

disposition in security for £7000 over said heritable subjects. That the petitioner the said Findley Caldwell Ker being *in titulo* to grant a title to said security subjects, acting with consent of the said heritable creditors, exposed the said subjects to public roup within the Faculty Hall on 17th June 1914 at the upset price of £5000, under and in virtue of certain articles and conditions of roup. There was no offerer for said subjects, and the said exposure was adjourned. That the petitioner the said Findley Caldwell Ker thereafter, with consent of said security holders, let the said subjects on leases expiring in the year 1925. . . . That the petitioner the said Findley Caldwell Ker, in virtue of [section 195 of the Companies (Consolidation) Act 1908, providing for certain procedure to be followed in the winding up and dissolution], made up an account of the winding-up of the said liquidation, and laid said account before a general meeting of the shareholders of the said M'Call & Stephen, Limited, held at Glasgow on or about 14th January 1919. He also made a return to the Registrar of Companies of the holding of said meeting and of its date. Said return was forthwith registered by the said registrar. That the petitioner the said Findley Caldwell Ker, at the request and with the consent of the said security holders, re-exposed the said security subjects to public roup and sale within the Faculty Hall, Glasgow, aforesaid on 2nd July 1919 at the upset price of £5500 sterling. The said subjects were sold at the price of £11,260. This sum even with the accruing rents under the existing leases will not be sufficient to pay off entirely the company's indebtedness to the petitioners John Stewart Robertson and the Clydesdale Bank, Limited. That the purchasers of said subjects refused to accept a conveyance thereto by the petitioner the said Findley Caldwell Ker, with consent of the said security holders the petitioners the said John Stewart Robertson, as trustee foresaid, and the said Clydesdale Bank, Limited, in respect that in accordance with the registration of the foresaid return the said company of M'Call & Stephen, Limited, became dissolved on or about the 15th day of April 1919."

No answers were lodged.

Argued for the petitioners—The Court had express authority under section 223 of the Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69)—*Collins Brothers & Company, Limited*, 1916 S.C. 620, 43 S.L.R. 454. No remit to a man of business was necessary, and the additional expense of such remit should if possible be avoided.

The Court granted the prayer of the petition.

Counsel for the Petitioners—D. A. Guild.  
Agents—Ronald & Ritchie, W.S.

Saturday, May 22.

FIRST DIVISION.

[Lord Cullen, Ordinary.]

GREENOCK AND PORT-GLASGOW  
TRAMWAYS COMPANY v.  
GREENOCK CORPORATION.

*Contract—Emergency Legislation—Suspension of Contract—Clauses of Lease Fixing Maxima for Fares and Conditions of Purchase of Tramway Undertaking—Courts (Emergency Powers) Act 1919 (9 and 10 Geo. V, cap. 64), sec. 1 (1).*

A company leased tramways from a burgh corporation. The lease contained clauses prescribing maximum fares, and gave the corporation an option to purchase the whole undertaking of the company within the burgh at a break in the lease on basis of its value as a going concern. The company owing to the conditions resulting from the war could not carry on their undertaking so long as they were limited to the maximum fares in the lease except at a loss, and they presented an application under the Act of 1919 to have the clauses fixing maxima suspended or annulled. The Court of consent of parties *suspended* until further orders the clauses fixing maximum fares upon condition (1) that certain maxima proposed by the company should not be exceeded, and (2) that the suspension should not be founded on in any proceedings for taking over the undertaking unless with the sanction and authority of the Court upon application made thereto, and on such terms and conditions as it might think fit.

The Courts (Emergency Powers) Act 1919 (9 and 10 Geo. V, cap. 64) enacts—Section 1—“(1) Section one of the Courts (Emergency Powers) Act 1917, which confers on the Court power to suspend and annul certain contracts shall have effect as if—(a) For subsection (1) thereof the following sub-section were substituted:—Where, upon an application by any party to a contract (including a contract confirmed by Act of Parliament or Order having the force of an Act) entered into before the first day of January Nineteen hundred and seventeen, the Court is satisfied that, owing to . . . , the alteration of trade conditions, occasioned by the present war, the contract cannot be enforced according to its terms without serious hardship, the Court may, after considering all the circumstances of the case and the position of all the parties to the contract and any offer which may have been made by any party for a variation of the contract, suspend or annul, or with the consent of the parties amend as from such date as the Court may think fit . . . the contract or any term thereof or any rights arising thereunder on such conditions (if any) as the Court may think fit. . . .”

