by any regulation cause the preference to be exercised in a way which puts an ordinary trader to a different disadvantage from that which he must suffer from the bye-law as approved of by the Sheriff being carried out by a fixed appropriation, I can see no ground for holding their action to be incompetent. I cannot see that they by appropriating berths from time to time, instead of setting aside a berth for a longer tract of time, are doing anything different from what the bye-law sanctions. What they practically do is to set apart a berth which an ordinary trader knows he can only enter on the footing that he cannot remain if a preference steamer comes forward. The regulation, although it might have been much better worded, does certainly not put any trader to disadvantage as compared with the former mode of working under the bye-law. In my view they are not extending the operation of the bye-law beyond its intent.

To me it appears that the only plausibility in the objection to the regulation lies in the form in which it is worded. It could easily have been expressed in terms which, while not affecting the operative effect of it, could not have been even with plausibility impugned as *ultra vires*.

I hold that what was done in fact was not in contravention of the bye-law, and that the regulation is so expressed as to authorise what is done, and that this regulation could be competently issued by the respondents.

LORD DUNDAS was sitting in the First Division.

The Court adhered.

Counsel for Pursuers (Reclaimers) — Horne — J. G. Jameson. Agents — Boyd, Jameson, & Young, W.S.

Counsel for the Defenders (Respondent) —Cooper, K.C. —Morison, K.C.—Constable, K.C.—Grierson. Agent—James Watson, S.S.C.

HOUSE OF LORDS.

Monday, June 28.

(Before the Lord Chancellor (Loreburn), Lord Ashbourne, Lord James of Hereford, Lord Gorell, and Lord Shaw of Dunfermline.)

GREENOCK HARBOUR TRUSTEES *v.* GLASGOW AND SOUTH-WESTERN RAILWAY COMPANY.

Sale—Sale of Heritage—Price—Interest on Price—Rate—Harbour—Railway.

In 1881 Harbour Trustees made an agreement with a railway company whereby each was to convey to the other for their respective undertakings certain lands which were to be acquired or had already been acquired. The agreement provided the mode in which, calculated according to the cost of acquisition of the lands to be acquired, the price chargeable to the parties for the lands to be conveyed to them respectively was to be fixed. By 1885 the parties were in possession of the respective lands, but owing to disagreement arising out of the terms of the agreement and from the fact that difficulties unforeseen at its date had had to be surmounted, no conveyances had been executed and no adjustment of accounts had been made. In 1906 the Harbour Trustees brought an action to have the agreement finally implemented and to recover a sum alleged to be due to them on a balancing of accounts. They claimed interest.

Held (*dub.* the Lord Chancellor and Lord James) that the circumstances of the case disclosed no specialties sufficient to take it out of the established rule that where a purchaser of heritage entered into possession before the purchase price was paid, interest on the price from the date at which he had obtained full possession ran in favour of the vendor, and that the rate of interest to be charged in the particular case should be 3½ per centum.

In 1906 Greenock Harbour Trustees raised an action against the Glasgow and South-Western Railway Company, in which they sought to have the defenders ordained to deliver to the pursuers a valid disposition of certain lands, to accept from the pursuers a valid disposition of certain other lands, and to pay certain sums as being due on a balancing of accounts, all in implement of an agreement between the parties dated 10th, 15th, and 16th March 1881. The only question of general interest in the case, the agreement being very special, was as to whether interest on the price of the lands should be chargeable by the one party against the other—if so, from what date and at what rate.

