general disposition to his testamentary trustees, so that on his death, whatever might be the formal state of title, the whole of the shares belonging to him at his decease should fall to be distributed by his testamentary trustees according to the directions of his settlement.

In regard to the heritable bond I have some difficulty. If the testator had expressly directed that shares held in his wife's name or in joint names were to be treated as part of the estate conveyed to his testamentary trustees there would have been no difficulty. The bond not being referred to the destination therein would not have been affected. The difficulty I feel arises from the consideration that the construction I propose to put upon the testament as regards the shares imports these two things—that the testator meant them to be part of his testamentary estate, and that he *assumed* that this would be so without any special direction on his part. It would be quite unreasonable to suggest that he introduced this curious clause about pre-emption for the purpose of indicating this intention. The *assumption* underlies the clause. It is not sufficient, however, that a testator should intend. He must show the intention by words in the settlement. Heritable bonds are not mentioned in the settlement, and accordingly I concur with your Lordship in the chair in differentiating the bond from the shares.

I am of opinion that the several questions should be answered in the manner proposed by your Lordship.

The Court answered the second alternative of the first question in the case, as regards the whole of the shares, in the affirmative, and the second alternative of the second question, the second alternative of the third question, and the first alternative of the fourth question all in the affirmative, subject of consent to the qualification that the answer to the second alternative of the second question did not apply to the investment which was later in date than the date of the last codicil (30th October 1911), which fell to be dealt with in terms of the special destination contained in the share certificate thereof.

Counsel for the First and Fourth Parties —Wark, K.C. — Dykes. Agents — Gray, Muirhead, & Carmichael, S.S.C.

Counsel for the Second and Third Parties —Wilton, K.C.—King Murray. Agents— Sim & Whyte, S.S.C.

Saturday, July 14.

FIRST DIVISION.

[Lord Ashmore, Ordinary.

JAMES BROWNLIE & SON *v.* MAGISTRATES OF BARRHEAD.

Reparation—Limitation of Action—Public Authorities Protection Act 1893 (56 *and* 57 *Vict. cap.* 61), *sec.* 1 (*a*)—"*Continuance of Injury or Damage*"—*Progressive Damage—Injurious Effects Caused by Flooding.*

By the Public Authorities Protection Act 1893, section 1 (*a*), an action against any person in respect of any alleged default in the execution of any Act of Parliament or of any public duty or authority must be commenced within six months next after the act, neglect, or default complained of, "or, in case of a continuance of injury or damage, within six months next after the ceasing thereof."

An action was raised against a public authority in respect of floodings, some of which had occurred more than six months previously. The pursuers averred that as a result of these floodings their premises had been seriously damaged, and were still being seriously damaged, owing to the progressive injurious effects of the water on the buildings. *Held* that the action was excluded in so far as it related to damage done by the floodings which had occurred more than six months before the date of the summons, there being no case of a "continuance of injury or damage" in the sense of the statute.

Burgh—Drainage—Dual System of Drainage — Duty of Drainage Authority to Effectually Drain the Burgh — Burgh Police (Scotland) Act 1892 (55 *and* 56 *Vict. cap.* 55), *sec.* 219.

The Burgh Police (Scotland) Act 1892, sec. 219, enacts—"The Commissioners shall . . . cause to be made . . . such . . . sewers as shall be necessary to the effectual draining of the burgh. . . ."

An action was raised against the drainage authority of a burgh for damages for injury to property due to the inadequacy of the sewers to carry off surface water as well as sewerage. The burgh had adopted a dual system of drainage whereby sewerage proper and roof water were carried by sewers to purification works, and surface water was taken by separate pipes to convenient points for discharge. In the case of the pursuers' property the surface water was discharged partly into a burn and partly, with the acquiescence of the drainage authority, into the sewer. The sewers proved insufficient to carry off all the surface water naturally delivered to them from the pursuers' premises and flooding ensued. *Held* that the drainage authority was not excused by the adoption of the dual system from its statutory duty of effec-

tually draining the burgh, and that it was therefore bound to carry off the pursuers' surface water by its sewers.

Reparation — Negligence — Contributory Negligence — Liability — Flooding by Regurgitation from Sewer—Damage Partly Caused by Pursuers' Negligence—Apportionment of Damage—Negligence of Pursuers not Contributing to Defenders' Neglect.

In an action for damages for injury to property caused by flooding due to the regurgitation from a sewer for which the drainage authority was responsible, combined with the spate-overflow of two streams for which the drainage authority was not responsible and which would have done extensive damage apart from the flooding from the sewer, *held* that the drainage authority was liable for the damage resulting from the flooding in so far as it was caused by its own negligence, the amount falling to be assessed as a jury question.

The Public Authorities Protection Act 1893 (56 and 57 Vict. cap. 61) enacts—Section 1—"Where after the commencement of this Act any action . . . is commenced in the United Kingdom against any person for any act done in pursuance or execution or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, duty, or authority, the following provisions shall have effect—(*a*) The action . . . shall not lie or be instituted unless it is commenced within six months next after the act, neglect, or default complained of, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof."

The Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55) enacts—Section 219—"The Commissioners shall from time to time . . . cause to be made under the streets or elsewhere such main and other sewers as shall be necessary for the effectual draining of the burgh. . . ."

Messrs James Brownlie & Son, Arthurlie Bakeries, Barrhead, *pursuers*, brought an action against the Provost, Magistrates, and Councillors of the Burgh of Barrhead, *defenders*, concluding for (*first*) £600, (*second*) £6000, (*third*) £10,000, and (*fourth*) £5000 in name of damages for injury to their property by flooding alleged to be due to inadequate drainage.

