pronouncement by the House of Lords in the case of *Villar*, [1907] A.C. 139, to import that ancient rule of construction (which the House of Lords found themselves constrained to follow) into the law of Scotland. I am not for putting at this time of day an artificial and unnatural meaning upon perfectly plain English words which are reasonably capable of only one meaning.

The case is interesting, as it is the first time that children who were born before the date of the testator's death but legitimated after that date have sought to have the same privileges as a *post natus* could legitimately claim where there is no limitation of the class to those who were born before the date of the testator's death; but I do not think there is anything in the law which was so fully developed in Mr Hamilton's argument which can have any bearing upon the true construction of this will, or force us to put an artificial meaning upon the language which the testator has employed.

LORD GUTHRIE—I am of the same opinion. It was admitted that, apart from any light to be derived from the context, the word "children" in a provision such as we have here is limited to lawful children. Again, apart from the context, the word "born" means actually born. I find no context to introduce any alteration on the ordinary meaning of these words. I read the words "the children of my son James Forsyth Burns born prior to the date of my death" as equivalent to "the lawful children of my son James Forsyth Burns actually born as such prior to the date of my death." No doubt there might have been authorities binding on us which would have compelled us to give either an extended or a restricted signification to one or other of these terms. It appears that in England the rule that the word "children" in a provision such as we have here means lawful children is the same as in Scotland. In reference to the word "born" it may be that in England the Court would construe the words "children born prior to the date of my death" as including those then procreated as well as those actually born; but they adopt this construction reluctantly and only in deference to authority, as appears from the case of *Villar*.

There is no such authority binding on us. If the above construction of the provision in question is sound, then none of the numerous cases quoted and ably commented on by Mr Hamilton have any application. In none of them did the Court either extend or diminish a class apart from the express, or what the Court thought was the implied, intention of the testator.

LORD JUSTICE-CLERK—I confess I have had some difficulty as to the first question, but that difficulty is not such as compels me to dissent from the judgment which your Lordships have agreed upon. As to the second question I have no difficulty at all. We will answer both questions in the negative.

The Court answered the first and second questions of law in the negative.

Counsel for the First Parties—Greenhill. Agents — Morton, Smart, Macdonald, & Prosser, W.S.

Counsel for the Second Parties—D. M. Wilson. Agents — Miller, Mathieson, & Miller, S.S.C.

Counsel for the Third Parties—Hamilton. Agents — Morton, Smart, Macdonald, & Prosser, W.S.

Counsel for the Fourth Parties—Dykes. Agents—J. L. Hill, Dougal, & Co., W.S.

Wednesday, November 29.

FIRST DIVISION.

[Bill Chamber.

A B AND OTHERS *v.* C D AND THE LORD ADVOCATE.

War—Defence of the Realm—Interdict—Officer Taking Possession of Lands—Relevancy—Defence of the Realm Consolidation Act 1914 (5 *Geo. V, cap.* 8)—*Defence of the Realm Regulations Consolidated* 28*th July* 1916, *Regulations* 1 *and* 2.

The Defence of the Realm Regulations Consolidated, dated 28th July 1916, by regulation 1, provide that the enjoyment of property will be interfered with as little as may be, and by regulation 2 authorise the competent naval or military authority, and any person duly authorised by him, where it is necessary to do so for the public safety or the defence of the realm, to take possession of any land and to construct military works thereon.

A commissioned officer of H.M. Army having taken possession of certain lands and others and proceeding to execute certain works thereupon, the proprietors brought a note of suspension and interdict against him and the Lord Advocate as representing the Secretary for War for any interest he might have. They did not aver that the officer was acting without orders, or that the lands had not been taken by the competent military authority, or that they had been taken without statutory power, but they stated that the officer had acted without their consent, that his actions would have harmful results, that no endeavour had been made to arrange the matter with them, and that such works as were necessary for the defence of the realm could be carried out effectively so as at the same time adequately to safeguard their interests. *Held* (*rev.* Lord Anderson) that the averments of the complainers were irrelevant, and that the prayer of the note should be *refused*.

The Defence of the Realm Regulations Consolidated, dated 28th July 1916, enact—"*General Regulations*—1. The ordinary avocations of life and the enjoyment of property will be interfered with as little as may be permitted by the exigencies of the measures required to be taken for secur-

ing the public safety and the defence of the realm, and ordinary civil offences will be dealt with by the civil tribunals in the ordinary course of law. The Admiralty and Army Council and members of the naval and military forces, and other persons executing the following Regulations, shall, in carrying those Regulations into effect, observe these general principles. *Power of Competent Naval and Military Authorities*—2. It shall be lawful for the competent naval or military authority and any person duly authorised by him, where, for the purpose of securing the public safety or the defence of the realm it is necessary so to do, (*a*) to take possession of any land and to construct military works, including roads, thereon, and to remove any trees, hedges, and fences therefrom."

