worked, and we are strongly impressed with the importance of not unsettling the law as established by past decisions where we cannot lay down a rule that is not open to exception" (12 Q.B.D.).

I think there is much good sense in that observation, and I think it is apposite to the present case.

I think the appeal must be dismissed.

LORD JAMES OF HEREFORD—I concur.

LORD ROBERTSON—I concur.

LORD ATKINSON—I agree.

LORD COLLINS—This is, in effect, an appeal after 32 years from the decision of the Court of Exchequer in 1876 in the case of the *Imperial Fire Insurance Company* v. *Wilson*, 35 L.T. 271. In my opinion the proposed method of taking the accounts of the insurance company is open to the same objections that prevailed in that case, which has been acted upon in the interval. I am far from satisfied that it arrives at a result at all more approximately accurate than the less complex method suggested by the Legislature itself and adopted by the Commissioners. I am of opinion, therefore, that the appeal should be dismissed.

Appeal dismissed with costs.

Counsel for the Appellants—Danckwerts, K.C.—Constable—Beyfus. Agents—Bonar, Hunter, & Johnstone, W.S., Edinburgh—Smiles & Company, London.

Counsel for Respondents—The Attorney-General (Sir W. S. Robson, K.C., M.P.)—The Solicitor-General (Alex. Ure, K.C., M.P.)—Munro. Agents—Solicitor of Inland Revenue for Scotland (P. J. Hamilton Grierson), Edinburgh—Solicitor of Inland Revenue for England (Sir Francis C. Gore), London.

Monday, May 25.

(Before the Lord Chancellor (Loreburn), Earl of Halsbury, Lord Ashbourne, Lord Robertson, and Lord Collins.)

TRAIN *v.* BUCHANAN'S TRUSTEE (CLAPPERTON).

(In the Court of Session, February 5, 1907, 44 S.L.R. 371, 1907 S.C. 517.)

Trust—Faculties and Powers—Direction to Trustees to Pay "either the Whole or only a Portion of the Annual Revenue" to Beneficiary—Exercise of Discretion.

A testator directed his trustees to hold a certain sum and to pay to a beneficiary during his lifetime "either the whole or only a portion of the annual revenue thereof, and that subject to such conditions and restrictions, all as my trustees in their sole and absolute discretion think fit"; and on the beneficiary's death to pay to his children the sum "with any revenue accrued thereon that has not been paid" to the beneficiary; failing such children the sum "and accumulations of revenue, if any," fell into residue. The trustees from time to time paid the beneficiary some very small sums. The beneficiary having assigned his interest in the trust, the assignee brought an action to obtain the unpaid balance of revenue on the ground that the trustees had never exercised the discretion given them to restrict the amount to be paid, and consequently that the whole annual revenue had become the property of the beneficiary.

Held, in the circumstances of the case, that the trustees had exercised the discretion conferred upon them.

This case is reported *ante ut supra*.

Train, the pursuer and respondent in the Court of Session, appealed *in forma pauperis* to the House of Lords.

At the conclusion of the appellant's argument, the respondent not being called upon—

LORD CHANCELLOR—I will not occupy your Lordship's time with this appeal, because it rests upon the statement of the appellant that the trustees who had the misfortune to be saddled with this duty have not exercised a discretion, or, at any rate, have not exercised a reasonable and sound discretion. I think your Lordships are satisfied that they have exercised a discretion; whether it was reasonable or sound I cannot possibly judge, because the facts are not before us, but it looks to me very like a most sound and reasonable discretion.

LORD ASHBOURNE—I quite agree.

LORD ROBERTSON—I concur.

LORD COLLINS—I agree.

Appeal dismissed.

Counsel for the Appellant—Munro—A. A. Fraser. Agents—A. W. Gordon, Edinburgh—Herbert G. Davis, London.

Counsel for the Respondent—Younger, K.C.—C. H. Brown. Agents—F. J. Martin, W.S., Edinburgh — Robbins, Billing, & Company, London.

Tuesday, May 26.

(Before the Lord Chancellor (Loreburn), Earl of Halsbury, Lord Ashbourne, Lord Robertson, and Lord Collins.)