The parties averred, *inter alia*—"(Cond. 1) The pursuers are bread manufacturers in the burgh of Barrhead and are owners of the Arthurlie Bread and Biscuit Works situated wholly within the burgh. The defenders, as the local authority within the burgh, own the main and other sewers therein and are responsible, *inter alia*, for the effectual draining thereof. . . . (*Ans.* 1) Admitted. Explained that the pursuers' works were purchased by them in 1887. The works had been previously used as a spinning and weaving factory and the property is old and dilapidated. It is situated close to a stream known as the Levern Water, which naturally drains the basin in which Barrhead is built. The works are low lying. The floors of the buildings are little higher than the channel of the Levern and are considerably lower than the ordinary flood-level of that stream. A tributary called the Kirkton Burn bounds the property on the east immediately before it joins the Levern Water. For these reasons the property has always been more or less subject to flooding from these streams. Explained further that Barrhead was turned into a police burgh in 1894, and the defenders' predecessors at once proceeded to form a drainage and sewerage system for the burgh. It was formed on the approved modern system of separating as far as possible the surface-water drainage from the sewerage. The sewers carry only sewerage proper and the rainfall from the roofs of the houses. The outfall sewer, which passes close to the pursuers' property, is led about three-quarters of a mile down the valley, where the sewerage is purified and discharged into the Levern. (Cond. 2) The pursuers' said works . . . are fitted throughout with drain pipes, which are connected by the usual trap drains with the sewers of the burgh of Barrhead, belonging to and controlled and administered by the defenders. . . . Admitted that the drains in pursuers' premises consist of surface drains leading to the Kirkton Burn and of drains connecting with the burgh sewer. Explained and averred that the pursuers' sewerage drain (including traps, &c.) was connected with defenders' burgh sewer at the sight of and to the satisfaction of defenders' Master of Works for the time. (*Ans.* 2) Admitted subject to the following qualifications and explanations. . . . The drains within the pursuers' property consist partly of surface-water drains which connect directly with Kirkton Burn, and partly of drains which connect with a branch sewer belonging to the defenders at a manhole in Glen Street. The history of the drains last mentioned is believed to be as follows:—When the defenders' predecessors formed a sewerage system in 1895 the pursuers did not desire to take, and did not in fact take, advantage thereof. . . . The levels were such that such connection should not have been made without careful consideration and adjustment of the pursuers' drains to the new conditions after the construction of Glen Street. Any possibility of regurgitation from the defenders' sewers in time of flood could have been effectually prevented by inserting pressure valves in the pursuers' drains, but the pursuers negligently failed to consider the matter or to make any such provision. (Cond. 3) The said sewers with which the pursuers' drains are so connected are of faulty design and have for many years been insufficient for draining the part of the burgh in which the pursuers' works are situated. . . . The result of the insufficiency and faulty design of said sewer is that the water therein frequently rises in the traps and manholes in the pursuers' premises and regurgitates therefrom on to their premises. As a result of the insufficiency of said sewers the pursuers' said premises are in times of heavy rainfall periodically flooded by water and

sewage regurgitating from said sewers. The defenders' averments in answer so far as not coinciding herewith are denied. (*Ans.* 3) . . . The sewer is well constructed and is sufficient for the needs of the district which it drains. . . . If the pursuers' property has suffered from regurgitation, which is denied, it is due as above explained to their own failure to take necessary precautions in the construction of their own drainage system and its adaptation for connecting with the defenders' sewers. (Cond. 4) In the year 1911 part of the pursuers' premises, which were then let to a tenant, was flooded by water and sewage from the burgh sewers. A claim was made on the defenders, who paid compensation to the tenant for the damage done. (*Ans.* 4) Denied. Explained that a claim was made against the defenders in 1911 in respect of an alleged flooding, and that the defenders without admitting liability compromised the matter by paying the claimants £5, 5s. (Cond. 5) On or about 30th November 1917 the pursuers' premises were again seriously flooded by water and sewage regurgitating from said sewers and a claim was then intimated by the pursuers against the defenders. Negotiations took place between the pursuers and the defenders' officials in regard to this claim and it was arranged that the pursuers would depart from the claim on the understanding that the defenders would take means to ensure that there would be no recurrence of the flooding. Defenders joined with pursuers in remitting to M'Creaths & Stevenson, C.E., Glasgow, to report on the position of the burgh sewer at the point in question, and on or about 17th December 1917 the said engineers reported to defenders that the main sewer was of insufficient size to carry off flood water, and that to prevent a recurrence of flooding it would be necessary to provide a remedy to carry away flood water from the sewer at a level low enough to prevent flooding from the sewer into pursuers' premises. In spite of this no adequate steps have been taken by the defenders to have the state of matters in question put right, nor indeed were any steps taken prior to the occasions of flooding in February and August 1920 hereinafter condescended on. (*Ans.* 5) Admitted that in 1917 the pursuers made a claim against the defenders in respect of an alleged flooding of their works. *Quoad ultra* denied, and explained that the defenders refused to entertain that claim. (Cond. 6) On or about 10th February 1920, following upon a heavy rainfall, a recurrence of flooding took place in the pursuers' works. The burgh sewer, to which the drain pipes in the pursuers' works are connected, became overcharged and proved insufficient to carry away the water and sewage coming into it, with the result that a large quantity of water and sewage was forced through the traps and manholes into the pursuers' works. . . . (*Ans.* 6) Admitted that some flooding of the pursuers' works took place about the time stated. . . . This claim is excluded by the terms of the Public Authorities Protection Act 1893, and the conclusions thereanent fall to be dismissed. (Cond. 7) On or about 17th August 1920, following upon a heavy rainfall, there was a further recurrence of flooding of the pursuers' premises. The main burgh sewer again became overcharged and water and sewage regurgitated in large quantities into the pursuers' works. As a result of this flooding, damage was caused to the pursuers' stock, as well as material disturbance to their business. . . . The defenders' averments in answer are denied. If any flooding from the Kirkton Burn or Levern Water took place, which is not admitted, the flood water therefrom did not reach the pursuers' premises, or if any did, it was only in small quantities, and after said premises were already inundated and damage caused to the premises and their contents by the flooding from the sewers. (*Ans.* 7) Admitted that the flooding of the pursuers' premises following upon a heavy rainfall took place on the date mentioned. *Quoad ultra* denied. Explained that on the occasion in question the Kirkton Burn and the Levern Water were both in high flood, and the surface drains were all regurgitating, and the cause of the flooding of the pursuers' premises was an overflow from these sources, and particularly from the Kirkton Burn, the banks of which the pursuers had negligently failed to keep in repair. If there was any regurgitation from the pursuers' drains connecting with the defenders' sewer, which is not admitted, it was small in quantity, and constituted an inappreciable contribution to the flooding. . . . (Cond. 8) As a result of the floodings above referred to the pursuers' premises have been and are still being seriously damaged. In particular the floors of the main building, which are of wood fixed on wooden joists with an asphalte foundation, have been materially and permanently injured by the effects of the flooding through absorption of water in the floors themselves and leakage of water into the foundations, thus resulting in continuously increasing injury by weakening of the floors and rotting of the supporting joists. The roofs of the main building, which consist of wooden floorings covered with slates and glass, have also been and are being materially and permanently injured through absorption of water into the timber, causing straining and setting up of the flooring boards under the slates, rotting of the timber, rusting of the nails, and general deterioration of a continuously increasing nature. . . . Further, the ovens used by pursuers in connection with their business have also been seriously and permanently damaged, which damage is continuing to develop. . . . (Cond. 10) The periodical flooding by sewage of the pursuers' premises and the consequent loss and damage to the pursuers above condescended on were due to the fault and negligence of the defenders. The sewers in the burgh sewage system, and in particular the sewer into which the drainage from the pursuers' works is discharged, are badly designed as above set forth and, *inter alia*, constructed of too small a capacity to carry away the drainage of the dis-

