application of the words is to an individual. I should think there is a great deal to be said in favour of the view that the only mode of committing this statutory offence is that you should do it upon your feet and not when you are in a vehicle being driven by someone else. After all, when you are construing a penal statute, you have to submit the words used to a strict construction. You have no right to construe them so as to bring within the scope of statutory penalties persons who are not expressly brought thereunder, although you may have a very strong feeling that they are committing the offence that the statute contemplated, but in a different way.

In the present case it is not necessary to determine that question, because assuming that the offence of loitering may be committed by a person being driven about by someone else in a motor car, I am clear that no magistrate is entitled to hold that anyone committed the offence upon evidence which showed that the car slowed down upon one particular occasion. In no sense of the word "loitering" does that amount to it. I agree with what Lord Anderson said that "loitering" is a word about the interpretation of which there may be some difficulty, but it means something more at all events than slowing down or stopping on a single occasion.

LORD JUSTICE-CLERK (ALNESS)—I agree. The charge in this case is limited both as regards place and time. The place is Watson Street, and the time 25th August. The only relevant findings of the magistrate with regard to what happened at that place and at that time are these—that a certain car turned into Hamilton Street, along which it proceeded; that on approaching the junction of Hamilton Street and Watson Street it slowed down—quite properly—and that it disappeared from view. I disregard the incident which occurred at the corner, because in my view while it may bear upon the purpose of the manœuvre, it does not bear on the manœuvre itself. The question arises—Do these facts establish the offence of loitering? The idea seems to me to be well nigh fantastic. The case is *a fortiori* of the case of *Fairfoul* ((1895), 2 Adam, 13, 23 R. (J.) 6), which was a decision to the effect that crawling is not loitering. In giving judgment in that case Lord Young made some observations with regard to what loitering means, which I think have a bearing upon this case. He said—"I think the drivers of private carriages also may be prevented from impeding the traffic by loitering in the street—stopping to chat with other drivers, gossiping, and idling. If the charge here had been that the driver was idly stopping to chat or smoke with a friend, the police might have interfered and ordered him to get on; they might have told him that loitering was forbidden and that he was loitering, and if he had refused to comply, might have had him prosecuted quite properly." Loitering in my view connotes the idea of lingering, and that idea is absent in the present case. It may be that the result of the decision which your Lordships are pronouncing may render evasion of this statute more easy than it was before. If that be so, it is a matter for the Legislature and not for us.

On the question whether the offence may be committed by a motorist as well as a pedestrian I desire to reserve my opinion inasmuch as the question was not fully argued before us.

The Court answered the question of law in the negative.

Counsel for the Appellant — Gibson. Agents—Balfour & Manson, S.S.C.

Counsel for the Respondent—Gentles, K.C.—Keith. Agents—John C. Brodie & Sons, W.S.

COURT OF SESSION.

Saturday, March 8.

FIRST DIVISION.

FORTH SHIPBREAKING COMPANY, LIMITED, AND OTHERS, PETITIONERS.

Company — Winding-up — Dissolution — Application to Declare Dissolution Void—Company Dissolved by Voluntary Liquidation while under Obligation to Convey Heritable Property to a New Company—New Company more than Two Years after the Dissolution Requiring Formal Conveyance thereof—Nobile Officium.

A company in liquidation sold and transferred its property and assets to a new company and was dissolved. More than two years after the date of the dissolution the new company (which had also gone into liquidation) discovered that they had not obtained a formal conveyance of certain heritable properties included in the transfer. In these circumstances a petition was presented by the existing company and the surviving liquidator of the old company craving the Court in virtue of its *nobile officium* to declare the dissolution void, and to authorise the liquidator of the old company to grant such formal titles to the property as might be requisite. The Court *refused* the petition.

Macdonald's Curator Bonis, 1923, 61 S.L.R. 207, *followed*.

The Forth Shipbreaking Company, Limited, now in liquidation, and John Taylor Tulloch, chartered accountant, Glasgow, the liquidator thereof, and William Fulton Andrew, chartered accountant, Glasgow, presented a petition in which they craved the Court "To make an order upon such terms as your Lordships shall think fit, declaring the dissolution of the Forth Shipbreaking Company, Limited, incorporated under the Companies Acts 1862 to 1900 on 2nd May 1905 to have been void for the purpose of the hereinafter authority being exercised, and to authorise the petitioner William Fulton Andrew as surviving liqui-

dator of said last-mentioned company to make up title in his own name so far as may be necessary, and to grant such formal title or titles as may be requisite, to vest the heritable subjects situated within or in the neighbourhood of the burgh of Linlithgow and at Philpingstone Road, Bo'ness, at present standing in the name of said last-mentioned company, in the petitioners the Forth Shipbreaking Company, Limited, incorporated under the Companies Acts 1908 to 1917 on 25th September 1920, now in liquidation, and John Taylor Tulloch, the liquidator thereof, or with their consent in the purchaser or purchasers of said subjects from them."