DICK AND OTHERS *v.* DICK'S TRUSTEES.

(In the Court of Session, May 29, 1907, 44 S.L.R. 680, 1907 S.C. 953.)

Succession—Trust—Uncertainty.

Terms of a residuary bequest which, being challenged upon the ground of uncertainty, was *held* not to be void.

This case is reported *ante ut supra.*

Dick and others, claimants and reclaimers, appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—I do not think it is necessary in the least to invoke in this case the rule that charitable bequests are an object of peculiar favour, because I do not think the points put by Mr Cripps had any real substance.

With regard to the first question, whether the trustees have an option to apply any part of this fund otherwise than to the charitable purpose designated by the will, I do not think that is the true construction of the clause. I think the words which are used "any part or parts thereof" have relation to the time or times when the distribution may become practicable by reason of the fund becoming available.

With reference to the second point made by Mr Cripps, whether the bequest is bad because there was an option to retain indefinitely and so frustrate the trust or so render uncertain its objects, I do not think that is the meaning of the clause. The word "indefinitely" appears to me really to be redundant, meaning the same in substance as the words "for such time or times as they may think fit." Of course the administration of a trust is always subject to the control of the Court if there is maladministration. Even if the word "indefinitely" meant something much more than that, I am by no means satisfied that the will could be set aside on that ground, but the point does not arise.

EARL OF HALSBURY—So far as I am concerned I think the Lord Ordinary's judgment perfectly satisfies everything that ought to be said upon the subject.

LORD ASHBOURNE—I agree.

LORD ROBERTSON—I concur.

LORD COLLINS—I agree.

Appeal dismissed.

Counsel for Appellants—Cripps, K.C.—Orr, K.C.—Munro. Agents—Inglis, Orr, & Bruce, W.S., Edinburgh—John Kennedy, W.S., Westminster.

Counsel for Trustees under Settlement of 1902—Clyde, K.C.—Cullen, K.C.—Scott Brown. Agents—Henry Robertson, S.S.C., Edinburgh—Crowders, Vizard, Oldham, & Company, London.

Counsel for the Trustees under prior Settlements—Lees, K.C.—Vernon—W. Ingram. Agents—W. & F. Haldane, W.S., Edinburgh—Neish, Howell, & Haldane, London.

Tuesday, May 26.

(Before the Lord Chancellor (Loreburn), Earl of Halsbury, Lord Ashbourne, Lord Robertson, and Lord Collins.)

TOAL *v.* NORTH BRITISH RAILWAY COMPANY.

(In the Court of Session, October 31, 1907, 45 S.L.R. 45, 1908 S.C. 48.)

Reparation—Railway—Negligence—Passenger on Platform Knocked Down by Open Carriage Door—Duty of Railway Servants—Relevancy.

The pursuer in an action of damages for personal injuries against a railway company averred that about 6 p.m. on a November day he, having alighted from a train and standing on a platform of the station, was knocked down by the open door of one of the carriages of the train which the railway servants had failed to close in the execution of their duty before the train was restarted, the station being so dark that he could not see if the doors were closed.

Held (*rev.* judgment of the First Division) that the action was relevant to go to trial.

This case is reported *ante ut supra.*

Toal, the pursuer, appealed *in forma pauperis* to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—The question here is whether the pursuer avers, and offers to prove, facts from which a jury might legitimately infer that this accident was caused by the neglect of the Railway Company, and I do not suppose that your Lordships will conjecture whether or not that is the right conclusion, for it is really the province of the jury not only to ascertain the facts but to draw their own inferences from the facts that are ascertainable. I find in this case the pursuer says that the duty of the defenders was to close the door of the carriage before it started; that it was their duty to do so on the occasion of this accident; that they did not close the door and so swept the pursuer from the platform on to the rails; and further, that the station was so dark that the pursuer could not see whether the doors were closed or not.

What was the duty of the Railway Company in this matter, and what they did or omitted to do, is for a jury to determine. Accordingly, with the most sincere respect for the opinion of the Court of Session, I am constrained to the view that in this case there is material from which the proper tribunal might conclude that the accident was due to the neglect of the defenders.

I will not express any opinion of my own upon the subject, because I think it is not