The Greenock and Port Glasgow Tramways Company, *applicants*, brought an application under the Courts (Emergency Powers) Act 1919 (9 and 10 Geo. V, cap. 64) craving the Court to make an order sus-

pending or annulling from such date as the Court should think fit the contract of lease under which the applicants ran certain tramways, in so far as concerned the provisions in clauses 13 and 14 of the lease which fixed maxima for fares chargeable by the applicants. The Corporation of Greenock appeared as *respondents*.

The application set forth—"That by the Greenock and Port-Glasgow Tramways Act 1887 (50 and 51 Vict. cap. clxxvii) the applicants were incorporated, and were empowered, *inter alia*, to construct and work certain tramways running from Greenock to Port-Glasgow and between other points in the district. By section 54 of the said Act the applicants were empowered to levy tolls or charges upon their tramways not exceeding 1d. per mile or fraction of a mile, provided that for any less distance than two miles any tolls or charges not exceeding 2d. might be charged. By section 61 of the said Act the applicants were obliged to run cars during certain hours for artisans, mechanics, and daily labourers at fares not exceeding one halfpenny per mile, the applicants nevertheless not being required to take any fare less than one penny. By section 66 of the said Act the Board of Police of Greenock were empowered to lease to the applicants the right of user of certain tramways constructed by them within the burgh of Greenock, under the powers of the Greenock Street Tramways Act 1871, and the right of demanding and taking the tolls and charges authorised by the said Act of 1871. By section 26 of the said Act of 1871 the Board of Police were empowered to levy tolls or charges, in respect of the tramways authorised by the said Act of 1871, not exceeding 1d. per mile (any fraction of a mile beyond an integral number of miles being deemed a mile), provided that for any less distance than three miles any sum not exceeding 3d. might be charged. Power was given by the said section to the Board of Trade under certain conditions to limit the sums chargeable in cases where for distances not exceeding two miles charges exceeding twopence were being made.

"By section 22 of the Greenock and Port-Glasgow Tramways Act 1899 the applicants were authorised to accept and take from the Greenock Board of Police a lease or leases of any tramway owned by the Greenock Board on terms to be agreed, and subject to such terms to demand, take, and recover in respect of such tramway, tolls, fares, and charges, not exceeding the tolls, fares, and charges authorised to be taken upon such tramways by the Act or Provisional Order relating to or regulating the same.

"By lease dated 14th and 15th May 1900 the Greenock Board set in lease to the applicants the right of user of the tramways belonging to them, situated in the burgh of Greenock for twenty-eight years from 15th May 1900. The Act relating to and regulating the said tramways is the foresaid Greenock Street Tramways Act 1871. By clause thirteenth of the said lease it was declared that it should not be lawful for the applicants to take or demand rates or charges exceeding one halfpenny for each

half mile within the burgh of Greenock, nor to exceed threepence for the fare extending over the four-and-a-half miles within the burgh of Greenock. By clause fourteenth of the said lease the applicants bound themselves to run cars within the burgh of Greenock at certain hours for artisans, mechanics and male and female workers, at fares not exceeding one halfpenny per mile. By section 22 of the Greenock and Port-Glasgow Tramways (Extension) Order Confirmation Act 1902, the said lease was confirmed and made binding on the parties.

"Owing to the alteration of trade conditions occasioned by the war there have been very large increases in the costs of both labour and materials required for the working of the said tramways. As regards labour—the wages paid for operating the tramways (excluding renewals) increased from £11,024 or 2.67d. per car mile in 1913 to £34,529 or 8.66d. per car mile in 1919, an increase of 213 per cent. For the current year the estimated wages at existing rates amount to £39,500 or 9.21d. per car mile—an increase of 259 per cent. Moreover, while wages have increased, the hours of labour have been greatly diminished. Further, at the present time additional increases in wages are being demanded by the tramway workers, who threaten to strike work, and so bring about a stoppage of the tramway services, unless further wage increases are made. As regards materials—the costs have increased as between 1913 on the one hand, and January 1920 on the other, by amounts varying (in percentages) from 150 per cent. to 335 per cent. Since January 1920 prices have continued to advance.