trict around the pursuers' works, or at all events the capacity of same has for a long period been increasingly insufficient for that purpose. Since the burgh sewers were laid there has been no addition made to them in order to cope with the increased needs of the burgh or to effect the drainage which defenders are under a statutory duty to discharge or for which they have given facilities. The defenders have been aware of this for a long period, and in any event since the year 1911, but they have taken no steps to enlarge the sewers or prevent flooding in times of heavy rainfall but have allowed the sewage collected by them in said sewers to be discharged on to the pursuers' premises. Further, the defenders in terms of section 219 of the Burgh Police (Scotland) Act 1892 are under a statutory duty to make such main and other sewers as shall be necessary for the effectual draining of the burgh. This duty they have failed to perform, and as a consequence of said failure the pursuers have suffered the loss and damage above referred to. The defenders' averments in answer are denied. If any flood water from the Kirkton Burn or Levern Water reached the pursuers' premises, which is denied, this was only in small quantities and after they were already flooded by water from the sewers. . . . Explained further that the drains in the pursuers' premises are of the type usual in such premises and in every way sufficient for their purpose, and were approved of by the defenders' burgh engineer at the time. (*Ans.* 10) Admitted that the defenders have certain statutory duties with regard to the construction and maintenance of sewers under section 219 of the Burgh Police Act. *Quoad ultra* denied under reference to the previous answers. The flooding complained of by the pursuers was not due to regurgitation from the defenders' sewers but to water from other sources for which the defenders are not responsible, and in particular from the Kirkton Burn, for which the pursuers have themselves to blame. . . . In any case the defenders have sufficiently discharged their statutory duties with regard to their sewerage system. If and so far as any material contribution to the flooding of the pursuers' property came from the defenders' sewers it was due to no insufficiency or defect therein, but to the pursuers' own negligence in connecting their drainage thereto without making the necessary alterations which the situation required."

The pursuers pleaded, *inter alia*—"1. In respect the pursuers have suffered and are continuing to suffer loss and damage through the fault of the defenders, as condescended on, the defenders are bound to compensate the pursuers therefor. 2. In respect the pursuers have suffered and are continuing to suffer loss and damage owing to the defenders' failure to implement their statutory duty, as condescended on, the defenders are bound to compensate the pursuers therefor."

The defenders pleaded, *inter alia*—"2. The material averments of the pursuers being unfounded in fact, the defenders should be assoilzied. 3. The flooding complained of not having been due to the negligence of the defenders, decree of absolvitor should be granted. 4. The defenders, having complied with their statutory duty and having provided thereunder a sufficient system of drainage for the burgh, are not responsible for the flooding complained of and should be assoilzied. 5. The damage complained of having been caused or materially contributed to by the fault of the pursuers, they are barred from suing the defenders therefor. 6. The claims for floodings, other than that of 17th August 1920, being barred by the Public Authorities Protection Act, the defenders should be assoilzied. 7. In any event the damages sued for are excessive."

The Lord Ordinary (ASHMORE) of consent dismissed the first conclusion of the summons and *quoad ultra* allowed a proof before answer.

Opinion.—"At the discussion in the procedure roll counsel for the defenders argued that the pursuers' claim for £600 for damage sustained by the pursuers in February 1920 as set forth in article 6 of the condescendence was barred by the Public Authorities Protection Act 1893 in respect that this action was not commenced till 16th February 1921. Counsel for the pursuers thereupon intervened admitting that the contention stated was well founded, and he consented to the said claim for £600 being repelled. I shall accordingly, of consent, assoilzie the defenders from the first conclusion of the summons.

"Counsel for the defenders urged four other objections, and I shall refer to these briefly *seriatim*. (1) With reference to the averments in articles 4 and 5 of the condescendence as to flooding in 1911 and 1917, he maintained that these averments are irrelevant as excluded by the said Act of 1893 and as not bearing on the claims for damage which arose only in August 1920, and, moreover, as being merely ancillary and relative to the claim of £600 from which *ex concessu* the defenders are now to be assoilzied. (2) . . . (3) With reference to the pursuers' averments generally, he submitted that the pursuers' case was evidently based on the assumption that the damage claimed became apparent only in August 1920, that on the face of it that assumption is so unreasonable that in the absence of explanation it ought to be rejected and the claims ought to be held irrelevant. . . .

"The counter arguments by the pursuers' counsel may be stated generally as follows:—On the question of relevancy he founded on the principles affirmed in *Darley Main Colliery* v. *Mitchell* (1886 11 A.C. 127), and these principles in their application to the present case he used as showing that the pursuers had no actionable claim until the damage had actually occurred, and that in August 1920, when, as averred, fresh damage did occur to the *cumulo* amount of £21,000 (£6000, £10,000, and £5000), a new cause of action arose and the proceedings were begun within six months thereafter. . . . No specific argument was submitted and no authority was cited on either side with

reference to the closing words of section 1 (*a*) of the said Act of 1893 as to the case of 'a continuance of injury or damage.' In these circumstances I shall express no opinion as to whether or not such a case is raised by the pursuers' averments or is available to them in law in the circumstances; but I refer to the recent English case of *Rex* v. *Marshland, Smeath, and Fen District Commissioners* (1920, 1 K.B. 155) in which Mr Justice M'Cardie, after characterising the words which I have quoted from the Act as being 'curiously vague' proceeds (page 173) to give his opinion as to the net result of the English authorities on the subject, viz., that 'in order to come within these words a plaintiff must prove a continuing breach of duty together with a continuing damage.'