The circumstances in which the petition was presented appear from the following report of George F. Hair, solicitor, Edinburgh, to whom the petition was remitted —"On 2nd May 1905 the Forth Shipbreaking Company, Limited (hereinafter called the old company), was incorporated under the Companies Acts 1862 to 1900. By special resolution of the old company passed on the 8th and confirmed on the 23rd September 1920 it was resolved that the company be wound up voluntarily and that Robert Martin Maclay, chartered accountant, Glasgow (now deceased), and the petitioner the said William Fulton Andrew, be appointed liquidators. By minute of agreement dated 25th September 1920, entered into between the old company and the liquidators thereof of the first part, and a new company to be formed with the same name of the second part, the old company and the liquidators thereof sold to the new company, which was duly incorporated on 25th September 1920, the whole property and assets of the old company. On 18th April 1921 a meeting of the shareholders of the old company was held, at which the liquidators submitted the accounts in the winding-up. Thereafter the liquidators made the usual statutory return to the Registrar of Joint Stock Companies, who registered it on 25th April 1921. Three months after said last-mentioned date the old company was in terms of section 119 of the Companies (Consolidation) Act 1908 dissolved. It had apparently been overlooked that, following upon the execution of the said minute of agreement, the old company and its liquidators should have executed in favour of the new company dispositions of the heritable properties belonging to the old company. On 7th April 1921 the new company passed an extraordinary resolution that the new company be wound up voluntarily, and appointed the said Robert Martin Maclay (now deceased) and the petitioner the said John Taylor Tulloch liquidators thereof. The said John Taylor Tulloch as surviving liquidator of the new company has sold certain subjects in Linlithgow which belonged to the old company at a price of £1100 and desires to sell also heritable subjects in Bo'ness, but finds that he is not *in titulo* to grant a conveyance to the purchaser of the property in Linlithgow, or if and when the same is sold to a purchaser of the subjects in Bo'ness. In these circumstances the petitioners seek to have the dissolution of the old company declared void and to authorise the petitioner William Fulton Andrew as surviving liquidator of said company to make up title in his own name so far as necessary and to grant formal titles as may be requisite, vesting said heritable subjects in name of the petitioners, or with their consent in the purchaser or purchasers thereof. Section 223 of the Companies (Consolidation) Act 1908 provides as follows:—'(1) Where a company has been dissolved the Court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested, make an order upon such terms as the Court thinks fit declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.' As more than two years have elapsed since the date of the dissolution of the old company advantage of the provisions of the above section cannot be taken, and the application is accordingly made in virtue of your Lordships' *nobile officium*. . . . In the whole circumstances the reporter is respectfully of opinion that if your Lordships consider that the *nobile officium* of the Court may be exercised this would not in any way prejudice any person. The petition expressly limits the purpose for which it is craved that the dissolution be declared void. In the case of the petition of the *Champdany Jute Company, Limited*, decided by your Lordships on 9th January 1924, your Lordships caused a similar limitation to be deleted from the prayer of the petition before declaring the dissolution to have been void. That case, however, fell within the terms of section 223 of the Companies (Consolidation) Act 1908, the Company having been wound up less than two years prior to the presentation of the petition. It accordingly differs in that respect from the present case, and it humbly appears to your reporter that it might be of advantage if your Lordships should think fit to declare the dissolution void, to do so only to the limited extent and for the purpose craved."

On 8th March 1924 counsel moved the Court to grant the prayer of the petition and cited *Collins Brothers & Company*, 1916 S.C. 620, 53 S.L.R. 454; *Macdonald's Curator Bonis*, 1924, 61 S.L.R. 207. The LORD PRESIDENT referred to Erskine, iii, 10, 4.