"As against the foregoing increased costs there was during the war an increase in receipts brought about by the abnormal war conditions of the district. This has hitherto enabled the tramways to be operated without serious loss, but it is estimated that for the current year the receipts will show a decrease, and the working of the tramways a heavy loss.

"Before making any provision for reserve or renewals the year 1913 showed a working balance of receipts over expenses of £21,379, representing 8½ per cent. on the capital expenditure of the company. The year 1919 shows a similar balance of £15,464 representing 6.38 per cent. on capital expenditure. The cost of renewals, however, has enormously increased. The total amount set aside for reserve and renewals stood at £39,594 at 31st December 1918. The estimated annual sum required for renewals, additional to the income on the said £39,594 is £11,644. The annual interest payable on borrowed money amounts to £2355. There is therefore a charge of £13,999 against the said working balance of £15,464, leaving a free balance of £1465. The interest payable on the preference shares (£70,000) amounts to £3500 per annum. The ordinary share capital amounts to £115,000 and interest upon that sum at 6 per cent is £6900.

"The estimated working balance for 1920, without allowing for any further increases in costs, is £7888. Taking the foregoing

charges for renewals, interest on borrowed money and preference and ordinary share dividends into account, this shows a deficit for the year of £16,511.

"In the circumstances thus existing which have been occasioned by the war, the contract contained in the foresaid lease, in so far as it restricts the fares chargeable by the applicants in terms of clauses 13 and 14 thereof, cannot be enforced without serious hardship. The tramways cannot be worked on the existing scale of fares except at a loss. Moreover, it is highly probable that further increases in costs will fall on the applicants, as appears, for instance, from the fact that the Corporation of Greenock have had under consideration for a considerable time the question of increasing the charges made by them to the applicants in respect of the supply of electric current required for operating the tramways.

"Having regard to the foregoing situation the applicants on 4th June 1919 addressed a letter to the Corporation of Greenock (who now represent the Greenock Police Board) in which they asked that the said lease should be revised so that the fare for ordinary passengers should be a penny per mile, and that on the cars provided for workmen the rate should be two miles for a penny. The proposals thus made were very moderate as at their date, and are now insufficient to protect the applicants from serious hardship, having regard to the increases in running costs which have since taken place and are likely to take place. Nevertheless the Corporation of Greenock have not given their assent to these proposals. A correspondence followed upon the applicants' said letter of 4th June 1919, but the Corporation neither made any proposals of their own nor accepted the applicants' proposals. On the contrary, on 12th February 1920 they finally intimated that apart from any reference to the Statutory Undertakings (Temporary Increase of Charges) Act 1918 they did not see their way to acquiesce in or give their consent to any increase of fares by the applicants in Greenock. The Act of Parliament to which they referred affords no relief from the terms of a contract such as the contract contained in the said lease. In these circumstances, the applicants are compelled to apply to your Lordships for an order under the Courts (Emergency Powers) Act 1919 suspending or annulling the terms of the said contract of lease in so far as contained in clauses 13 and 14 thereof."

Answers were lodged, which set forth—  
". . . 2. The respondents believe it to be true that owing to the alteration of trade conditions during recent years there have been increases in the cost of both labour and materials required for the working of the applicants' tramways. The respondents, however, do not admit that such alterations and increases have been occasioned solely or entirely by the war. . . . 3. The respondents admit that there was during the war an increase in the applicants' receipts, and they believe that the tramways have down to 1919 been operated without loss. . . . The respondents admit, however, that they have had under consideration the question of