"After weighing the arguments and the considerations on the one side and the other, I have come to these conclusions—that I cannot safely dispose at this stage and without inquiry of any part of the remaining claims made by the pursuers, that although the pursuers' averments, regarded generally, do strike me as somewhat unsatisfactory, that although on the subject of the damages they seem unnecessarily vague or inexplicit, I do not feel justified at present in ordering the pursuers to condescend on fuller details, and that accordingly the appropriate course is to allow proof before answer."

Thereafter having heard the proof the Lord Ordinary sustained the second, third, and fourth pleas-in-law for the defenders and assoilzied them from the conclusions of the summons.

The pursuers reclaimed, and argued—1. The damage due to rot and rust started by the flood water was progressive and was still going on. The case was thus one of "a continuance of injury or damage" within the meaning of section 1 of the Public Authorities Protection Act 1893. The pursuers were therefore entitled to sue for damages in respect of the injuries caused by the floodings prior to the flooding of August 1920. 2. The adoption of a dual system of drainage did not relieve defenders from their statutory duty of effectually draining the burgh. It was proved that the sewerage system was inadequate and that this inadequacy led to the flooding of pursuers' premises. The pursuers were therefore entitled to damages. Counsel referred to the following authorities:—*Hanley* v. *Magistrates of Edinburgh*, 1913 S.C. (H.L.) 27, 50 S.L.R. 521; *St George's Co-operative Society* v. *Glasgow Corporation*, 1921 S.C. 872, 58 S.L.R. 568; *Hawthorn Corporation* v. *Kannuhick*, [1906] A.C. 105, *per* Lord Macnaghten at 108; *Caledonian Railway Company* v. *Greenock Corporation*, 1917, 54 S.L.R. 600, *per* Lord Skerrington at 617, [1917] A.C. 556, *per* Lord Finlay, L.C., at 567 and 569; *Duke of Buccleuch* v. *Cowan*, 1866, 5 Macph. 214, *per* Lord Inglis at 216; *Nitro-Phosphate and Odam's Chemical Manure Company* v. *London and St Katherine's Docks Company*, (1878) 9 Ch. D. 503; *Flemings* v. *Gemmill*, 1908 S.C. 340, *per* Lord Dunedin at p. 350, 45 S.L.R. 281; Beven on Negligence, p. 80.

Argued for defenders—1. There was no relevant averment of continuing damage. The continuance of the injurious effects caused by the floodings was not "a continuance of injury or damage" in the sense of the statute—*Spittal* v. *Corporation of Glasgow*, 1904, 6 F. 828, 41 S.L.R. 629. 2. The defenders having adopted the dual system of drainage were under no obligation to carry off by their sewers the surface drainage of the pursuers' yards. Further, it was proved that the floodings of February and August 1920 were due partly to the condition of spate of the Kirkton Burn and the Levern Water and partly to pursuers' negligence in the administration of their property. Counsel referred to the following authorities:—*Hill* v. *Warren*, 1818, 2 Stark 377; *Rex* v. *Marshland, Smeath, and Fen District Commissioners*, [1920] 1 K.B. 155, *per* M'Cardie, J., at 173; *Earl of Harrington* v. *Derby Corporation*, [1905] 1 Ch. 205, *per* Buckley, J., at 226; *Christie* v. *Glasgow Corporation*, 1899, 36 S.L.R. 694, *per* Lord Low (Ordinary) at 696; *Ballard* v. *North British Railway Company*, 1923 S.C. (H.L.) 43, *per* Lord Dunedin (*diss.*) 60 S.L.R. 441; *Stretton's Derby Brewery Company* v. *Mayor of Derby*, [1894] 1 Ch. 431; *Corporation of Raleigh* v. *Williams*, [1893] A.C. 540; *Glossop* v. *Heston and Isleworth Local Board*, (1879) 12 Ch. D. 102; *Attorney-General* v. *Lewes Corporation*, [1911] 2 Ch. 495.

At advising—

LORD PRESIDENT—The pursuers complain that owing to the failure of the Magistrates of Barrhead to provide sewers adequate for the effectual draining of the burgh, in terms of section 219 of the Burgh Police Act 1892, their property has been repeatedly damaged by flooding on the occurrence of heavy rainfall. Flooding is said to have been occasioned owing to the inadequacy of the burgh sewers in 1911, in 1917, and in February and August 1920. . . .

The present action is brought to recover damages in respect of the two last-mentioned floodings.

The defenders plead section 1 of the Public Authorities Protection Act 1893 as a bar to the pursuers' claim so far as based on any of the floodings up to and including that of February 1920—the action not having been raised until 16th February 1921. Accordingly when the case was in procedure roll in the Outer House the pursuers consented to the dismissal of the first conclusion of their summons which related exclusively to damage to the stocks of bread, flour, crumbs, and the like which were in the premises in February 1920, but stood out for the whole of their second conclusion, which referred to damage caused by the various floods, including particularly those of February and August 1920, to certain portions of their premises such as the woodwork and ovens. Rot started by the flood water was said to be the cause of progressive damage to the former, while the absorption of water by the concrete of the oven-structures was said in like manner to have set up movements which gradually produce cracks and bursts. The pursuers

accordingly argued that in so far as damage to the premises is concerned the case is one of "a continuance of injury or damage" within the meaning of section 1 of the Public Authorities Protection Act, and that such injury or damage not having ceased but on the contrary still going on, a claim in respect of it is not excluded by the Act. It is settled that the continuance of the injurious effects caused by an accident is not "a continuance of injury or damage" in the sense of the statute — *Spittal* v. *Corporation of Glasgow*, 1904, 6 F. 828. Now if the statutory six months could never begin until the injurious effects of the alleged "act, neglect, or default" had ceased, the leading enactment — namely, that action must be raised within six months next after the act, neglect, or default complained of—could hardly ever come into operation. There can be few injuries that are momentary and do not last for a time more or less considerable. I think it is the occurrence of the cause of action which is intended to mark the *punctum temporis* from which the six months are to run. And inasmuch as a claim to reparation arises only where an act, neglect, or default is accompanied by consequent loss and damage, it follows that the *punctum temporis* must be one at which *injuria* and *damnum* concur. The *damnum* need not be exhausted, but it must at least have begun. If this is correct with reference to the leading part of the enactment, it is hard to believe that the statute intended to apply a different principle to the case of "a continuance of injury or damage." The use of the disjunctive "or" between the words "injury and "damage"—distinguishable as the connotations of those two words are — undoubtedly raises a difficulty. But I think the only consistent reading of the statute is to construe the cessation of a continuing injury or damage as referring to the case of an act, neglect, or default which is in itself continuous and inflicts continuous loss and damage. The *punctum temporis* in such a case is reached as soon as the neglect or default and the consequent damage cease to concur. A similar conclusion was reached in England in *Carey* v. *Metropolitan Burgh of Bermondsey* (1903, 20 T.L.R. 2), and by Mr Justice Buckley, sitting as judge of first instance, in *Earl Harrington* v. *Derby Corporation*, [1905] 1 Ch. 205. The pursuers contended that the fact—if it be a fact—that the defenders' sewers were all along inadequate for the purpose of effectually draining the burgh when heavy rainfalls took place, and remained so up to and including the date of the final flooding of August 1920, constituted a continuing neglect or default on the part of the defenders. But that is a very different thing from saying that there was all along an existing cause of action, for if Barrhead had been immune from heavy rainfalls the sewers would never have shown themselves inadequate at all. It follows, in my opinion, that the plea stated for the defenders on the Public Authorities Protection Act must be sustained to the effect of excluding the pursuers' whole claims in respect of all the floodings except that of August 1920. The Lord Ordinary's judgment does not deal with this point, and as he arrived on the merits of the case at the conclusion that the defenders' sewers were sufficient for the effectual draining of the burgh, it was not necessary for him to consider and decide it.