A B and others, *complainers*, brought a note of suspension and interdict against Captain C D and the Lord Advocate as representing the Secretary of State for War for any interest he might have, *respondents*, craving suspension of certain proceedings complained of, and interdict against C D and all others acting under his orders, "(1) From entering upon the lands belonging to the complainers, situated at or near Loch E, without their consent, and from erecting any buildings on said lands or any part thereof without such consent; (2) from blasting the islands or rocks in said loch; and (3) from interfering with the sluices and salmon ladders at the outflow of said loch, or with the flow of water from said loch; and to grant interim interdict."

They *pleaded*—"(1) The actings and operations complained of being illegal, interdict should be granted as craved. (2) The said actings and operations being unnecessary and being needlessly injurious to the complainers, interdict should be granted as craved. (3) The proposed works being of a permanent character, the respondent was not entitled *brevi manu* to enter the lands of the complainer and act in the way complained of. . . ."

The pleas-in-law for C D included, *inter alia*—"(1) The note of suspension and interdict is incompetent. (2) The complainers' averments being irrelevant, the note should be refused."

The Lord Advocate lodged answers and pleaded, *inter alia*—"(1) In respect that the lands in question have been taken possession of by His Majesty's Principal Secretary of State for the War Department in the exercise of the rights and duties of the Crown in the defence of the realm, the present proceedings are incompetent and the note should be refused. (2) The complainers' statements are irrelevant and insufficient to support the prayer of the note."

The *facts* are given in the opinion (*infra*) of the Lord Ordinary (ANDERSON), who on 17th October 1916 pronounced an interlocutor recalling interim interdict and passing the note.

Opinion.—". . . The averments upon which the complainers rely in support of the note of suspension and interdict are shortly stated thus—That the respondent without obtaining consent from any of the complainers entered upon the lands in the vicinity of Loch E, and is at the present moment engaged in operations on those lands, includcluding blasting operations upon the islands and rocks situated in Loch E, and interference with the sluices at the outflow of the loch, which operations are alleged to be illegal, injurious, and unnecessary for any purpose of public defence.

"The note has been answered by Captain C D and also by the Lord Advocate, and the answers which Captain C D has lodged seem to me to be the appropriate reply which fell to be made to the allegations against him. His position, shortly stated, is this—That he is an official acting under the orders of the War Office, and that in everything he did he was just carrying out the orders which he had received from his superiors, and in effect he says he knows nothing about the legal aspect of the matter. It was urged by the Solicitor-General for the respondents that as this is a process of interdict against Captain C D, who may be displaced to-morrow by a different official, it ought to be dismissed at this stage. That objection is in my judgment obviated by the fact that the Lord Advocate as representing the War Department has lodged answers, and therefore the complainers have now a proper contradictor in connection with the important question which they raise in their note. The position which the Lord Advocate takes up in his answer is, shortly stated, this—That the War Office have determined to take possession of certain ground in the vicinity of Loch E in connection with a scheme for establishing military works there, and that possession has been taken by the proper authority under the Defence of the Realm (Consolidation) Regulations 1914.

"Accordingly in that state of the pleadings I am bound, at this stage at all events, to consider the case as one arising solely under those last-mentioned regulations, and to regard the War Office as having assumed temporarily the possession of the land in question in connection with the present War. The regulations to which I have referred are authorised by the Act of Parliament (5 Geo. V, cap. 8), being the Defence of the Realm (Consolidation) Act 1914, which by section 1 empowers His Majesty in Council to make regulations as to the defence of the realm. On that authorisation by the Legislature His Majesty in Council has promulgated a number of regulations which are known as the Defence of the Realm (Consolidation) Regulations 1914, and subsequent amendments thereof.

"Now the questions which are raised in the pleadings fall to be determined on a consideration of the first and second of these general regulations, and especially the second. The second of these regulations authorises the competent naval and military authorities to take possession of lands, and the powers given are of the widest character. Section 2 contains a series of regulations, (*a*) to (*f*); and when the terms

of these regulations are considered it comes to this, that the War Office has statutory authorisation to take possession of any land they choose to lay their hands upon, and to deal with it as they think fit for the necessary national purpose.