The *clauses* of the *agreement* which gave rise to the case and were in question were these—"3. The company shall, within three years after the passing of the Bill into an Act, acquire the properties lying between the turnpike road leading from Port Glasgow to Greenock and the river Clyde belonging to the Marine Investment Company, the Clyde Pottery Company, William Watson, Messrs Sommerville & Company, and John Fullarton (in this agreement called 'the owners'), with all the rights and privileges thereto belonging, and shall thereupon sell to the Trustees so much of the foreshore of the river Clyde as lies to the north of the line C, D, E, F, G, shown on the plan, at the prices per square yard at which the company purchased the same. 4. The company shall purchase from the Trustees the land and foreshore of the river Clyde, coloured yellow on the plan, at the average price per square yard of the land to be purchased under article 3 hereof. 5. After the company shall have acquired the properties belonging to the owners, they

shall convey to the Trustees, free of cost, all rights and privileges affecting the foreshore and *alveus* of the river to the north of the said line C, D, E, F, G, including any right and title to an access or accesses to the river from the said properties, or any of them."

The *circumstances* under which the agreement was made and the action raised were thus narrated by the Lord Ordinary (SALVESEN)—"In 1880 the pursuers obtained parliamentary powers to construct in the east end of Greenock a large new dock, since completed and now known as the James Watt Dock. In the following session of Parliament the defenders promoted a Bill in which they sought power to construct certain railways for the purpose of connecting their system with the new dock. The pursuers presented a petition against the Bill, but agreed to withdraw it on the terms contained in the agreement entered into between the parties, dated 10th, 15th, and 16th March 1881. The terms of this agreement were finally adjusted in a committee room of the House of Commons just before the evidence for the promoters fell to be led. Perhaps this circumstance may explain the difficulties which have arisen as to its construction.

"For the purpose of constructing the undertakings of both parties it was necessary that ground should be acquired on the foreshore to the west of what was then Inchgreen Island. This stretch of land was owned principally by the pursuers and the five persons named in the third article of the agreement. Much of the ground was submerged at high water, and some of it, including what belonged to the pursuers, was used as timber ponds into which the timber was floated at high water and left lying in the mud at low water. Access to these timber ponds was obtained by what were termed 'water passages.' These passages did not differ from any other portions of the foreshore except in so far as they were indicated by a row of stobs on each side which served both to mark the passages and to guide the timber into the ponds. At the extreme west end of the ground there were two plots belonging to the Clyde Pottery Company and to William Watson, which were separated by a street called Pottery Street extending from the high road between Greenock and Port Glasgow down to low water-mark. This street had never been properly formed.

"For their undertaking, which included the construction of a quay wall, the pursuers required the seaward portion of the ground in question along its entire length, and they ceased to have any use for the plots 5 and 6 on the plan, which had been feued by the pursuers from the superior and were let as timber ponds. On the other hand, this area and the contiguous ground to the west were required for the Railway Company's lines and other works. Accordingly in the agreement a line with the lettering C, D, E, F, G, was drawn through the foreshore in a direction from west to east; and the general scheme of the agreement was that the pursuers were to have the whole ground to the north of this line while the defenders took the ground between the line and the road to Port Glasgow. For both parties it was essential that they should be fully vested in the property of their respective portions of the land in question.

"After the agreement had been executed the defenders proceeded to acquire under their compulsory powers the properties belonging to the five persons named in article 3. The price of one of the properties was settled by agreement, the prices of the others were all determined by the award of arbitrators or juries under the Lands Clauses Act. It then occurred to the defenders that neither they nor the pursuers could obtain a complete title to the whole lands required unless they got a disposition of the *solum* of the water passages from the superior. They differed as to the price to be paid—the defenders maintaining that the *solum* of the passages, burdened as it had been with a right of access to the timber ponds, was valueless, while the superior demanded a substantial price. This matter also was referred to arbitration, and on the defenders paying the sum awarded by the arbiter a disposition was granted in their favour which completed their right of property in the passages in question. Meanwhile both parties were engaged in constructing their several undertakings; and since Whitsunday 1885 each has been in possession of the ground on the north and south respectively of the line C, D, E, F, G. The conveyances to be granted under the agreement have never been adjusted; nor have the prices payable been settled. This great delay may be explained in various ways, but is I believe mainly due to the different views taken as to the meaning of the agreement. After protracted negotiations parties have failed to come to terms, and the pursuers have now brought this action to have the various matters in dispute settled by a court of law."