The defenders do not dispute that on the four occasions above referred to—and particularly on the last of them—the pursuers' premises were flooded. But they repudiate all liability. This repudiation is based on an interpretation of the proved facts of the case, which rests on a particular and, so far as I know, original view with regard to the limits of their legal responsibilities as drainage authority. It is necessary therefore to examine this view in the first instance. It appears to have been suggested by the circumstance that the scheme for effectually draining the district in operation at Barrhead is a dual one. Sewage in the strict sense of the word, plus roof water, is carried by continuous lines of sewer pipes to purification works on the bank of the Levern Water at a point below the site of the burgh. Surface water (such, for instance, as collects on roads and streets) is carried by separate pipes to the most convenient point on the Levern Water and discharged direct into it. According to the burgh surveyor—and as might be expected to be the case—the distinction is not one which it is possible to carry out in all cases. He says — "Whenever we can find an outlet for surface water we take it; even in new premises, if we can get an outlet for surface water *or roof water*, we ask them to connect up with an open ditch or a surface-water drain, or whatever it may be, and wherever that cannot be done we have got to take it into the sewer"; and again — "The only surface drainage that I know that drains into the sewers is the roofs of the houses *and the back courts* of the buildings." However it may be performed, the statutory duty of the burgh is effectually to drain its district. In the case of the pursuers' premises the surface drainage of the courts to the north and west of the main building drains into the sewers by means of a grated manhole and about seven sivers and gullies, as does also the roof water from the western portion of the main building—this in addition to sewage proper from the inside of the buildings. The roof water from the eastern part of the main building and from the smaller buildings drains into lines of piping which are the property of the pursuers, and discharges a considerable distance away into the culvert of the Kirkton Burn, near the point of junction with the Levern Water. This constitutes a relief *pro tanto* of the burgh's obligations.

At the root of the argument by which the defenders supported the judgment of the Lord Ordinary there lay the proposition that they are under no duty to carry off by means of their sewer the surface water naturally delivered to the manhole and the sivers and gullies in the pursuers' courts or yards. The pursuers' premises are so situated as to make this contention

of importance in relation to the circumstances of the flooding complained of. They occupy along with some other industrial buildings a low-lying piece of ground of considerable extent made saucer-shaped, partly by the natural configuration of the ground, and partly by a railway embankment on the south and the embanked roadway of Glen Street on the north and east. If, say the defenders, the sewer is inadequate at times of heavy rainfall to carry off the surface water from the pursuers' courts or yards and the premises are consequently flooded, the responsibility rests not on the defenders but on the pursuers themselves as the persons on whose property such surface water falls or collects. Before such persons can claim any damage they must show (according to the defenders) that the flooding of which they complain arose, not from the *rejection* of such surface water from a sewer surcharged up to the level of their property, but from the *ejection* on to their property of sewer water reaching their premises *via* the sewer. This is no doubt a logical sequel from the proposition that the burgh is under no obligation to take any surface-water drainage into their sewers. If such is the case, then it follows that the pursuers cannot prove their case without discriminating between the contribution to the flood made by *rejected* surface water which could not get into the surcharged sewer, and *ejected* water which had already got into it. This is as much as to say that the pursuers' case is incapable of proof, and the Lord Ordinary has found it not proven. He does not explicitly deal with this proposition of the defenders. But they not only argued to us that it was sound, but frankly told us that it was essential to their success. Anyhow it is very clear that whatever view is taken of it must determine the point of view from which the proved facts of the case have to be regarded.

This proposition was maintained independently of any question about spate-overflows from the Kirkton Burn or the Levern Water reaching the pursuers' premises. Questions of that kind arise in the case and will receive attention later, but they are distinct from the question of legal responsibility arising upon the defenders' proposition.

It appears on record in the form of a charge of negligence against the pursuers to the effect that in availing themselves of the sewers they did not sufficiently consider the difficulties presented by the relative levels of their property and the sewers. The Lord Ordinary held—and I agree with him—that in the absence of any evidence to the contrary the mode of draining the pursuers' premises and the connections with the sewers, as made and used for many years, had the consent of the burgh as drainage authority. No denial of responsibility on any such ground was ever put forward in connection with any of the complaints of flooding prior to the defence of this action.

In the argument before us the proposition took the form of an uncompromising contention that when a burgh adopts the dual system any surface-water drainage is received into the sewers at the peril of the owner so privileged. But the statutory obligation of effectually draining the burgh cannot be evaded in this fashion.

The influence of the same proposition may be traced throughout the examination of the defenders' witnesses. For instance, the magistrates who attended at the pursuers' request at their premises on the evening of 20th August 1920, when the flood was beginning, and saw the sewer water rise in the manhole until it was level with the top, are at pains to explain that the ponding which they saw thereafter accumulating above the manhole and in the yards was due, according to their observations, rather to the surface drainage of the yards which could no longer get away by the manhole into the sewer, than to a positive overflow of sewer water from the manhole. The burgh surveyor's assistant, on the other hand, describes the sewer water as rising in the manhole and then breaking over the top of it, and the defenders' witnesses in like manner attribute the ponding which occurred to the continued rise of the sewer water, which no doubt dammed back the surface drainage and, in combination with it, put the whole yards under water.