"It is to be noted that although the regulation No. 2 at the end enjoins the competent naval and military authorities to give notice of the intention to take possession of moveable property in pursuance of the regulations, there is no corresponding provision that notice falls to be given when the naval and military authorities propose to take heritable estate. Accordingly the situation seems to be this, that it was in the power of the War Office, without any intimation whatever to the owners of these lands, simply to take possession of them and to proceed to utilise them for national purposes. It is also to be noted that the regulations contain no provision as to compensation, but it is matter of common knowledge that a commission has been appointed by the King to award, *ex gratia*, compensation to those whose property has been taken possession of for national purposes.

"Turning now to the contentions of the complainers, I find it made matter of complaint by them that the respondent Captain C D has, without the consent of the proprietors and without legal warrant or authority, entered upon the lands in question; and it is suggested, as I read these pleadings, that the illegality complained of was in proceeding without the consent of the proprietors. That seems to me to be quite an untenable position. As I have stated, the authority bestowed by the regulations upon the War Office and the Admiralty authorities entitles them to take possession of heritable property without any consent, and judicial expression was given to that view in an English case to which I was referred, to wit, the case *In the matter of a Petition of Right*, reported in the Law Reports, 1915, 3 K.B. 649. Mr Justice Avory, who decided the matter in the King's Bench Court, and whose judgment was affirmed by the Court of Appeal, says on page 654 in dealing with Regulation No. 2—'In my opinion Regulation No. 2 of these regulations confers upon the competent naval and military authority during the continuation of the present war an absolute and unconditional power to take possession of land or buildings, and to do any other act involving interference with private property where, for the purpose of securing the public safety or the defence of the realm, it is necessary so to do, and that this enactment impliedly repeals for the time being any right to or liability to pay compensation if it existed in time of war under the earlier Acts.' I entirely agree with the view so expressed as to the import and object of Regulation No. 2.

"But then the complainers say that those wide powers which the regulations confer upon the War Office and the Admiralty are subject to three limitations or restrictions. In the first place, it is said that by the regulations the possession of land can only be taken by a competent naval and military authority, and that is undoubtedly the case. But then it seems to me that in a case of this sort, where the action of a public department is being challenged, I must assume in the absence of specific challenge that everything has been properly done. It seems to me that it is for the complainers to aver and, if they can, to establish that a competent naval or military authority did not act in the manner in question. That averment is not made, and accordingly it is unnecessary to consider further the first limitation on the right of action by the War Office.

"The second limitation or restriction which, according to the complainers, is laid by the regulations upon the powers of the authorities is that the land can only be taken where the taking of it is necessary for the purpose of securing public safety or the defence of the realm; and it was maintained for the complainers that it is a matter for the law courts to determine, on the question being raised, whether or not it was necessary for the public safety or the defence of the realm to take the land in question. I have grave doubts as to the soundness of that contention. It seems to me that the intention of the regulation was to make the War Office authorities final on this question of whether or not it was necessary to take the land for this purpose. That is a military question, and I think it is unlikely that the framers of the regulations intended that that military question should, with all the public disclosure which might be attendant upon its determination, be matter for the consideration of a court of law. But it is a debatable point whether the view I have expressed as to the meaning of this part of the regulation is or is not sound. Accordingly the complainers are probably right in saying that at all events it is a question for proper determination in the Court of Session whether or not the complainers have the right to raise this matter by pleadings and have it determined in a court of law.

"In the third place, the complainers maintain that there is a limitation upon the powers bestowed upon the authorities in terms of the general regulation No. 1. That regulation provides—'. . . [*quotes, v. sup.*] . . .'

"Now undoubtedly, as it seems to me, the regulation which I have just read confers certain rights upon the subject, and subjects the mode in which the war authorities do their duty to the consideration of some tribunal, and I cannot figure any other tribunal which is appropriate and competent to deal with the conduct of the authorities save the courts of law of the country. But it may very well be that while that is so it does not open the door of this Court to a process of interdict. That regulation may very well have been promulgated to give those who have been dispossessed of their lands a statutory right to exact damages from the public authorities, which otherwise they did not have under the regulations, and it may be that, although they have that right at the end of the day,

yet under the regulations they are not entitled to proceed against the public authorities while the public work is being done, by a process of interdict.