The *averments* on the question of interest were—"(Cond. 8) . . . The pursuers have repeatedly called upon the defenders to implement their part of the said agreement, but the defenders have refused or delayed to do so, and the present proceedings have accordingly been rendered necessary. The sum first sued for is the difference between the purchase price payable by the defenders to the pursuers and the purchase price payable by the pursuers to the defenders. Interest is due to the pursuers on this sum since Whitsunday 1885, when, as above condescended on, the parties entered into possession of the respective subjects. . . . (Ans. 8) . . . Explained that even if the agreement had been effectual and operative, no interest is due to the pursuers, as no right to interest commenced until the pursuers had established their debt against the defenders and the precise amount thereof, and up till now the pursuers have made no attempt to do so. The agreement not being operative, no question of interest arises. Explained further that the rate of

interest, if any, exigible is grossly overstated, as the lands were waste and incapable of yielding any substantial return."

And the *pleas* were—For the pursuers—"2. The pursuers and the defenders having respectively entered into possession under the said agreement of the said subjects specified in the third and fourth and in the fifth declaratory conclusions of the summons as at Whitsunday 1885, the pursuers are entitled to decree for the difference between the prices thereof, with interest from the said date, in terms of the first branch of the petitory conclusion of the summons." For the defenders—"5. No right to interest has emerged in favour of the pursuers in respect (1) that implement of the agreement according to its terms has never been possible; and (2) that the defenders have always been ready and willing to meet the demands of the pursuers, who have left that obligation unascertained and unexamined, and the defenders therefore fall to be assoilzied from the conclusions of the summons relative to the claim of interest. 6. In any event, the interest charged falls to be assessed at a lower rate than 5 per cent., in respect that the subjects in question are not capable of yielding such a rate of interest."

On 10th July 1907 the Lord Ordinary (SALVESEN) found "that the parties obtained full possession of the subjects required for the purposes of their respective undertakings, not later than Whitsunday 1885, and that each is liable to pay interest as from that date on the purchase price of the land to be conveyed to them respectively, as fixed by the said agreement." On 17th July he fixed the rate at 3½ per cent.

Opinion—". . . The last question is as to the point of time from which interest falls to be calculated. Mr Hunter for the defenders argued that interest can only run from the date of the summons on the ground that the debt is not liquidated until a decree has been pronounced; and it was the pursuers' own fault that it has not been liquidated at an earlier period. He relied mainly upon two cases—*Carmichael*, 8 Macph. (H.L.) p. 119, and especially on the opinion to be found on p. 131; and *Durie's Trustees*, 22 R. 34. The latter case has, I think, very little bearing, because the question there arose in connection with a claim of relief from public burdens imposed by the disponer on his disponee. The disponer had delayed for thirty-one years in obtaining the apportionment which was a necessary condition of his claim for relief; and accordingly it was not unnaturally held by a majority of the Judges that no interest was exigible. The prior case was also different in its circumstances, and interest was refused because there was no contract, express or implied, under which it could be demanded, and no suggestion that the principal sum had been wrongfully withheld and not paid on the day that it ought to have been paid. A different question arises where the disponee of land has been put in possession before payment of the purchase price has been ascertained; and there is a long series of decisions to the effect that interest runs from the date of possession in such a case even if the purchase price may not be ascertained until long afterwards. I refer to *Wallace*, 3 S. 525; *Spiers*, 5 S. 764; *The Stirling and Dunfermline Railway Company*, 19 D. 598 and 621; *The West Highland Railway Company*, 21 R. 576, and *Johnston*, 22 R. 925. In all these cases the rule that where a purchaser has obtained possession of the subjects he is bound to pay interest from the date of his possession was recognised. Lord Cowan in support of this view in the *Stirling and Dunfermline* case said—'It would be contrary to all equity to allow the purchaser to possess the subjects with their fruits without accounting for interest on the price which he has continued to hold in his hands. The interest is the equivalent for the fruits, and drawing one he must pay the other.' No doubt there has been great delay here in ascertaining the amount of the purchase prices due to the pursuers and defenders respectively; but for that delay the defenders are most to blame. They at no time took any steps to have the questions determined, although it seems to have been recognised that it was for them to draw the appropriate conveyances, while Mr Wilson for the pursuers was constantly urging the officials of the railway company to take the matter up except between 1894 and 1900, when he seems to have been content to let the matter lie dormant. I accordingly hold that each party is entitled to debit the other with interest from Whitsunday 1885, when each had full possession of the respective properties which fell to be conveyed under the agreements. I shall, however, be glad to hear parties as to the rate of interest. . . ."

