On appeal the Sheriff (GUTHRIE SMITH) reversed this judgment in an interlocutor in which he found "it proved that on 14th October 1867 the defender, being insolvent, granted a trust-deed for behoof of his creditors, and on 13th November made offer of composition of 10s. per pound, which was accepted by his creditors, and for which bills were granted, falling due on 1st January 1868, 1st July 1868, and 1st January 1869: Finds that, in terms of said arrangement, the pursuer, being a creditor of the defender, received from him a bill for £54, 1s. 9d., dated the 13th November 1867, and payable in three instalments as aforesaid, and that thereafter defender granted him another bill for £25, dated the 12th day of December 1867, payable five months after date, being the bill now sued for: Finds that the defender has failed to prove that said bill was granted as an accommodation bill, and that, on the contrary, it was granted to account of pursuer's debt over and above the said composition; and in respect there is no evidence that it was either stipulated for by the pursuer as a condition of his accepting said composition, or was granted by the defender as an inducement to him to accede to said composition arrangement, finds that the pursuer is entitled to recover payment of the said bill: Therefore repels the defences; decerns in terms of the conclusions of the summons."

He observed in his note—"It is plain that the bill in question was not granted in payment of goods or for any present pecuniary value. The defender says it was an accommodation bill, of which the pursuer obtained the defender's acceptance 'by taking undue advantage of the defender's circumstances at the time.' The proper way of proving a defence of this kind to a bill of exchange is writ or oath. But, with the acquiescence of the pursuer, the Sheriff-Substitute allowed a proof at large. There is no evidence of the defender's statement of the cause of granting beyond his own testimony. It is not shown that the bill was used by the pursuer as an accommodation bill, and the defender's statement is contradicted by both the pursuer and his shopman. The defence therefore fails.

"The only other explanation of how the bill came to be granted is that which is given by the pursuer—namely, that it was granted to account of full payment of the defender's debt to him over and above the composition, the defender having previously promised that he would do so. This, it has been lately decided, is a sufficient consideration to support a bill, because every man is morally bound to pay his lawful debts in full—*Clark* v. *Clark*, Jan. 5, 1869, 7 Macph. p. 335. 'It is perfectly competent,' said Lord Neaves, 'for a bankrupt to pay all or any of his creditors in full after his discharge, provided there has been no antecedent stipulation to that effect.'

"If the defender had been able to show that when the pursuer agreed to the composition arrangement there was an understanding between them that he was to receive something more than the other creditors, the transaction would have been clearly illegal, and the consideration could not have been supported. But the defender carefully abstains from making any averment to this effect. Indeed he expressly denies it when examined on oath. His whole case is that the bill had nothing whatever to do with the composition arrangement, and the pursuer is no less emphatic in his statement that it was not a condition of his taking the composition that he should get the bill libelled. Considering the relation which subsisted between the parties at the time, slight evidence might have been sufficient to impeach the transaction, but here there is no evidence at all, and therefore decree falls to be pronounced in terms of the conclusions of the summons."

The defender appealed.

M'LAREN for him.

FRASER and STRACHAN in answer.

The Court (the LORD JUSTICE-CLERK being absent) dismissed the appeal.

Agent for Pursuer—T. J. Gordon, W.S.

Agent for defender—J. F. Weir, W.S.

Wednesday, November 15.

FIRST DIVISION.

LORD DUPPLIN, PETITIONER.

Entail—Disentail—Heir of Entail—Propulsion of Succession—11 *and* 12 *Vict. c.* 36, § 2. *Held* that an heir of entail in possession, through a deed of propulsion of a portion only of the entire estate, was not "an heir of entail in possession in virtue of the tailzie" within the meaning of the Act 11 and 12 Vict. c. 36, and other Entail Amendment Acts; and that consequently he was not entitled to disentail that portion of the estate the succession to which had been propelled to him.

In this petition for authority to record an instrument of disentail a remit was made by the Lord Ordinary (MACKENZIE) to Mr Robert Burt Ranken, W.S., to report. The facts of the case and the question of law arising thereon will be seen from the following paragraphs of Mr Ranken's report:—

"The present application is made by the petitioner as 'the heir of entail in possession' of the *dominium directum* or superiority of certain parts and portions of the lands and baronies of Balhousie, Kinnoull, and others, lying in the county of Perth, for the purpose of obtaining authority to disentail the same, and acquire the superiorities in fee-simple. The superiorities are situated in the immediate neighbourhood of the city of Perth, and are of the gross annual value of about £500, while their saleable value if they were disentailed would amount, at twenty-two and a half years' purchase, to upwards of £11,000.

"The petition is founded on the Entail Amendment Act of 1848, and on the Act passed in 1853 for the purpose of extending the benefits of that Act, special reference being made to the 2d and 32d sections of the first of these Acts, and to the 4th section of the second.

"The entailed estate, of which the said superiorities form part, is held under two dispositions and tailzies thereof made and granted by the now deceased Thomas Earl of Kinnoull in favour of himself and the heirs-male of his body, which failing, to the other heirs and substitutes therein specified, dated respectively 14th March 1774 and 28th July 1779. The entails were both recorded in the Register of Tailzies, and their dates are correctly set forth in the petition.

