legal rights and take advantage of the settlement by claiming under it." The sole question in controversy therefore came to be—Is it within the power of the necessary heirs to give effect to the intentions of the testator? To which I think the answer can only be in the affirmative, and that for the best of all reasons—They are, according to Argentine law, the absolute untrammelled owners of the land in Argentina and can do with it what they please. They do not and cannot say that they have no assignable interest in the Argentine land, nor that to bring it within the trust purposes would be to commit a breach of trust or to do an idle act. Nor did they maintain that they were bound to take no active step. Their position was that they were bound, if it was within their power, to give effect to the intentions of the testator. "The necessary heir" may carry into effect the purposes of the settlement relative to the Argentine immoveable property in the various modes suggested in your Lordships' opinions without infringing Argentine law. They cannot therefore take under this settlement unless they make available for the purposes of the settlement in one form or another the land in Argentina. I propose therefore that we recal the Lord Ordinary's interlocutor and pronounce a finding in the terms suggested by Lord Mackenzie.

LORD SKERRINGTON was absent.

The Court pronounced the following interlocutor—

"Find that if any of the claimants shall take a share of the immoveable estate in the Argentine without making the same available for division in accordance with the general scheme of the testator's settlement, he or she cannot be entitled to claim under the settlement any share of the fund *in medio*."

Counsel for the Pursuers and Real Raisers—Hamilton. Agents—J. & J. Turnbull, W.S.

Counsel for the Claimants, Anita Gregson and Others (Reclaimers)—Chree, K.C.—T. Graham Robertson. Agents—Alex. Morison & Co., W.S.

Counsel for the Claimants, Miss Christina Brown and Others (Respondents)—Moncreiff, K.C.—Leadbetter. Agents—Macpherson & Mackay, S.S.C.

Counsel for the Claimants, Oswald Stanley Brown's Executors (Respondents)—Sandeman, K.C.—R. C. Henderson. Agents—Somerville & Watson, S.S.C.

Thursday, March 20.

FIRST DIVISION.

(SINGLE BILLS.)

THE ABERDEEN STEAM NAVIGATION COMPANY, LIMITED, PETITIONERS.

Company—Memorandum of Association—Alteration—Power to Sell Undertaking—Companies (Consolidation) Act 1908 (8 *Edw. VII, cap.* 69), *sec.* 9 (1).

The Companies (Consolidation) Act 1908, sec. 9 (1), enacts—"(1) Subject to the provisions of this section a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it (*a*) to carry on its business more economically or more efficiently; or (*b*) to attain its main purpose by new or improved means; or (*c*) to enlarge or change the local area of its operations; or (*d*) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or (*e*) to restrict or abandon any of the objects specified in the memorandum."

A company having power to amalgamate with any other company with similar objects under a contract of copartnery which formed its constitutive writ, presented a petition craving the Court to confirm an alteration of its form of constitution by substituting for the contract of copartnery a memorandum and articles of association which had been adopted by special resolution duly confirmed, and to confirm an extension of its objects. The memorandum included amongst the objects of the company power to "sell, transfer, or dispose of the undertaking, property, and rights, heritable or moveable, real or personal, and business of the company or any part thereof." The Court *confirmed* the alterations made in so far as they conferred power to sell, transfer, or dispose of any part of the property and rights, heritable and moveable, real or personal, and business of the company, but refused to confirm the alterations so far as they conferred power to sell or dispose of the undertaking.

The Aberdeen Steam Navigation Company, Limited, *petitioners*, brought a petition for confirmation of an alteration of its form of constitution and of extension of its objects. No answers were lodged.

The petitioners were originally constituted in 1845 as The Aberdeen Steam Navigation Company, under and in terms of articles of copartnery. They were thereafter registered in terms of the Companies Acts 1862 and 1867 as an unlimited company. On 22nd November 1918 they were registered under the Companies Acts 1908 to 1917 as a company limited by shares under the name of The Aberdeen Steam Navigation Company, Limited. The articles of copartnery were altered from time to time, and in November

1918 as altered they formed the constitution of the company.