So far as regards legal responsibility there is no real difference between these two versions of the same incident, for in either case it was the inadequacy of the sewer which caused the flooding by *ejecting* or *rejecting* water which it should have been able to carry away from the pursuers' property. The sewer is equally inadequate for its purpose either way, and in either case the phenomenon, commonly called regurgitation, takes place. Whenever the channel by which water is intended to flow—whether the water-run of a sewer or the bed of a natural stream—becomes too small to carry away the current as fast as it is is delivered to the channel, the flow is obstructed or dammed back, and the level of the water behind or above the obstruction is forced to a higher plane—in other words, the sewer or the stream, as the case may be, regurgitates or restagnates. In the present case that which forced the sewer water upwards through the manhole until it rose level with the top and then broke over it was precisely the obstruction of the sewer channel by surcharging, and it matters nothing—so far as the liability of the defenders is concerned—what were the relative volumes of (*a*) the overflow from the manhole, sivers, and gullies of water which had already got into the sewer on the one hand, and (*b*) surface water dammed back by the rising level of the water already in the sewer on the other hand, so long as the duty of the burgh to provide effectual drainage is clear.

At the end of his opinion the Lord Ordinary very conveniently summarises his conclusions in a series of informal findings. Of these the one lettered (*e*) is fundamental to the result at which he arrives. It is—"That the pursuers have failed to prove that the defenders' system of sewage and

drainage is inadequate or insufficient, or that the defenders were guilty of any fault or negligence or breach of statutory duty in any way." While stoutly maintaining that the burgh as drainage authority was under no obligation to carry off the surface drainage of the pursuers' yards by their sewers, the defenders candidly and very properly stated at the debate before us that if they were mistaken in this, the facts established by the proof show that the sewers were actually inadequate for their purpose in the present case—particularly in regard to the pursuers' premises. This does not destroy their other answer to the pursuers' claim, which depends on the part played (in the floodings of February and August 1920) by the condition of spate in which both the Kirkton Burn and the Levern Water undoubtedly were, but it cuts very deep into the Lord Ordinary's opinion and into the merits of the case. For the reasons just given I think the defenders are mistaken, and the foundation of the judgment reclaimed against is thus displaced.

[*His Lordship reviewed the evidence and dealt with the facts of the case, and proceeded*] —But the question—and it is a very important and general one—which remains is this. Be it (first) that a flood of half a foot or thereby in depth had accumulated in the yards to the north and west owing to the inadequacy of the burgh sewers, and that the barricades had been sufficient to prevent this accumulation reaching the interior of the main building in any large volume; be it (second) that the spate-overflow of the Kirkton Burn broke in at the joiner's shop door, and, partly by spreading through the main building and partly by flowing (when it got high enough) over the rising ground at the south-west corner, overcame the barricades; be it (third) that the floods from those two sources combined to cover the pursuers' premises inside and out, and were at a later stage augmented by spate-overflow from the Levern Water, so as to produce a maximum flood-level of 1·97 all over the pursuers' premises—what is the legal result as regards the liability of the defenders?

In the first place it is clear that the defenders are not responsible for providing sewers adequate to carry away spate-overflows from natural streams. In the second place the defenders have tried to prove negligence against the pursuers in respect of their failure to restore the defective part of the bank of the Kirkton Burn until the eleventh hour; and the Lord Ordinary makes appropriate comment on part of the pursuers' evidence about this. But the attempt falls far short of success. Moreover, by far the greater part of the spate-overflow occurred on a considerable length of the bank lower down than the defective part. In the third place the defenders' evidence suggests that some of the rhones on the north-eastern front of the main building were in bad condition, adding to the surface-water in the yards, but the evidence is insufficient to make this possible element of contribution a material one. They also produce some evidence in support of the hypothesis that the pursuers' roof-water drain to the Kirkton culvert may have been blocked, but—curiously enough—they suggest in the same breath that the high level to which the Levern Water rose at the mouth of the Kirkton culvert caused the level of the water in that drain to rise to such an extent as to regurgitate from the only siver which communicates with it in the pursuers' premises, namely, one at the eastern end of the open shed, adjoining the van shed on the north. The level to which the Levern Water actually rose at the mouth of the Kirkton culvert is unknown, but it is very probable that the pursuers' drain to the Kirkton culvert, which carried not only the roof water above referred to but any water reaching the ditch between the Kirkton Burn and the main building, was at some stage in the later history of the flood considerably obstructed by the height to which the water stood at the culvert mouth. With regard to none of these matters, however, is the evidence sufficient materially to affect the proved results of the insufficiency of the burgh sewer which manifested themselves independently of spate-overflows or other causes.

The defenders' argument with regard to these matters was based on their plea of contributory negligence. As was pointed out in the analogous case of *Moffat & Company* v. *Park* (1877, 5 R. 13) the case is not one of negligence contributing to the defenders' neglect of their duty of efficient drainage, although if the pursuers' use of the sewer for the purpose of carrying away surface water had been unauthorised it might possibly have been so regarded. The true view of the matter, as was observed in that case, is that even if the pursuers had been convicted of negligence in the administration of their property, the effect of such negligence would be, not to destroy their case, but to constitute an important element in mitigation of damages.

The case is not exactly on all fours with that of the *Caledonian Railway Company* v. *Greenock Corporation* (1917 S.C. (H.L.) 56) as the pursuers endeavour to maintain. The displacement of the railway company's retaining wall by water ponded behind it was the effect of the totality of the weight of flood water delivered on to the ground behind, and it was obvious that any material contribution to that totality — even though comparatively small in itself — might be properly said to have been the true cause of the ultimate displacement, and to entail liability for the whole damage. But if a flood is contributed to from two sources, only one of which proceeds from the negligence of the defenders, it would be most unjust to attribute to that negligence responsibility for the whole damage done. In the *Greenock* case the contribution to the flood which displaced the weight of the wall was—so to speak—the last straw which broke the camel's back. In the present case the pursuers' premises would have suffered extensive damage from spate-overflow even if the defenders' contribution to the flood had never been made. The depth

of the flood all over would not have been so great, but the premises would have been deeply flooded all the same.