LORD PRESIDENT (CLYDE)—The old company was owner of certain property held partly on ordinary feudal title and partly upon long lease or tack. The old company went into liquidation and made an agreement with the new company whereby these heritable properties were to be made over to the latter. The old company, however, was dissolved without any disposition or conveyance being granted, and more than two years have elapsed since the date of its dissolution. The new company has itself entered upon liquidation, and its liquidator is now anxious to dispose of the properties

referred to, to which, however, he is unable in the circumstances to grant a title. The present petition has been brought to have the dissolution of the old company declared void, with a view to the liquidator of the old company, who happens to survive, granting such formal titles to the property as may be requisite. The petition is an application to the *nobile officium* of the Court in respect that section 223 of the Companies Act of 1908 cannot be taken advantage of. In the recent case of *Macdonald's Curator Bonis* (*supra*, p. 207) we had to consider whether the circumstances involved in that case entitled us to exercise our *nobile officium*. The case was one in which section 223 would have provided relief if the application had been made within the period limited by the section. Relief by resort to the *nobile officium* was refused on the grounds explained in the judgment. I see no difference between the circumstances of this case and the circumstances of the case of *Macdonald's Curator Bonis* which is in any way material. It is true that in *Macdonald's* case there had been no agreement to make over the properties to any third party before dissolution took place. In the present case there was such an agreement, but it was not followed by any conveyance of the property. I cannot see that the circumstance that the old company had incurred an obligation which it failed to implement makes any material difference. As was said in *Macdonald's* case, there is no reason why we should exercise the *nobile officium* when the ordinary law applying to caduciary property is available to the parties. It may be that by resorting to their rights under the ordinary law they may be unable to obtain a title to this property as perfect as they could have wished, or as perfect as it might have been if they had timeously availed themselves of section 223 of the statute. But the ordinary law does provide a remedy to them, and that being so there is no sufficient ground for invoking the *nobile officium*. I think the present case is ruled by *Macdonald* and that the application should be refused.

LORDS SKERRINGTON, CULLEN, and SANDS concurred.

The Court refused the petition.

Counsel for Petitioners — D. Jamieson. Agents — Fraser, Stodart, & Ballingall, W.S.

Thursday, March 13.

FIRST DIVISION.

HANNAH'S TRUSTEES *v.* HANNAH.

Succession — Settlement — Approbate and Reprobate — Clause of Forfeiture—Right of Children Claiming Legal Rights to Found on Clause of Forfeiture to Exclusion of their Own Issue—Clause Read as Inoperative.

By his trust-disposition and settlement a testator left the liferent of his estate to his widow and the fee to the children who survived him, in equal shares, payable on their attaining majority, with a destination-over in favour of the issue of children who predeceased the period of division, viz., the death of the widow. He further declared that the provisions to his wife and children were to be accepted by them as in full satisfaction of their legal rights, and that if any of them should claim their legal rights "he or she shall forfeit all his or her right, interest, or benefit under these presents; and further, all right, interest, and benefit under these presents which would otherwise have been taken by the issue of any child claiming legitim shall also be forfeited; all of which forfeited rights, interests, and benefits shall thereupon accresce to the other beneficiaries or beneficiary accepting these presents."

On testator's death his widow and each of his two surviving children elected to claim their legal rights and thereby forfeited their provisions under the trust settlement. *Held* that as the forfeiture clause was in favour of children who did not repudiate, and as no such children were in existence, it did not take effect, and that accordingly the remainder of the trust estate after payment of the legal rights did not fall into intestacy, but fell to be protected by the trust for behoof of the children's issue.

Gillies v. *Gillies' Trustees*, 1881, 8 R. 505, 18 S.L.R. 323, *followed*.

Mrs Mary Isabella Brown or Hannah and others, the testamentary trustees of James Hannah, tweed manufacturer, Hawick, *first parties*, Hector Hannah and Andrew Brown Hannah, the testator's two surviving sons, *second parties*, and Olive Hannah, pupil child of and residing with Andrew Brown Hannah, *third party*, presented a Special Case for the opinion and judgment of the Court.

The testator died on 22nd July 1920 leaving a trust-disposition and settlement dated 24th December 1903. A *curator ad litem* was appointed to the third party.

The Case stated—"2. The testator was survived by his widow the said Mary Isabella Brown or Hannah and two sons, Hector Hannah and Andrew Brown Hannah, both of whom are over twenty-one years of age. The said two sons are the second parties. The said Andrew Brown Hannah is married and has a daughter Olive Hannah, who is in pupilarity and who is the third party to the case. The said Hector Hannah is married and has no family. 3. By the said trust-disposition and settlement the testator directed the trustee to pay to his wife during her lifetime (but subject to the obligation upon her to aliment and educate the children) the annual interest and revenue of the whole residue of his estate with a discretionary power to encroach upon capital, and subject to the declaration that the widow's right should cease upon her remarriage. 4. The testator further provided that on the death or second marriage of his wife, should she be the survivor, or at his