The *articles of copartnery* provided, *inter alia*—"The trade and business of the company shall be the conveyance of passengers, live stock, and goods by sea between Aberdeen and London, or also between such ports as the directors may from time to time determine; but the directors shall have power to let or hire any of the company's vessels or to employ the same in any other trade or service than the regular trade of the company; and also, as hereinafter mentioned, to use the lands and buildings and others of the company for affording wharfage or warehouse or storage or other accommodation to the public."

The *petition* set forth—"10. That the objects of the company as contained in the said articles of copartnery are restricted, and the company desires that they should be extended so as to be in line with the objects of similar companies which possess a memorandum and articles of association in modern form. The directors of the company recommended the abrogation of the existing articles and the substitution of a memorandum and articles of association accordingly. Such documents were prepared for submission to and approval by the members of the company. 11. That accordingly at an extraordinary general meeting of the company duly convened and held on the 6th day of December 1918 the following special resolution was unanimously passed, and at a subsequent extraordinary general meeting also duly convened and held on the 27th day of December 1918 the same was duly confirmed, namely:—'That the memorandum and articles of association submitted to this meeting and for the purpose of identification signed by the chairman thereof, be and the same are hereby approved, and that pursuant to the provisions of the Companies (Consolidation) Act 1908, sections 9 and 264, the form of the company's constitution be altered by substituting such memorandum of association with extended objects as therein set forth, and such articles of association for the articles of copartnery adopted at a special general meeting of the shareholders of the company held on the 8th day of April 1875, and for all articles and regulations of the company subsequently made and now in force, and that the directors be and they are hereby authorised to apply to the Court to confirm this resolution under the said Act.' 13. That the objects of the company as declared in the third clause of the said memorandum of association are as follows:—[*Then followed a list of the objects proposed, which included*] (*n*) To amalgamate with any other company in the United Kingdom established for objects similar to any of those for which the company is established, and to acquire, hold, and dispose of the shares, stocks, or debentures of any such company, or to distribute among the members of the company any shares, stocks, or debentures received by it from other companies under any amalgamation scheme. (*v*) To sell, transfer, or dispose of the undertaking, property, and rights, heritable or moveable, real or personal, and business of the company, or any part thereof, for such consideration as the company may think fit, and in particular for cash or for shares, stock, debentures, or securities of any other company, or partly in one and partly in another or others of such modes. 14. That the objects contained in the said third clause of the proposed memorandum of association are all calculated to enable the company to carry on its business more economically or efficiently, and to carry on any other business which under existing circumstances may conveniently or advantageously be combined with the main business of the company. In many cases the objects set forth are merely declaratory of what the company is at present doing and is entitled to do without express power in its constitution."

No answers were lodged.

On 21st January 1919 the Court remitted to Sir George Paul, C.S., to inquire into and report upon the facts and circumstances set forth in the petition as to the reason for the proposed alteration of the company's constitution and extension of objects, and as to the regularity of the present proceedings.

Sir George Paul's *report*, while otherwise in favour of the petitioners, stated—"With regard to the proposed extension of objects it is averred in the petition that they are all calculated to enable the company to carry on its business more economically or efficiently, and to carry on any other business which, under existing circumstances, may conveniently or advantageously be combined with the main business of the company. 'But,' as was observed by Lord Kinnear in *Glasgow Tramways Company* v. *Magistrates of Glasgow*, 18 R. 683, 28 S.L.R. 467, 'the Court is not entitled to sanction such resolutions merely because they appear reasonable and proper in the interests of the company itself. We must be satisfied that the conditions under which the statute allows the memorandum of association to be altered are complied with.'

"It is, however, explained in the petition that many of the objects set forth are merely declaratory of what the company is at present doing, and is, under its existing powers, entitled to do.

"The proposed objects import a considerable extension of the company's business as specifically authorised by the existing articles of copartnery, but after careful consideration the reporter is of opinion that, except as after mentioned, the averment of the petitioners is well founded, and that the proposed alteration may be held to fall under heads (*a*) and (*d*) of section 9 of the Act of 1908.

"In the unreported case of the *Biggar Auction Mart Company* your Lordships of the First Division by your interlocutor of 14th May 1912, after hearing counsel, refused confirmation of a power to sell the company's main undertaking, or to amalgamate, on the ground that the powers of alteration under the 9th section of the Companies Act are limited in a way which excludes the conferring of a power to dispose of the undertaking or to amalgamate. Your Lordships are also respectfully referred to peti-

tion *John Walker & Sons, Limited*, 1914 S.C. 280, 51 S.L.R. 246; also petition *Macfarlane Strang & Company, Limited*, 1915 S.C. 196, 52 S.L.R. 113. It appears to be assumed in the Act that the company is not to lose its identity—the authorised alteration must be for its advantage as a going and continuing concern.

