so, although I am not sure that I quite follow Lord Dunedin in the observation that he made, and counsel were unable to assist me by giving any apt illustration of what they conceived to have been in his Lordship's mind.

I think it is impossible to say that there are here third parties who would during their lifetime have taken some of the share destined to the claimant if the provisions of the testator had been allowed to be carried out, *i.e.*, who would have benefited under the deed if they happened to survive the present claimant. I agree with your Lordships that the bequest is not a joint one. As Mr Watson pointed out, the idea of severance is to be found at the very beginning of the provision, and is continued right throughout. On the marriage of any one of the children the trustees are directed actually to realise sufficient of the estate to reduce the child's interest into an aliquot and distinct part. Accordingly, as I cannot think that any beneficiary under this settlement other than the ultimate fiar would be affected by giving effect to section 9, I agree with your Lordships that the judgment of the Lord Ordinary should be recalled.

The Court recalled the interlocutor of the Lord Ordinary, ranked and preferred the claimant in terms of his claim, and remitted the cause to the Lord Ordinary to proceed.

Counsel for the Claimant and Reclaimer —Macphail, K.C.—Skelton. Agents—R. R. Simpson & Lawson, W.S.

Counsel for the Pursuers and Real Raisers —Watson, K.C.—Carnegie. Agents—Tods, Murray, & Jamieson, W.S.

HOUSE OF LORDS.

Tuesday, May 23.

(Before Viscount Haldane, Viscount Finlay, Viscount Cave, Lord Dunedin, and Lord Wrenbury.)

CRERAR *v.* BANK OF SCOTLAND.

(In the Court of Session, June 18, 1921, S.C. 736, 58 S.L.R. 524.)

Bank — Right in Security — Secured Loan Account—Transfer to Bank of Shares in Security of Advances—Right of Bank to Tender Shares of Same Denomination in Lieu of Specific Shares Transferred—Acquiescence in System followed by Bank —Bar.

In an action against a bank by one of its customers, who had transferred to the bank in security of advances shares of a certain denomination, the pursuer claimed that on repayment of the loan the bank was bound to account to her for its intromissions with the specific shares lodged, and that it was not entitled to tender a corresponding amount of shares of the same denomination. In the course of the action it was found in fact by the First Division, on appeal from the Sheriff Court, that the bank credited the pursuer in its books with the quantity of shares transferred without making any note or keeping any record of the denoting numbers of the shares, and treated them as interchangeable with the shares of the same denomination held by it on account of other customers, that in the transactions in question the bank acted throughout in accordance with their usual practice, and that this practice was known to and approved of by the firm of stockbrokers whom the pursuer employed as her agents to carry through the transactions with the bank. *Held* (*aff.* judgment of the First Division) that on the facts so found the defenders were not bound to account to the pursuer for their intromissions with the specific shares in question, and appeal *dismissed.*

The case is reported *ante ut supra.*

The pursuer appealed to the House of Lords.

At delivering judgment—

VISCOUNT HALDANE—The point in this case is a very short one, and your Lordships do not think it necessary to take further time to consider the appeal.

I do not propose to recapitulate the facts out of which the claim arises, they are not in dispute. The position in which we sitting in this House are placed makes it the less necessary, for the appeal is limited by the provisions of the 40th section of the well-known Act of 6 Geo. IV, cap. 120, which provides that "when in causes commenced in any of the courts of the sheriffs . . . matter of fact shall be disputed and a proof shall be allowed and taken according to the present practice, the Court of Session shall, in reviewing the judgment proceeding on such proof, distinctly specify in their interlocutor the several facts material to the case which they find to be established by the proof, and express how far their judgment proceeds on the matter of fact so found or on matter of law and the several points of law which they mean to decide; and the judgment on the cause thus pronounced shall be subject to appeal to the House of Lords in so far only as the same depends on or is affected by matter of law, but shall, in so far as relates to the facts, be held to have the force and effect of a special verdict of a jury finally and conclusively fixing the several facts specified in the interlocutor."

Now the case was heard first before the Sheriff-Substitute, who after various proceedings made certain findings. But these were recalled by the Sheriff-Principal, and finally the Court of Session disposed of the matter both in point of fact and in point of law. So far as findings of fact are concerned your Lordships are debarred from considering them here excepting as they raise questions of law.