The problem presented seems to me to be much the same as that which came before the Court of Appeal in the English Court of Chancery in *Nitro-Phosphate Company* v. *London and St Katherine's Docks*, 1877, 9 Ch. D. 533. The extraordinary high tide which actually occurred would have flooded the plaintiffs' premises very seriously even if the dock company had made their river wall of the full statutory height, but the decision was that while the extraordinary height of the tide did not excuse the dock company from their liability, the dock company should be allowed to show that the damage caused by the flood should be apportioned. Mr Justice Fry, as the judge of first instance, had added a declaration to his judgment by which he found the plaintiffs entitled to recover whatever sum might be fixed as an assessment of the whole damage done. This he did on the view that the defendants by their negligence had prevented it from being ascertained what the extent of the damage would have been if they had made their retaining wall of the proper height, and that accordingly they could not definitely establish any ground for apportionment. But the Court of Appeal sent back the case for assessment of the damage *without* this declaration, thus leaving entirely open any question of apportionment or mitigation. If the defenders in the present case had been the sole authors of the flood which accumulated on the pursuers' premises and ultimately invaded the main building, it is not disputed that they would be liable for the consequences of their negligence. If they are only material contributors to the flooding, along with other causes (natural in their character) for which they bear no responsibility, on what principle can it be contended that they should avoid liability altogether? There is no difference—as regards the question of liability or none—between negligence which floods and negligence which helps to flood. But it may well be that the assessment of the damages entailed by negligence of the latter kind—and that assessment must be in the nature of a jury question according to our practice—may fall short, even very far short, of the figures named in the conclusions of the summons, or of those spoken to in the evidence as representing an assessment of the total damage done.

The interlocutor of the Lord Ordinary assoilzieing the defenders should in my opinion be recalled, the sixth plea-in-law for the defenders on the Public Authorities Protection Act should be sustained, and the defenders assoilzied from the conclusions of the summons relative to any of the floodings except that of 17th August 1920, and the defenders' first, third, fourth, and fifth pleas-in-law should be repelled. It seems unnecessary in the present situation of the case to increase the burden of an already costly litigation by remitting to the Lord Ordinary, and if your Lordships agree in the above result I propose that the case be put out for hearing on the question of the amount of damages. . . .

LORD SKERRINGTON— . . . In so defining the true controversy between the litigants I have given full effect to the defenders' plea founded on the Public Authorities Protection Act 1893, and have rejected what I regard as the untenable contention of the pursuers' counsel to the effect that there has been "a continuance of injury or damage" which entitles the pursuers to recover damages in respect of injuries received by flooding prior to 17th August 1920.

It is unnecessary, and would in my opinion be a waste of time, to refer in detail to the evidence in regard to the insufficiency of the defenders' sewerage system to drain the pursuers' property. It is, however, necessary to state the attitude of the defenders' counsel with reference to the findings in fact which lead up to the decision in favour of their clients. As regards conclusion (*e*) the defenders' senior counsel refused to support it by reference to the evidence. On the contrary, he pointed to the fact that on the evening of 17th August 1920 four members of the defenders' Town Council had seen for themselves that the water had risen to such a height in a sewer manhole situated on the pursuers' property as to indicate that the burgh sewers were not carrying away the contents of the pursuers' branch drains. From this fact he argued that conclusion (*e*) could not have been intended to be read in its natural sense, but that it must have been intended as an affirmation by the Lord Ordinary of a certain legal view in regard to the nature and extent of the duties which the defenders as the sewerage and drainage authority of the burgh of Barrhead owed to the pursuers as the owners of property within the burgh. This contention, even if it were tenable, would not help the defenders. They would still remain in the dilemma that the decision in their favour rested on a finding which was admittedly indefensible if regarded as a finding in fact, and which was (as I shall show) equally indefensible if regarded as a finding in law. In justice to the Lord Ordinary, however, I must say that the learned counsel (who was not engaged in the case in the Outer House) was mistaken in his interpretation of the finding. The Lord Ordinary stated in his opinion that he proceeded on the assumption that the surface-water from the pursuers' property, which had flowed into the defenders' sewers ever since the year 1901, was so received with the defenders' consent as the local authority. The defenders' counsel stated that they did not dispute the correctness of this assumption, but they attempted to maintain in the Inner House a plea not raised on record or argued before the Lord Ordinary, viz., that the defenders' consent to a connection being made between the pursuers' branch drains and the burgh sewers was given, or must be deemed to have been given, subject to various conditions not mentioned in any statute, and including a condition that the pursuers should not allow surface-water to flow into the drains so connected. This contention is worth noting,

because it indicates the limited duty which the defenders conceive that they owe to the pursuers, but in my judgment it has no foundation either in fact or in law, and is not only unsound but unintelligible. . . .

Further, I see no legal ground for what seems to have been the Lord Ordinary's view, viz., that the subsequent invasion of the pursuers' property by a great flood of water for which the defenders were not responsible washed away any liability on their part in respect of a smaller and earlier flood due to the insufficiency of the burgh sewers. Why should the defenders be held scaithless in respect of liquids which they unlawfully caused to accumulate on the pursuers' property and which flowed into the pursuers' buildings, either with or without the help of the Kirkton Burn or of the Levern Water? No doubt the difficulty in proving the amount of the damage suffered by the pursuers through the fault of the defenders is greatly increased by the presence of other sources of injury for which the defenders are not responsible, but this difficulty does not lead to the conclusion that the defenders are absolved from all responsibility for their negligence and breach of duty. It must, I think, be a jury question as regards each relevant item of the pursuers' claim whether the injury proved to have been caused by flooding on 17th August 1920 to any particular piece of property is, as a matter of reasonable inference from the nature of the damage, the situation of the property, and so on, attributable to liquids which accumulated on the pursuers' property owing to causes for which the defenders were responsible, or for which on the other hand they were not responsible; or again, whether the only reasonable inference is that the injury was caused by a combined flood due to various causes, for one only of which the defenders were responsible. The apportionment of damage in a case which from its nature does not admit of precise evidence and assessment is in my judgment a suitable matter for the determination of a jury or of a judge performing the functions of a jury.

In the view which he took of the case the Lord Ordinary did not think it necessary to consider the plea of contributory negligence (plea 5 for the defenders), but we heard argument upon it. The defenders' counsel maintained that the pursuers had been guilty of contributory negligence in failing to keep the banks of the Kirkton Burn in proper repair. The evidence does not in my opinion support this contention. The defenders' counsel also argued that the sixth plea-in-law for the defenders, based upon the Public Authorities Protection Act 1893, ought to be sustained in so far as that had not already been done by the interlocutor of 2nd November 1921, by which the first conclusion of the summons was dismissed of consent. As I have already stated, I see no answer to the view that all claims of damages at the instance of the pursuers in respect of floodings prior to that of 17th August 1920 have been cut off by the statute.