On 19th June 1908 the First Division, on a reclaiming note for the defenders, while varying certain other findings, adhered to the Lord Ordinary's interlocutors *quoad* the question of interest.

At advising—

LORD PRESIDENT—. . . Now that disposes of everything except the question of interest. The question is, must interest be paid on the balances brought out? I confess that all my inclination was to say that no interest should be paid, because the delay that has elapsed in bringing this matter to a conclusion and getting accounts settled as between the parties seems to me just as much the blame of the one as of the other; and, as a rule, people are not to pay interest unless they are in some way in default in not having paid the principal; and here the principal could not have been paid or settled until the balance was known. I have been bound, however, to confess to myself that the authorities are too strong for me. They are quoted by the Lord Ordinary in his note, and I think that since the time of Mr Erskine it has been held as a rule of law that once there has been a bargain of sale made of heritable property, and the buyer has been put in

possession of that heritable property, he is bound to pay interest on the price, as the price should be eventually brought out, even although there still remains something to be done. I rather regret it in a case of this sort, but I cannot go against the authorities. I think I should be doing wrong if I did, and therefore I agree with the Lord Ordinary in the matter of interest. The Lord Ordinary has fixed it at a small figure, and there I think he was quite right. Accordingly upon that matter I agree with him. . . .

LORD M'LAREN— . . . As to the question of interest I was certainly under the impression that interest was only due in respect of *mora*, or in respect of contracts specially implied. This is clearly not a case of *mora*, and it is only by a rather strained mental operation that one could put it under implied contract, but there seems no doubt that where a purchaser has been put in possession of heritable property before the price is ascertained—that is a not unusual case, because it may have to be ascertained by arbitration—but where that is the case, interest is payable for the period of occupation between the date of conveyance and the date of the payment of the price. It is perhaps, as the law is so fixed, of no great importance to say upon what principle such a payment should be discerned on, but the way in which I can most easily represent the principle to my mind is that the interest is given in place of rent, because while before the transaction has been completed by the payment of the price—of course it might be a railway—if the price were not paid, and therefore could not come to be considered as absolutely settled until then—yet the purchaser has been put in possession, and therefore he must pay interest as a substitute for rent, or as consideration for the possession he has had during this immediate period.

LORD KINNEAR—I agree with the opinion of the Lord President in this case.

The defenders (reclaimers) appealed to the House of Lords, and in their *supplementary statement* stated on the question of interest—"There is one important question, namely, the question of interest, which can be dealt with separately.

"Their Lordships have held that the parties obtained full possession of the subjects required for their respective undertakings at Whitsunday 1885, and that each is liable to pay interest as from that date on the purchase price of the land occupied by them respectively. As the sum which falls under the judgment appealed against to be paid by the appellants is by far the larger, this finding tells against them to the extent of several thousand pounds.