"The disadvantages of conceding this right to the subject are obvious. In the first place, you stop what may be a vital and important national work if the hands of the military authorities are tied while this question is being determined, it may be, by the House of Lords, and fatal national consequences may ensue. Then, again, there is the question of publicity which attends litigation in this Court, and valuable information as to what is being done by the military authorities might be conveyed to the enemy if the manner in which the War Office are constructing this aerodrome were disclosed in litigation. But, again, as it seems to me, that is a matter upon which two views may be taken, and although on the merits, so far as I can see, the prospects of the complainers in regard to these two points are not at all good, I am not prepared at this stage to say that these two points which I have mentioned are not appropriate for fuller determination and decision by the Court of Session. The complainer maintained these two contentions in argument, and they are at least adumbrated in the pleadings. I accordingly propose to pass the note.

"But, looking to the views which I have expressed, which are certainly not favourable to the prospects of the complainers, I must give effect to them in regard to the question of interim interdict. I am not prepared to tie the hands of the War Office if they choose to go on with the construction of this aerodrome, and to carry out such operations in the national interests as they see fit, in the vicinity of Loch E and on Loch E itself.

"Accordingly I shall recal the interim interdict and pass the note."

The respondents reclaimed, and argued—The note was incompetent. It was not alleged that C D was acting in a private capacity, but the prayer of the note was directed against him alone, and as a member of H.M. Army. The result was that he was placed in such a position that he must obey the orders of the Court and also those of his superior officers, and those were in conflict. In such circumstances the remedy sought was incompetent—*Horne* v. *MacGregor*, 1908, 15 S.L.T. 961 (*per* Lord Mackenzie at p. 962). Further, the Secretary of State for War should have been called—*Hawley* v. *Steele*, 1877, 6 Ch. D. 521. The Defence of the Realm Consolidation Act 1914 (5 Geo. V, cap. 8); the Defence of the Realm Regulations Consolidated, 28th July 1916, Regulations 2, 3, 4, 43, 47, and 62, were referred to. The fact that the Lord Advocate had appeared did not render the note competent. Further, the answers for the Lord Advocate must be accepted *pro veritate*—*Poll* v. *The Lord Advocate*, 1897, 1 F. 823 (*per* Lord Kyllachy at p. 827), 35 S.L.R. 637. Consequently, even though the competent military authority might be bound to exercise a discretion as to the method of doing the work, the case must be dealt with on the footing that that discretion had been validly exercised. The complainers should have raised a declarator against the official department in question. Further, the complainers' averments were irrelevant, as they did not aver that C D was acting without authority or had exceeded his authority.

Argued for the complainers—The note was competent. It was incompetent to call an official department of State as a defender, as the King could do no wrong. The proper course, as was adopted here, was to call the individual who infringed a private right—*Raleigh* v. *Goschen*, [1898] 1 Ch. 73; Broom's Legal Maxims (8th ed.), p. 40; *Nireaha Tamaki* v. *Baker*, [1901] A.C. 561; *Smith* v. *The Lord Advocate*, 1897, 25 R. 112 (*per* Lord Young at p. 123), 35 S.L.R. 117. There was no question of an exercise of the royal prerogative, for the justification for the acts done was based upon a statute conferring powers, and the statute did not authorise what was done; it merely authorised a minimum of interference with private rights to secure the end in view—Defence of the Realm Regulations (*cit.*), Regulation 1—and it was alleged that the operations had not been confined to that minimum. Whether or not the operations had been limited to the minimum was a question examinable by the Court. In *Poll's* case (*cit.*) the ground of the decision was that an alien could not found upon constitutional rights belonging to British subjects. *Hawley's* case (*cit.*) was distinguished, for in it the Secretary of State for War owned the ground in question. In *Bainbridge* v. *The Postmaster-General*, [1906] 1 K.B. 178, the Postmaster-General was held not to be liable for one of his subordinates in executing the functions of his Department. Further, the averments of the complainers were relevant, and the fact that the answers for the Lord Advocate might be accepted *pro veritate* did not make them irrelevant. Further, the case stated should not be decided on relevancy against the complainers when they had not had a chance to reply to the answers. In *Sheffield Conservative Club* v. *Brighton*, 1916, 32 T.L.R. 598, and *In the matter of a Petition of Right*, [1915] 3 K.B. 649, proof was allowed.

LORD PRESIDENT—I am of opinion that this note should not be passed, because there is no question to try between the parties. The application for interdict is supported by statements which in my judgment are irrelevant.