In my judgment we ought to recal the interlocutor reclaimed against, to sustain the defenders' sixth plea-in-law in so far as that has not already been done, and to assoilzie the defenders from the remaining conclusions of the action in so far as these claim damages in respect of floodings other than that of 17th August 1920; to repel the defenders' first, third, fourth, and fifth pleas-in-law; and to appoint parties to be heard in regard to the damages (if any) for which the defenders are liable to the pursuers.

LORD SANDS—In this case the pursuers claim damages for two floodings of their premises, viz., upon 11th February 1920 and 17th August 1920. In regard to the claim in respect of flooding upon 11th February the defenders plead the protection of the Public Authorities Protection Act 1893, in respect that the action was not raised within six months of the occurrence of the events complained of. For the reasons stated by your Lordship in the chair I am of opinion that this defence is well founded.

[*His Lordship proceeded to deal with the facts of the case, and concluded*]—In regard to the question of contributory negligence I agree with your Lordship in the chair that this is not a case of such a plea excluding any claim even if sustained, but it might be an element in a question of damages. I confess that I have some sympathy with this plea, or perhaps I should rather put it thus, that the considerations underlying it tend to militate against sympathy with the pursuers. As regards the breach in the embankment the evidence is not satisfactory as to whether the eleventh-hour repair was sufficient, but in any view in the light of what happened in February this repair ought not to have been delayed so long. But it is not established that an inrush from this particular spot was a factor of importance. The burn broke over its banks generally. There can be no doubt that the situation of this burn at a higher level and with an artificial bank is a standing menace to pursuers' property in case of flood. But there is a lack of evidence in regard to the steps proper to be taken and of pursuers' right to take them in order to remove this menace.

On the whole matter I agree with your Lordship in the chair that it is established by the evidence in the case that defenders' sewer system was inadequate, that this led to the invasion of pursuers' property by flooding upon 17th August, and that pursuers are entitled to an award of such damages as they may instruct to be attributable to the flooding for which defenders are responsible. As we have not yet had an opportunity of hearing the parties upon the question of the nature and the amount of damages, it would be inexpedient at this stage to say more than that I concur in your Lordship's indication of the interlocutor proper to be pronounced.

The Court recalled the interlocutor of the Lord Ordinary, repelled the first, third, fourth, and fifth pleas-in-law for the defenders, sustained their sixth plea-in-law, assoilzied them from the conclusions of

the summons relative to any of the floodings except that of 17th August 1920, and continued the cause for further procedure.

Counsel for Pursuers — Watson, K.C. — Jamieson—G. R. Thomson. Agents—John C. Brodie & Sons, W.S.

Counsel for Defenders—Graham Robertson, K.C.—Ingram. Agent—W. M. Murray, S.S.C.

Wednesday, July 4.

FIRST DIVISION.

MACDONALD, GREENLEES, & WILLIAMS (DISTILLERS), LIMITED, PETITIONERS.

Process—Petition—Company—Intimation—Petition for Sanction of Scheme of Arrangement — Companies (Consolidation) Act 1908 (8 *Edw. VII, cap.* 69), *sec.* 120.

In a petition by a private company, with consent of a majority in numbers of each class of its shareholders, representing more than three-fourths of the value of the capital in each class, for authority to call and hold meetings and for sanction of a scheme of arrangement under section 120 of the Companies (Consolidation) Act 1908, no crave was made for intimation on the walls and in the minute book. The Court *ordered* intimation on the walls and in the minute book.

The Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69) enacts—Section 120—"(1) Where a compromise or arrangement is proposed . . . between the company and its members or any class of them the Court may on the application in a summary way of the company or of . . . any member of the company . . . order a meeting . . . of the members of the company or class of members, as the case may be, to be summoned in such manner as the Court directs. (2) If a majority in number representing three-fourths in value of the . . . members or class of members, as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on . . . the members or class of members, as the case may be, and also on the company. . . ."

Macdonald, Greenlees, & Williams (Distillers), Limited, *petitioners*, presented a petition under section 120 of the Companies (Consolidation) Act 1908 for authority to convene meetings of the members and shareholders of the company for the purpose of considering and approving a scheme of arrangement prepared with a view to converting the company from a private into a public company, making a public issue of its shares and obtaining a quotation on the Stock Exchange. A majority in number of each class of shareholders, representing more than three-fourths of the value of the capital in each class, were consenters to the petition.

The petition did not contain a crave for intimation on the walls and in the minute book, and when the petition appeared in the Single Bills counsel submitted that in the circumstances such intimation was unnecessary.

The Court pronounced this interlocutor—

"Appoint the petition to be intimated on the walls and in the minute book in common form, and allow all concerned to lodge answers thereto, if so advised, within six days thereafter."

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

Saturday, July 14.

FIRST DIVISION.

TRUSTEES OF DOMESTIC TRAINING SCHOOL, &c., GLASGOW, PETITIONERS.

Charitable Trust—Administration—Failure of Objects—Application for Authority to Transfer Funds—Cy près.

The trustees of a charitable society which carried on a home for training friendless or destitute girls as domestic servants and a hostel for girls unable to find temporary accommodation, petitioned the Court for authority to divide its funds and property between a church association which trained orphans and destitute girls for domestic service and a vigilance association for the protection of women and children. Owing to changed conditions the usefulness of the society had been much impaired, the number of girls desirous of receiving domestic training having greatly decreased, and the hostel having become merely a lodging-house for women workers who were in a position to pay for, and did pay for, the board and lodging provided. Further, its financial position had become such that it could not be continued without the payments received from lodgers. The Court *granted* the prayer of the petition.

Mrs Rachel Mitchell Teacher and others, the trustees of the Domestic Training School and Hostel for Women Workers, 260 Renfrew Street, Glasgow, *petitioners*, presented a petition in which they craved the Court to authorise them to transfer the property and funds of the trust to the Church of Scotland Training Home for Servants and to the National Vigilance Association of Scotland in proportions set forth in the petition.

The petition stated—"That in the year 1884 there was founded in Glasgow a society known at its inception as 'The Glasgow Union for the Care and Help of Girls and Women.' Its object was 'to form a centre for all work at present carried on in Glasgow for the care and help of women and girls, and to set on foot from time to time, and after consultation with existing