increasing the charges made by them to the applicants in respect of the supply of electric current required for operating the tramways, and they believe that it is possible that further increases in working costs may permanently or temporarily fall on the applicants. 4. Except in so far as above admitted, the applicants' averments are denied, and the respondents explain and aver that whereas the average dividend declared and paid by the applicants for the period of five years prior to 1914 was 4½ per cent., the average dividend over the last five years has been 7½ per cent. 5. By the foresaid lease by which the Board of Police of Greenock, now represented by the respondents, leased to the applicants the right of user for 28 years of the tramways therein referred to, it was provided, *inter alia*, as follows, viz.—(Art. 3) that the applicants should pay the sum of £1200 per annum in name of rent; (Art. 4) that the applicants should pay in lieu of maintenance of streets the sum of £450 per annum in addition to the cost of repairing all disturbance to the roadway occurring from reconstruction, repairs or renewal of the rails, metals, or other property of the applicants; (Art. 5) that the applicants should pay a sum annually equivalent to one-third of the net profits earned on the applicants' tramways within the burgh in proportion to the mileage thereof in excess of a cumulative dividend of 6 per cent. on the capital employed in the undertaking; (Art. 7) that the applicants should pay for a minimum supply of electrical energy equal to 500,000 units per annum at the price of three halfpence per unit, the price of further units to be fixed by subsequent agreement; (Art. 13) that the applicants should maintain a full and complete service of cars within the burgh at intervals of not more than ten minutes during every lawful day and during not less than sixteen hours per day, and that the applicants should not take or demand rates or charges exceeding one halfpenny for each half mile within the burgh nor to exceed threepence for the fare extending over the four and a half miles within the burgh; and provision was further made in this article for the fixing of stages; (Art. 14) provision for the running of workmen's cars during prescribed hours at fares not exceeding one halfpenny per mile; and (Art. 17) that the Greenock Board, now the respondents, should be entitled in their option to terminate the lease at 15th May 1921 by giving six months' previous notice in writing, in which event the respondents shall purchase the applicants' whole undertaking so far as situated within the burgh on, *inter alia*, the basis of its market value as a going concern. . . . 7. In the event of articles 13 and 14 of the lease being suspended or annulled *simpliciter*, as craved by the applicants, the effect will be to entitle the applicants to impose the maximum tolls and charges authorised by their statutes, free from the limitations and obligations provided for the benefit of the public, which form an integral part of the scheme of the agreement of lease. The respondents, moreover, are apprehensive that in the event of their exercising their option under article 17 of the lease to

terminate it at 15th May 1921, and thereby becoming bound to purchase the applicants' undertaking so far as within the burgh of Greenock on valuation as a going concern, any modification of the lease under the present application may operate to the prejudice of the respondents and the community by enhancing the price falling to be paid by the respondents. 8. The respondents respectfully submit and contend (*primo*) that the application should be dismissed as premature, or alternatively sisted *sine die* or otherwise until such time as the applicants shall have . . . (2) formulated and submitted to the respondents the full and detailed tariff or table of fares and service of trams both for artisan and other workers, and also for the general public, which they propose to substitute in lieu of the provisions of articles 13 and 14 of the lease; (3) submitted full and detailed estimates of the receipts to be derived from such new tariff and service; and (4) made, or given the respondents reasonable opportunity to make, an offer for revision and adjustment of both sides of the agreement of lease to meet the present or anticipated alterations of trade conditions. The respondents further respectfully submit and contend (*secundo*) that in any event it would be unjust and inequitable to suspend or annul *simpliciter* articles 13 and 14 of the lease, and that if any modification of the terms of the agreement of lease be made by way of suspension or annulment or otherwise it should be made only subject to such conditions as may after inquiry be agreed between the parties, or, failing agreement, be fixed by the Court for the protection of the respondents and the public."

On 20th April 1920 the Lord Ordinary officiating on the Bills (CULLEN) allowed a proof. The respondents reclaimed. Thereafter the applicants lodged a *minute* in which they stated in reply to answer 8 (2) for the respondents—"2. Answer 8 (2)—In lieu of the provisions of articles 13 and 14 of the lease regarding fares and fare stages the applicants propose for immediate adoption the following scheme, viz.—The whole of the tramways operated by the applicants form one continuous route. It will be divided into twelve sections of approximately two-thirds of a mile in length.