It was a case in which a lady had sought to claim in an action of accounting against

the respondents, the Bank of Scotland, in respect of certain transactions in shares which the bank had financed for her by making the advances for the purchase of these shares. She desired to fix the bank with the liabilities of a mortgagee in possession of specific and individual shares. The lady conducted her proceedings in respect of the purchase and subsequent sale of the shares through her brokers Messrs Knox & Service, and the bank in setting up the account in the way they did pursued what was with them the usual practice. They did not treat the shares as to be specifically distinguished—they took them *en bloc*, and they said, "We credit you with the title to such a quantity of Coats' shares, but we pay no attention to what the particular numbers and designations of the particular shares are." That was the general practice, and I have no doubt a very convenient practice. It is a departure from what is the ordinary strict course if a borrower goes to a lender and says, "I want to borrow from you on this specific security;" in that case the lender is bound to be depositee of the particular security, and his only rights over it depend upon his contract. But in this case what the bank did was what they had done in a vast number of other cases and what they were accustomed to do in dealing with brokers.

Now the question is whether the brokers of the lady had authority from her to make, and did in fact make, the contract with the bank which the bank have set up, because if they did make it then that makes an end of the case. The Court of Session find in their 13th finding in their interlocutor—"That in the transactions hereinbefore referred to the defenders acted throughout in accordance with their usual practice" (the defenders are the bank—that is the 1st finding) "and that this practice was known to and approved of by the firm of Knox & Service, whom the pursuer employed as her agents to carry through the said transactions with the defenders." It is said that that is not a very specific finding. I think it is a very specific finding; it covers all we want to know—the authority and agency of Messrs Knox & Service—and when your Lordships look at the opinions given in the First Division of the Inner House it is clear that the learned Judges in expressing themselves meant to convey that Messrs Knox & Service had full authority from the lady and did make that arrangement as her agents.

That being so, a fact is found which we have no concern with as such, and we could not challenge it even if we were disposed to challenge it, and that fact once established the rest of the decision is plainly a decision which there is no reason to question.

For these reasons I move your Lordships that this appeal be dismissed, and dismissed with costs.

VISCOUNT FINLAY—I am of the same opinion. It appears to me that the 13th finding as set out in the appellant's case really makes an end of the question which has been brought before us. That seems to me to be an extremely clear finding of fact that Messrs Knox & Service were employed by the pursuer as her agents to carry through the transaction with the defenders, that the defenders throughout acted in accordance with their usual practice, and that this practice was known to and approved by the firm of Knox & Service. It seems to me that there was nothing more to discuss, and that the decision to which the First Division came is the only inference in point of law that is possible from the facts so found.

VISCOUNT CAVE—I concur and for the same reasons.

LORD DUNEDIN—I concur. I think the judgment of the Lord President was entirely satisfactory, and I should only like to add that we being bound by the findings of fact as found by the Division, I think Mr Fleming, necessarily confined within the narrow limits for an appeal to this house as he is by the Judicature Act, really put forward every argument that could have been urged.

LORD WRENBURY—I agree.

Their Lordships ordered that the interlocutor of the Court below be affirmed and the appeal dismissed with costs.

Counsel for Appellant—D. P. Fleming, K.C.—King Murray. Agents—Cuthbert & M'Dowall, Solicitors, Glasgow — Robert White & Company, S.S.C., Edinburgh—Godfrey & Godfrey, Solicitors, London.

Counsel for Respondents—Macmillan, K.C. Watson, K.C.—A. C. Black. Agents—Tods, Murray, & Jamieson, W.S., Edinburgh—Ashurst, Morris, Crisp, & Company, Solicitors, London.

Friday, May 26.

(Before Viscount Haldane, Viscount Finlay, Viscount Cave, Lord Dunedin, and Lord Wrenbury.)

PERCY *v.* GLASGOW CORPORATION.

Reparation — Wrongful Apprehension — Charge of Evading Payment of Fare — Liability of Master for Action of Servants —Scope of Authority —Averments—Relevancy—Form of Issue.

The bye-laws made under the powers conferred by the Glasgow Corporation Tramways Acts 1870 to 1893 provide that it shall be lawful for any officer or servant of the Corporation to seize and detain any passenger attempting to evade payment of his fare whose name or residence is unknown to such officer or servant.

In an action of damages brought by a passenger against the Corporation the pursuer averred that he tendered in payment of the fare a penny slightly marked but not defaced; that the conductor refused to accept it and summoned a tramway inspector, who demanded another penny from the pursuer, which the pursuer declined to pay; that the inspector and conductor then