"The power to amalgamate may however in the present case be allowed, as the company has it under its contract of copartnery, and amalgamation of shipping companies is by no means unusual.

"In view of the above-mentioned decision of your Lordships, and the powers allowed in that and in other previous cases, the reporter is of opinion that the present application may be confirmed as regards all the objects included in the special resolution other than that of selling or disposing of the undertaking.

"If your Lordships should see fit to refuse that power, the words 'any part of' should be added after the words 'dispose of,' and the word 'undertaking' in the same line (petition, p. 12, *v.*) deleted; and that the words 'or any part thereof' should be also deleted (lines 3 and 4 of the same subsection)."

In the Single Bills the petitioners cited *Macfarlane, Strang, & Company, Limited*, 1915 S.C. 196, 52 S.L.R. 113, in which the Court had granted power to sell though the same reporter had reported against it. *John Walker & Sons, Limited*, 1914 S.C. 280, 51 S.L.R. 246, was distinguishable in respect that there was no power to amalgamate in that case, while in the present case there was.

The Court, after taking the case to avizandum, pronounced the following interlocutor—

"Confirm . . . the alterations made with respect to the objects of the company contained in the memorandum of association of the company . . . subject to the following modifications upon subclause (*v*) of the third clause of the said memorandum of association, namely—(1) Delete the word 'undertaking' occurring therein, and the words 'or any part thereof' also occurring therein; and (2) Insert the words 'any part of' between the word 'of' and the word 'the,' both occurring in the first line thereof as printed on page twelve of the petition, so that such sub-clause (*v*) shall read as follows, namely—'(*v*) To sell, transfer, or dispose of any part of the property and rights, heritable or moveable, real or personal, and business of the company for such consideration as the company may think fit, and in particular for cash or for shares, stock, debentures, or securities of any other company, or partly in one and partly in another or others of such modes.'"

Counsel for the Petitioners—Wilton, K.C.—Burn Murdoch. Agents—Davidson & Syme, W.S.

HOUSE OF LORDS.

Monday, April 7.

(Before the Lord Chancellor (Birkenhead), Lord Buckmaster, Lord Atkinson, Lord Parmoor, and Lord Wrenbury.)

GRANT *v.* KYNOCH.

(In the Court of Session January 19, 1918, 55 S.L.R. 220, and 1918 S.C. 185.)

Workmen's Compensation — Accident — Blood-poisoning — Handling Artificial Manures—Time and Manner of Infection — Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1).

An employee in a manure factory whose work consisted in the handling and bagging of artificial manures composed largely or wholly of bone-dust, became ill with blood-poisoning and died. The point of infection was a scratch on one of the man's legs. The germs which caused the blood-poisoning were present in large numbers in the manures, but were also to be found though in a lesser degree in decaying matter, dust, the air, and on the skin and clothes of persons of uncleanly habits. It was not proved when or how the deceased received the scratch or when the infection occurred, though it was in the highest degree probable on the medical evidence that he received the infection from the germs contained in the bone-dust. The arbitrator awarded compensation. *Held* (*rev.* judgment of the Second Division, *dis.* Lord Atkinson, *dub.* Lord Wrenbury) that there was evidence on which the arbitrator could competently find that the deceased's death was due to an "injury by accident" arising out of and in the course of his employment.

Observations as to the degree of particularity with respect to the time and manner of infection required to be ascertained in cases of disease due to infection by bacillus.

Brintons Limited v. *Turvey*, [1905] A.C. 230, 42 S.L.R. 862, *followed.*

Authorities examined.

The case is reported *ante ut supra.*

The pursuer appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—The appellant claims compensation under the first section of the Workmen's Compensation Act 1906 in respect of the death of her husband James Grant. The section is as follows—"If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall . . . be liable to pay compensation."

The facts of the case are compendiously set out in the findings of the arbitrator—the third to the ninth inclusive. These findings must be accepted by your Lordships,