"The appellants submit that in the circumstances of the case there is no claim for interest against them. Interest can only run upon a quantified sum. (*Wallace* v. *Geddes*, 1 Sh. Ap. 42; *Stirling Railway Company*, 19 D. 598, see esp. p. Lord Cowan.) In the present case there was no sum ascertained or fixed upon which interest could be chargeable, nor has any sum been fixed until the interlocutor of Lord Salvesen, dated 18th July 1908, was pronounced. The appellants further maintain that interest (apart from contract) can only be got from a person after a demand has been made for payment. (*Blair's Trustees* v. *Payne*, 12 R. 104, 22 S.L.R. 54; *Durie's Trustees* v. *Ayton*, 22 R. 34, 32 S.L.R. 28.) No such demand was made until the service of the summons. The appellants further maintain that interest can only be exacted when there is a contract express or implied to pay it, or when money has been wrongfully withheld from the creditor by the debtor, neither of which *species facti* apply here. (*Caledonian Railway Company* v. *Carmichael*, 8 Macph. (H.L) 119, 7 S.L.R. 666, L.R. 2 Sc. Ap. 57, 2 Paterson's Ap. 1836, see esp. per Lord Westbury.) In the case of the *Caledonian Railway* v. *Carmichael*, the case of *Wallace* v. *Oswald* (3 S. 525) (which is among those founded on by the Lord Ordinary in the present case, and is the only one of the cases referred to in the judgments in the Court below, the circumstances in which approach those under consideration in this appeal) was founded on in argument, but was not held applicable to the purchase made by the Railway Company from Sir William Gibson Carmichael.

"While the Lord Ordinary seems to indicate that he held the defenders liable to pay interest because they were responsible for the delay in completing the transaction, and therefore in fault, this is not the ground of the decision in the Inner House. In point of fact the delay was due to the breakdown of the original agreement, and to the knowledge of both parties that it could not be applied to the facts as ascertained after its date, without equitable adjustment, or at least without getting it judicially construed. The delay which took place in taking steps towards adjustment or towards obtaining judicial construction was, the appellants maintain, attributable to the respondents. That the appellants were not in fault is evident from the correspondence, which shows in particular that on 1st April 1891 the respondents asked the appellants for a tracing of the ground the respondents had to acquire from the appellants, and on 5th June thereafter the appellants sent the respondents the plan required by them, and notwithstanding this no claim was made by the respondents against the appellants from the date of the agreement in 1881 until March 1902, a period of twenty-one years. There is no evidence of an oral character of any fault on the part of the appellants. The representative who instructed the negotiations on their behalf is dead, and the evidence of the respondents' secretary and general manager does not reveal fault on the appellants' part when read along with the correspondence. The ground upon which the Inner House put the finding for interest is that by the law of Scotland, in the case of an ordinary sale of heritage, the purchaser is *ex lege* bound to pay interest for the price of the subject bought from the term at which he enters

into possession as long as he retains the price. (Ersk. iii, 3, 79; Bell's Com. i, 694; *Grandison's Trustees*, 22 R. 925, 32 S.L.R. 542.) But it is submitted that these cases have no application to a transaction like the present, where the sum (if any) ultimately payable in settlement of the cross-conveyances between the parties was not and could not be ascertained without delay and appeal to judicial construction, and where the term at which possession was actually taken had, and could have, no reference to any period at which the sum payable was ascertainable. The circumstances of the present case distinguish it entirely from cases of compulsory taking under the Lands Clauses Acts, which are determined by reference to the provisions and implications of the statutes. (*West Highland Railway Company*, 21 R. 576, 31 S.L.R. 455.)"