"The charges will be as follows, viz.—

Any 1 section . . . . .	1d.
" 2 or 3 sections . . . . .	2d.
" 4 . . . . .	3d.
" 5 or 6 . . . . .	4d.
" 7 or 8 . . . . .	5d.
" 9 or 10 . . . . .	6d.
" 11 or 12 . . . . .	7d.

In the case of fares for workpeople the applicants propose to issue return tickets at ordinary single journey rates with a minimum return fare of twopence.

"3. Answer 8 (3)—The following are particulars of the receipts which the applicants estimate may be earned as a result of the proposed fares and stages, from which it will be seen that the net receipts before making allowance for mortgage interest, renewals, and reserve, or interest on the share capital, or for any further increase in wages, price of materials, or the cost of electricity, amount to £25,133 per annum :—

"(a) *Gross Receipts*.—During the year 1919 the number of passengers carried on the tramways were:—

At 1d. fares . . . . .	7,906,222
" 1d. " . . . . .	4,514,872
" 1½d. " . . . . .	1,157,171
" 2d. " . . . . .	973,537
" 2½d. " . . . . .	810,484
" 3d. " . . . . .	720,428
" 3½d. " . . . . .	165,001

Total 16,247,715

With the proposed fares in operation the applicants estimate the gross revenue as follows:—

<i>Passenger Traffic.</i>	
1d. passengers—7,500,000 . . . . .	£31,250
2d. " 4,360,000 . . . . .	36,333
3d. " 1,100,000 . . . . .	13,750
4d. " 435,000 . . . . .	7,250
5d. " 30,000 . . . . .	625
6d. " 30,000 . . . . .	750
7d. " 30,000 . . . . .	875
Total 13,485,000 . . . . .	£90,833
Add for sundry receipts . . . . .	2,500
Total gross receipts . . . . .	£93,333

"(b) *Working Expenses*.—The services run during the year 1919 produced 957,035 car miles. It is proposed to increase the car mileage to 1,028,812 per annum to prevent overcrowding the cars as far as practicable. The estimated working expenses are given below, compared with the actual expenses in 1919:—

	Actual 1919.	Estimate based chiefly on Expenditure in January 1920.
Power . . . . .	£5,615	£5,873
Distribution . . . . .	814	917
Car equipments . . . . .	5,936	6,000
Permanent way . . . . .	2,970	3,800
Running . . . . .	29,706	34,722
Buildings . . . . .	635	100
Other expenses, including administration and general . . . . .	10,751	11,000
Rent of leased lines 1,473 . . . . .	1,473	
	£57,900	£63,885

63,885

Working balance

£29,448

"As a result of a claim put forward by the employees' unions the applicants have agreed to pay increased wages in accordance with a resolution passed by the National Joint Industrial Council for Tramways, which from June next will increase the annual cost of wages at present paid by . . . . .

4,315

"(c) Estimated net receipts . . . . .

£25,133

*Distribution of Net Receipts.*

Mortgage Interest.	
4½ per cent. of £47,000 = . . . . .	£2,115
6 per cent. of £4000 = . . . . .	240
Estimated amount required for renewals . . . . .	11,644
Pref. share dividend 5 per cent. of £70,000 . . . . .	3,500
Ord. share dividend, say 6 per cent. of £115,000 . . . . .	6,900

24,399

Surplus . . . . .

£734

“While the above estimate shows a surplus, it is too little to cover further increases in the cost of wages and materials and to provide a reasonable sum for reserves, because—(a) Negotiations are at present proceeding to increase the rate of wages above those already agreed. (b) The prices of materials are still advancing. (c) The respondents have made a claim to charge the applicants an increase in the price for electrical energy which is purchased from the respondents and required to operate the tramways. (d) The respondents contend that if the provisions of articles 13 and 14 of the lease relating to fares and stages be suspended or annulled it would give the applicants the power to charge the maximum fares authorised by the statutes. With this the applicants agree, but desire to point out that such statutory maximum fares give ample protection to the public. It is the protection universally provided by Parliament in connection with tramway undertakings. Further, the applicants are of the opinion that an immediate increase of the fares to the maximum authorised by statute would produce a lower revenue than the proposed fares will produce. The applicants estimate that the economic and other conditions of to-day are such that the operation of the maximum statutory fares may reduce the total traffic receipts to £87,120, as compared with £90,833 estimated under their proposed scheme.

