufficient in the particular circumstances.

I therefore think the Sheriff-Substitute has taken the right course in dismissing the action.

The LORD JUSTICE-CLERK concurred.

The Court dismissed the appeal and affirmed the interlocutor of the Sheriff-Substitute.

Counsel for the Reclaimer (Pursuer)—Johnston, K.C.—M. P. Fraser. Agents—Oliphant & Murray, W.S.

Counsel for the Respondent—Munro, K.C.—Lippe. Agents—Macpherson & Mackay, S.S.C.

Saturday, October 18.

FIRST DIVISION.

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

Succession—Faculties and Powers—Apportionment—Liferent Given to Objects of the Power and Fee to Strangers—Consent of Liferenters.

By antenuptial marriage contract a person reserved to himself a power to apportion among his children the sum of £1000, contained in a policy of assurance on his life assigned to the trustees, who were to divide the proceeds after fulfilling certain purposes among the children, and a sum of £2000, which he thereby became bound to pay to his children at the date of his death. By his trust-disposition and settlement, under declaration that the provisions were made by him in exercise of his power of apportionment, he left legacies of £25 to each of his sons, and thereafter directed his trustees to hold a sum of £7000, which more than exhausted his estate, for his two daughters in liferent and their children in fee.

Held that although the fee of part of the fund to be apportioned had been given to strangers to the power, yet the liferenters being objects of the power and consenting, the power of apportionment had been validly exercised.

Mackie v. *Mackie's Trustees*, July 4, 1885, 12 R. 1230, 22 S.L.R. 814, *commented on per curiam*, and *dub. per* Lord Johnston.

Charles Campbell M'Leod and others, marriage-contract trustees of the Rev. John Macleod, D.D. (*first parties*); the said Charles Campbell M'Leod and others, testamentary trustees of the said Dr Macleod (*second parties*); John Norman Macleod, the Rev. William Arthur Macleod, Charles Roderick Macleod, and Norman Augustus Macleod, sons of the said Dr Macleod (*third parties*); the said Norman Augustus Macleod, executor of the deceased Duncan Archibald Macleod, another son of the said Dr Macleod (*fourth party*); the Rev. Robert Baldock Scott and others, the marriage-contract trustees of Mrs Alexa Evelyn Macleod or Scott, a daughter of the said Dr Macleod, with the consent and concurrence of the said Mrs Scott and her husband (*fifth parties*); and Leonard Walter Dickson and others, the marriage-contract trustees of Mrs Margaret Eleanor Macleod or Macdonald, a daughter of the said Dr Macleod, with the consent and concurrence of the said Mrs Macdonald and her husband (*sixth parties*), brought a Special Case to determine whether the said Dr Macleod, by his trust-disposition and settlement, had validly exercised a power of apportionment reserved by him in his antenuptial marriage contract.

The Case stated—"1. By the *contract of marriage* of Dr and Mrs Macleod (hereinafter referred to as the marriage contract) Dr Macleod assigned to the trustees therein named a policy of assurance with the Life Association of Scotland for £1000, on his own life, upon the trusts and for the uses, ends, and purposes specified in the marriage contract, and he provided in the fifth place that after the death of the spouses the proceeds of the life policy should be held for the children of the marriage as therein set forth, and in particular he provided 'that if there shall be more than one child of said intended marriage it shall be lawful to and in the power of the said John Macleod, at any time of his life and while unmarried, after the death of the said Alexandrina Macpherson, and even on deathbed, to divide and proportion, as he shall think fit and proper, among said children, the foresaid principal sum of £1000 or the balance thereof, and any additions thereto and interest thereof hereinbefore provided to them, and failing of any such division, then the said sum of £1000 or the balance thereof, and any additions thereto and interest thereof, shall belong to and be divided among said children equally and share and share alike.' 2. The marriage contract also contains the following obligation by Dr Macleod, viz.—'And for provisions to the children, if any, of the said intended marriage, the said John Macleod binds and obliges himself and his foresaids to pay to such child or children the sum of £2000 sterling as at the date of his death, with interest at the rate foresaid from that date till payment, and that in such shares and proportions, if more than one child, as he shall fix and appoint by any writing under his hand, and failing such writing, then equally and share and share alike.' 3. It was also declared by the marriage contract