The pursuers (respondents) in their case stated—"(7) There remains lastly the question of interest on the purchase prices payable by the parties to each other. The respondents respectfully submit that interest is due by each party to the other from Whitsunday 1885 on the purchase prices respectively payable by them as now ascertained, and they acquiesce in the rate of 3½ per cent. which the Court below, in giving effect to the respondents' contention, has fixed. It is a well-established rule of law that interest on the price of land begins to run in favour of the vendor as from the date when the purchaser obtains possession of the subjects sold. This rule is based on the principle that the vendor, being deprived of the rents and fruits of his land, which he loses by ceding possession thereof to the purchaser, should receive in lieu the interest of the purchase money until the same is paid, and that the purchaser ought not both to obtain the rents and fruits of the land sold and retain the interest on the purchase price. In the present case each party has had the full enjoyment of the other's property since Whitsunday 1885, and at the same time each party has retained the whole purchase price of the other's property. The respondents have all along been desirous of having the transactions completed by the execution of the conveyances and payment of the purchase prices, and from time to time urged the appellants to take the matter up, but without avail, and they submit that there is no reason in the present case for departing from the ordinary rule as to interest."

At delivering judgment—

LORD CHANCELLOR— . . . Then there is a difference in regard to interest. I confess that I have very great difficulty in acceding to the view that interest should be allowed on the balance of price that may be found payable by one of these parties to the other. I do not believe that the rule laid down in *Erskine* was ever intended to be applied to such a case. On a sale of heritable property, where the buyer has been put in possession but the price remains unpaid, it is only reasonable to suppose that he takes possession with a knowledge that he cannot receive the fruits without paying an equivalent, and that the seller cannot be expected to yield the fruits without receiving an equivalent. That is a good foundation for implying a contract to pay interest on the purchase money. But in this case the parties mutually exchanged possession of different lands in or before 1885 under an agreement dated in 1881. The conveyances have never been adjusted, the prices never settled, and each party has apparently been paying feu-duties applicable to the subjects which they were under obligation to convey to each other. It was not till 1906, after a lapse of more than twenty years, that this action was commenced. I do not believe that either party had the least idea, until a quite late stage of their mutual dealings, that interest on the unascertained sums respectively due to each other was running against them, and to exact it for so long a period of time will operate very harshly against one or other. The Lord President reluctantly yielded only to authority in allowing interest. But I think this case is of so exceptional a kind that it may be said to stand outside the principle invoked by his Lordship. I am for not allowing any interest on either side prior to the commencement of this action, though I am not disposed to press my opinion on a point of this kind if your Lordships take a different view.

Finally, I consider that both parties are equally to blame for this litigation, and neither of them has been right in all points, and that accordingly no expenses ought to be allowed to either party either in this House or in the Courts below.

LORD ASHBOURNE — I entirely concur with the Lord Chancellor save in one respect. I think the interest should be allowed—as is the opinion of my noble and learned friends Lord Gorell and Lord Shaw of Dunfermline.

LORD JAMES OF HEREFORD—I agree.

LORD GORELL— . . . With regard to one other point which was much discussed before this House, viz., the question of interest, I have come to the conclusion that the decisions below are correct. It is true that there has been great delay in carrying out this agreement owing to causes which are referred to in the evidence and correspondence, and noticed in the judgment appealed from, but having regard to the general rule of law stated by the Lord Ordinary and followed by him and the Inner House, I am unable to find, from what has taken place between the parties, sufficient to take this case out of the application of the general rule.

The matter from the outset appears to have been treated by the parties as a case of cross purchases of different lands, and although the delay in carrying the matter through appears at the outset to have risen owing to difficulties which were not sufficiently appreciated at the time of making the contract, I do not find there is sufficient to infer any agreement between the parties which would amount to an agree-

ment to depart from the general rule with regard to interest—in fact it will be found from the correspondence that the trustees were pressing the company from time to time to get matters settled, and calling their attention to the fact that interest was running upon the sum due to the trustees; see in particular letters 1st April 1891, 28th September 1900, and 10th June 1903, in the last two of which express reference is made to the amount due for interest increasing, and nothing is suggested in answer to those letters to show that the matter has been treated as a case in which no interest was to be due on either side.