“The following are details of the applicants’ estimate of receipts from the maximum fares as provided by the several Acts, making up the £87,120 mentioned above:—

Passengers.	Fares.
4,000,000 (workpeople)	@ 1d.
500,000 (workpeople)	@ 1½d.
5,500,000	@ 2d.
1,520,000	@ 3d.
165,000	@ 4d.

“There is an economic limit for fares on each tramway undertaking, above which any increase will result in decreased revenue. While it is believed that the proposed fares will not to-day be above the economic limit for the Greenock tramways, the applicants may find it necessary and practicable to raise the fares still further in order to meet altered conditions of higher costs, &c., and to earn a moderate revenue. It is for this reason that the applicants are of the opinion that they should not be tied down to the scheme of fares and stages above formulated for immediate adoption, and that the provisions regarding fares and stages of articles 13 and 14 of the lease should be annulled and the statutory maximum fares allowed.”

The respondents lodged *answers to the minute* in the following terms—“1. That the respondents having considered the minute for the applicants boxed on 12th May 1920 respectfully insist in their objection to the suspension or annulment of the contract of lease in question in so far as concerns the provisions contained in clauses 13 and 14 thereof as craved in the prayer of the application, and further object to the suggestion contained in the said minute for the applicants that the provisions regarding fares and stages of the said clauses 13 and 14

should be annulled and the statutory maximum fares allowed. 2. That, subject to the condition that the respondents are not to be and shall not be prejudiced or affected in any proceedings for assessment of the amount to be paid by the respondents for the purchase of the applicants’ undertaking or any part thereof under article 17th of the said contract of lease or otherwise, the respondents are willing and hereby offer to consent to the applicants putting into operation immediately the scheme of fares and fare stages proposed by them in article 2 of their said minute, subject to this condition, that the short portion of the route between Cathcart Square and the Caledonian Railway Station shall be included in one section for the purpose of fares both for passengers travelling east and for passengers travelling west.”

Argued for the applicants—The pleadings showed that the applicants had a clear case for relief, but they could not consent to the condition proposed by the respondents, because if they did this undertaking might be acquired by the respondents as a bankrupt concern and the relief given would only be partial. Apart from war conditions it must be taken that the applicants would have been in a reasonably sound financial condition when a transfer to the respondents took place. The applicants ought not to be deprived of the benefit in their financial position, which they anticipated would result from relaxation of the terms of the lease, in the question of purchase by the respondents.

Argued for the respondents—If the applicants were granted the relief sought the value of their undertaking would be enhanced when it came to be taken over by the respondents. That was unreasonable in view of the fact that the tramways taken over by them from the respondents were not constructed by them; they provided no capital and took no risks. When they had sought an increase in capital it had been made a condition that the purchase price should not be increased on that account. A similar condition should be attached to any relief if it were now given.

In the course of the discussion the Court indicated an opinion that the case was not a suitable one for annulling the conditions of the lease. In response to suggestions from the Court counsel agreed to adjust an interlocutor.

The Court without delivering opinions pronounced the following interlocutor—

“The Lords of consent of parties recal the interlocutor of the Lord Ordinary officiating on the Bills (Lord Cullen) dated 20th April 1920 and refuse the reclaiming note for the [respondents]: Find no expenses due to or by either party in connection therewith: And having considered the application, the answers for the respondents, the minute for the applicants, and the answers for the respondents, and having heard counsel for the parties, suspend until further orders of the Court the provisions relating to fares and stages

contained in articles 13 and 14 of the contract of lease between the parties referred to in the application upon the following conditions—(1) That the applicants shall not charge fares exceeding those proposed by them in the scheme set forth in article 2 of the minute; (2) that the suspension shall not be founded on in any further proceedings for the valuation of the tramway undertaking under article 17 of the said contract of lease unless with the sanction and authority of the Court obtained upon application made for that purpose and subject to such terms and conditions, if any, as to the Court may seem fit; Continue the cause with liberty to either party to apply for the recal or modification of this order.”