The complainer is the owner of lands surrounding a certain loch and of the loch itself. He seeks to interdict the respondent, who is an officer in His Majesty's service, from entering upon these lands. The foundation of the prayer is that the respondent is a wrongdoer and trespasser. I am of opinion that upon the statements made by the complainer himself it is clear that the respondent is neither the one nor the other.

It is common ground that the loch and the surrounding lands referred to were taken possession of on 25th September 1915 by the competent military authority under

the Defence of the Realm (Consolidation) Regulations of 1914. And the complainer says that the particular officer who, with men under his charge, entered upon the lands was an officer in His Majesty's military forces and purported to act in the matter complained of as representing His Majesty's Secretary of State for War. The surmise of the complainer is said—by the respondent and by the Lord Advocate, who appears on behalf of the Crown—to be quite correct. The subordinate was acting under the Defence of the Realm Act in obedience to the orders of his superior officer. And I do not doubt that he might have been interdicted if the complainer had been able to show that the action was taken outwith the statute and the regulations of 1914, which have the force of statute. But he conspicuously fails to make any such averment. The only averment levelled at the respondent is that he entered on the lands without obtaining the consent of or consulting with the complainer. But there is no foundation for such a complaint in the regulations or in the Act of Parliament. There is nothing to suggest that before entering upon the lands, as the naval and military authorities are authorised to do by the second of the regulations, the consent of the complainer—the proprietor—must be obtained.

Then it is alleged that in respect that the operations were to be of a permanent character the competent naval and military authorities ought, before taking possession of the lands, to have arranged for acquiring them for the purposes specified and have come to some reasonable arrangement with the proprietor. But once more the complainer fails to aver any clause in the Act of Parliament or any regulation which warrants that statement and which precludes the competent naval and military authority from entering upon the land until they have taken the steps necessary to acquire it on terms arranged with the proprietor.

In short, the complainer's whole case depends upon his third plea-in-law, which is to the effect that as the works were of a permanent character, the respondent was not entitled to enter upon the lands without the previous arrangement and consultation which are referred to in the statement. That plea-in-law seems to me to be utterly unfounded. There is nothing in the statute or in the regulations to support it.

Accordingly I come without hesitation to the conclusion that this respondent, being neither a trespasser nor a wrongdoer but acting in compliance with the regulations and under the orders of his superior authority, was not liable to be interdicted by the proprietor of the lands. I am therefore for refusing this note.

LORD JOHNSTON—I do not think that the question of the competency of this proceeding can be judged of in precisely the same way when dealing with a note of suspension and interdict as it would be if we had before us a formal summons. If one looks at the note of suspension and interdict itself one finds that the complainers bring it simply against Captain C D, giving his address, as also against the Lord Advocate for any interest he may have in the premises. And then they ask that Captain C D and all others acting under his orders should be interdicted from entering upon the complainers' lands without their consent, from erecting buildings, &c.

Now nobody can say on the face of that that there is anything incompetent whatever in the crave. In order to judge of the competency one has got to proceed to the statement of facts for the complainers upon which this demand for redress, or rather for protection, is founded. That leads one to see that it is not a question of pure competency, but a mixed question of relevancy and competency. The note, which *per se* is competent enough in the abstract, will only be competent in the concrete if there are relevant grounds stated in support of it. In fact the question really comes to be, Can we in the circumstances which are stated as the grounds of application competently grant the remedy craved?

In order to arrive at an answer to that question I think we must look at the statements made by the complainers irrespective of the answers, and must take it as a question of proper relevancy. I find that the statements are extremely loose. The real question we know to be whether this Court can interfere with an officer who is acting on the instructions of a competent military authority. We know that from counsel and from the way in which the case has been argued. Yet the statement of facts does not definitely challenge his instructions or their source in one way or the other. Indeed, if I am not mistaken, it never uses the expression "competent military authority." The first mention of the respondent merely says that he is an officer in His Majesty's military forces, and purports to act in the matters complained of as representing His Majesty's Secretary for War. I ask myself, What does that mean, "purports to act"? The complainers do not say that he does not represent His Majesty's Secretary for War, that he is not acting directly or through an intermediary under his instructions, but leave it in this indefinite way, "purports to act." I think that they are bound to make their averment positive, and I therefore am driven to assume that the complainers cannot dispute, and consequently accept, that the officer in question does act in the matters complained of as representing His Majesty's Secretary for War and takes his instructions from a competent military authority. I think that is also borne out by the remaining averments. The complainers say that in taking possession of and interfering with the lands, &c., the respondent has not obtained consent of or in any way consulted with the complainers or any other parties interested, and that the complainers are aggrieved by the illegal and unreasonable actings of the respondent and his unnecessary and wanton interference with their rights. But then they go on to say—"As the premises and works about to be established are, as the