It was argued by the appellants that at any rate the interest should be calculated only at deposit rates, say 2 per cent. per annum, but I can see no reason for departing from the judgment of the Lord Ordinary, who has fixed a very moderate rate of interest from Whitsunday 1885. If the parties had settled the conveyances at that time in 1885 or thereabouts, the balance which was due from one to the other would have been fixed and the matters disposed of, and then the party to whom the balance was payable would have had his money, and would have been able to use it ever since then at ordinary business rates, and it cannot be considered that 3½ per cent. per annum is excessive on such a basis. If interest is allowed at all, as it is decided it shall be, it should be allowed at such a rate as would have been probably obtained by the use of the money from the time when matters ought to have been completed. Had a consignation been made, which was not the case, the depositors would have been out of the money deposited, whereas they have had the use of the money.

The result is that in my opinion the interlocutors appealed against should be varied so far as is necessary by the alteration which I have mentioned in the third finding of the Lord Ordinary in the interlocutor of the 10th July 1907, and also with regard to the costs, and should be, in other respects, affirmed. With regard to the costs I agree with the judgment of the Lord Chancellor.

Lord Shaw— . . . On the subject of interest I confess to your Lordships that I have had considerable difficulty. The judgment of the late Lord Fraser in *Blair's Trustees* v. *Payne* (12 R. 104) (on one of the occasions, all too rare, upon which that very learned Judge sat in the Inner House) states with compendious accuracy the arguments, considerations, and authorities dealing with this subject. The few sentences by Lord Westbury in the Scotch Appeal of *Carmichael* v. *The Caledonian Railway Company* (8 Macph. (H.L.) 131) still express the accepted general principle —"Interest can be demanded only in virtue of a contract, express or implied, or by virtue of the principal sum of money having been wrongfully withheld and not paid on the date when it ought to have been paid." And with regard to the acquisition of lands of which possession is taken without payment of the price, the judgment of Lord Cowan in the *Stirling and Dunfermline Railway Company* (19 Dunlop 598) states the accepted and elementary rule, viz.—"It would be contrary to all equity to allow the purchaser to possess the subjects with their fruits without accounting for interest on the price which he has continued to hold in his hands. The interest is the equivalent for the fruits, and drawing one he must pay the other."

There is no difference in principle between all these authorities. But my difficulty arose from this consideration, that the contract in the present case was not a single but a double contract of the nature of an excambion. And in the ordinary case of excambion, where properties are acquired so as to straighten marches and the like for the mutual accommodation of the owners of adjacent lands, and where a settlement in money is not in liquid terms arrived at, but parties are left to enjoy in the course of years the mutual conveniences arising from the excambion, a case might, in my judgment, quite well arise for holding that there was no piling up of interest either on the one side or the other, and no case of wrongfully withholding in the sense of Lord Westbury's dictum.

Fortunately for the respondents in this case the correspondence pretty clearly disposes of this point. Various letters, beginning on the 21st of January 1891, show the efforts that were being made by the Trustees to obtain an adjustment not only of titles but of accounts from the appellants; and in a letter of 28th September 1900 the cross transactions are treated as of the nature of an excambion, and the point as to interest and its running specifically mentioned. "I must really ask you," says Mr Wilson to Mr Mackenzie, "to take up the question of the excambion in connection with this ground. My Trustees are complaining very much at the delay which is taking place, and, as you are aware, the interest on the sum due to us is increasing to a very large extent." The reference to interest is repeated in a subsequent letter, and in short it appears to me that the general rule referred to in the authorities which I have cited is not abrogated or avoided by what has happened in this case, but on the contrary is confirmed. I therefore think that the Court below has arrived at a just conclusion upon this point. As to the rate of interest I agree in terms with the view and reasons upon that subject which have been expressed in the opinion of my noble friend Lord Gorell. As to costs I concur in the course proposed.

Their Lordships, while varying the interlocutor appealed against in other points, affirmed it on the question of interest.

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Counsel for the Defenders (Appellants)—Clyde, K.C.—Hunter, K.C.—J. G. Spens. Agents—John C. Brodie & Sons, W.S., Edinburgh—Sherwood & Co., Westminster.