Counsel for the Applicants—Constable, K.C.—T. G. Robertson. Agents—J. Miller Thomson & Co., W.S.

Counsel for the Respondents—Macmillan, K.C.—Gentles. Agents—Cumming & Duff, W.S.

Saturday, May 22.

#### FIRST DIVISION.

[Lord Blackburn, Ordinary.]

#### MACQUEEN v. MACKIE & COMPANY DISTILLERS LIMITED.

*Process—Proof—Diligence for Recovery of Documents—Discretion of the Judge as to Details of Specification.*

Proof having been allowed in general terms, held, in a reclaiming note against a disallowance of certain documents in a specification, that the same width and extent of investigation would not as of course be allowed of every averment remitted to probation as of the crucial averments, but short of disallowing all diligence to recover documents required for the proof of subsidiary topics the matter was within the discretion of the Lord Ordinary.

Robert Haldane Macqueen, *pursuer*, brought an action against Mackie & Company Distillers Limited, *defenders*, concluding for £1854 damages for breach of contract.

The pursuer averred—“(Cond. 1) The pursuer in the beginning of the year 1912 was engaged by the defenders Mackie & Company Distillers Limited, who do a very large trade in whiskies both at home and abroad, as the head of their export department. The terms of the engagement are contained in a letter from the pursuer dated 16th February 1912 and letter of confirmation and acceptance from the defenders to him of even date. The engagement was that the pursuer should act as the head of the said department for a period of two years at a commencing salary of £300 per annum. It was further a term of the engagement that if the pursuer was satisfactory in his said managership he was to be made a director of the limited company at the end

of the two years. (Cond. 2) The prospective post of director in the defenders' company was lucrative in a monetary sense and was also very valuable to a young man such as the pursuer was from the point of view of position and prospects. The said promise was a material consideration in the pursuer's mind in inducing him to enter the defenders' service. (Cond. 3) The pursuer acted for two years as head of the department to the entire satisfaction of the directors and the company, and his engagement was continued thereafter without any question being raised or any discussion taking place as to his complete suitability or as to the satisfaction of the board with his services. By tacit relocation the pursuer's engagement was continued from year to year. The commencing salary of £300 in or about June 1915 was agreed to be increased to £400 per annum, the said increase to take effect immediately upon the pursuer's return from military service. (Cond. 4) Notwithstanding the complete satisfaction with the pursuer's services at the end of the second year in February 1914 no offer of a directorship was made to the pursuer although he had acquired the necessary qualification in shares. Upon the pursuer reminding the chairman of directors, Mr Peter Jeffrey Mackie, of this promise and remonstrating about the failure to implement the same, the said Mr Mackie, acting for the board and with its authority, at two verbal interviews and afterwards in writing confirmed that the original agreement on this matter stood and indicated that the pursuer's chance would come quite soon. The pursuer accordingly continued in the defenders' employment in reliance on the said promise and expectation. . . . (Cond. 5) During the period of continued employment foresaid the late war broke out, and in the summer of 1915 the pursuer deemed it his duty to join His Majesty's forces in order to fight for his country. He accordingly did so on or about 10th August 1915 with the full knowledge and approval of the company. In consequence of an interview with the said chairman of directors preparatory to the pursuer going on service it was agreed between the pursuer and the board that he should enlist, but that his position should be kept open for him on his return, and that on his return he was to be paid a salary of £400 a-year. The terms of this agreement were confirmed by a letter dated 7th June 1915 from the pursuer to the defenders, in which, *inter alia*, he said—‘My position is to be kept open for me, and on my return I am to be paid a salary of £400 a-year.’ In addition, and as part of the said agreement, by a letter written by the said P. J. Mackie on behalf of the board of directors, a written promise of the directorship foresaid was given. On the strength of these contractual promises the pursuer joined His Majesty's army, ceasing to be in the employment of the defenders' company. (Cond. 6) The pursuer served in various places and ultimately for a considerable time in Egypt. He did not obtain his demobilisation till 31st July 1919. (Cond. 7) In or about November 1918, and while there was yet no immediate prospect of his release