complainers believe and aver, intended to be of a permanent character, the complainers submit that before commencing operations His Majesty's Secretary of State for War or those acting on his behalf should first have arranged for the acquiring of the lands necessary . . . and have come to some reasonable arrangement with the complainers and other bodies and persons interested whereby the valuable interests belonging to the complainers might be duly safeguarded." Then they go on—"The complainers are in no way desirous of impeding any works necessary for the conduct of the present war or the defence of the realm, and are willing and have offered without avail to confer with the War Office in the matter. The complainers are satisfied that such works as are necessary in the national interest can be effectively carried out so as at the same time adequately to safeguard the complainers' rights and interests."

It is impossible to read these passages without seeing that the true object of the complainers is to strike at the War Department through Captain C D, and that without any allegation that he does not act on the orders of a competent military authority, and further that their method of proceeding raises the questions, first, whether the War Office are acting within their powers, and second, if they are so acting whether we can inquire as to the reasonableness or necessity of their operations, which is as much as to ask us to interfere in matter of detail and degree. Anything more clearly irrelevant, and incompetent because irrelevant, it is difficult to conceive. To make their note, directed as it is against Captain C D as an individual, competent, it would be necessary that the complainers should say, "Captain C D has no authority from a competent military authority, but is acting on his own account." If, on the other hand, their case is to be, that assuming that Captain C D was acting on instructions from his superiors, then that these superiors—even if a competent military authority in the sense of the Act—had no authority to give these instructions because they have misconstrued and gone beyond the powers conferred upon them by the Defence of the Realm statutes and regulations, then the proceeding could not possibly be brought against Captain C D as an individual and without calling his superiors.

I therefore agree that the note must be at once refused, and that to pass it in order to try the question is perfectly unnecessary.

LORD MACKENZIE—I am of opinion that the averments of the complainers are not relevant. There is no statement that the lands in question were not taken possession of by the competent military authority under the Defence of the Realm (Consolidation) Regulations of 1914. There is no statement that they were unlawfully taken possession of, and there is no statement that Captain C D was not acting under instructions which he was bound to obey.

Accordingly I think in no view can the averments made by the complainers entitle them to interdict.

LORD SKERRINGTON—This seems to me a simple case, but unnecessary obscurity has been cast upon it by the form of the written pleadings and of the oral argument for the respondent. In the former the Defence of the Realm Regulations are referred to, but it is nowhere stated that Captain C D was a person authorised to do what he did by the competent military authority. Then in the oral argument it was maintained that if a subject had his lands invaded by a military force it was incompetent for him to challenge the legality of the actings of the supreme military authority by an action of interdict directed against the officer in charge of the proceedings. That proposition seems to me to be unarguable. The real ground upon which this application fails is that in the circumstances of the case as now established it is supported by no relevant averment. The complainers aver that the respondent is an officer in His Majesty's military forces and purports to act in the matters complained of as representing the Secretary of State for War. I read that statement as meaning that the complainers do not know whether the respondent has or has not the authority of the Secretary of State for War. They were entitled to put their averment in that form, because they could not know whether Captain C D was or was not acting within the limits of his authority. But as they chose to call the Secretary for War, they were bound to anticipate that he might either repudiate or ratify what had been done by Captain C D. In the former alternative it would be clear that Captain C D had committed a wrong and that interdict must go out against him. On the other hand, if the Secretary for War were to do what in point of fact he did—appear in the process and ratify the actings of Captain C D—then that ratification would on the ordinary principles of the law of agency be conclusive. The sole remaining question in the case would then be whether or not the competent military authority had exceeded the powers belonging to it under the Defence of the Realm Regulations or otherwise when it performed, through the agency of Captain C D, the acts challenged by the complainers. Now it was admitted that there were no relevant averments to that effect, but the complainers' counsel argued that he was entitled to add the necessary averments at adjustment. I do not agree. The complainers were bound to anticipate the course which the case has taken, and as they did not make their action relevant they must submit to its dismissal.

The Court recalled the interlocutor of the Lord Ordinary on the Bills, of new recalled the interim interdict, and refused the prayer of the note.

Counsel for the Complainers—Macmillan, K.C.—MacRobert. Agents—J. & F. Anderson, W.S.

Counsel for the Respondents — The Solicitor-General (Morison, K.C.)—Pitman. Agent—Geo. Inglis, S.S.C.