"The petitioner is infeft in the superiorities (with the exceptions of certain subjects to be afterwards mentioned, in respect of which a feu-duty or ground-annual of £140 is payable), conform to disposition by the Right Honourable George

Earl of Kinnoull, the petitioner's father, in his favour, dated 5th July, and with warrant of registration on his behalf thereon, recorded in the Division of the General Register of Sasines applicable to the county of Perth on 20th October, both in the year 1870, the date of registration equivalent to infeftment being correctly set forth in the petition.

"By this disposition the petitioner's father, the Earl of Kinnoull, who is still in life, propelled the succession of the superiorities, as is set forth in the petition, in favour of the petitioner, who, it is stated, was born on the 27th day of May 1849, and is now of full age; and the petitioner maintains that, in the words of the statute of 1848, he is the 'heir of entail in possession' of the superiority estate 'by virtue of the tailzies' above referred to, which are both dated prior to 1st August 1848, and that having been born after that date, he is entitled to acquire that estate in fee-simple without any consents from the subsequent heirs of entail. No consents by the next heirs accordingly have been obtained or produced in process.

"The petitioner is thus in possession of the estate, not as having succeeded thereto upon the death of the last heir of entail called before him in the destination, but as deriving right to the possession from such heir who is still in life, by virtue of the deed before referred to propelling the succession to the petitioner; and the question arises, whether the petitioner is, in these circumstances, the heir of entail in possession of the estate by virtue of the tailzies in the sense of the statute of 1848?

"This question, which involves the competency of the application, has recently been fully considered by your Lordship in the similar petition of Viscount Macduff for authority to record an instrument of disentail of the estate of Carraldstoun or Careston, in the county of Forfar, reported by your Lordship to the First Division of the Court of this date (April 3, 1871); but as that application has been withdrawn before any judgment was pronounced by the Court, the question of competency of such petitions still remains undecided.

"There is, *ex facie* of the propelling deed in favour of the petitioner, no valuable consideration mentioned as the cause of granting; and though the deed does not bear to be granted for 'love, favour, and affection,' but refers to an arrangement as having been made between the Earl and the petitioner for its execution, the reporter has, on inquiry, been informed by the petitioner's agents that there is no agreement of any description between the father and son relative to the deed as to the application, for behoof of the father, of any monies to be derived from the superiorities after being sold or burdened, in the event of the disentail being carried through, nor any backletter or obligation, nor declaration of trust by the petitioner, which could have the effect of qualifying his *ex facie* absolute right under the propelling deed, and reducing it to a trust-right for behoof of the father, but that the father has *bona fide* and without consideration made over the superiority estate to the son for the latter's behoof.

"The Earl of Kinnoull could not himself petition to have the estate disentailed till Lord Dupplin attains twenty-five years of age; and although Lord Dupplin could undoubtedly petition now if he had succeeded to the estate on the death of his father, it is doubtful whether he can competently do so during his father's life, although feudally vested in the estate under the conveyance from him.

"There is no express provision either in the Act of 1848, or in the subsequent Entail Amendment Statutes, applicable to the case which occurs under the present application. There are only two clauses in the statutes where reference is made to propelling the succession to an entailed estate, one in the Act of 1853, and the other in the recent Entail Amendment Act of 1868. Both these provisions contemplate the case of a propelling deed where the propellor reserves his liferent; and under the first of these provisions the propellor may be the petitioner in any applications under the Rutherfurd Act or the Act of 1853, 'provided the consents of the persons whose consents would have been required to such application, if he had not propelled the succession as aforesaid, be obtained thereto.' Under the latter of these provisions the propellee (or disponee under the propelling deed) may in like manner be the petitioner, if he produces the consents of the persons whose consents would have been required if the estate had not been propelled, the presentation of the application being sufficient evidence of the consent of the propellee.

"These provisions, however, do not appear to contemplate the case which occurs in the present application, of a deed conveying the estate absolutely to the next heir without any reservation of the granter's liferent, but they expressly refer to a deed where such liferent is reserved.

"The reporter has only to add on this part of the case that, after granting the propelling deed, the Earl of Kinnoull undoubtedly remains the heir of entail in possession of the bulk of the estates settled under the tailzies, of which the superiorities in question form only a small portion. In the case of Viscount Macduff the whole of the estate settled under the entail was conveyed under the propelling deed."

On receiving the report, from which excerpts have been given as above, the Lord Ordinary reported the petition to the First Division with reference to the question raised by Mr Ranken.

As the three next heirs of entail after the petitioner were his three immediate younger brothers, who were in minority, and whose father Lord Kinnoull was their only legal guardian, the Court appointed Mr John Gillespie, W.S., as their curator *ad litem.*

Solicitor-General (Clark) and Lee for the petitioner.

Watson for the next heirs of entail and their curator *ad litem.*

At advising—

Lord President—The petitioner Lord Dupplin states that he is desirous of availing himself of the provisions of the Entail Amendment Acts of 1848 and 1853 for the purpose of disentailing his estate, and that he has accordingly executed and produced an instrument of disentail accordingly, and by the prayer of his petition he asks the Court to interpone authority thereto. The second section of the Act of 1848, upon which he founds, enacts, "that where any estate in Scotland is held by virtue of any tailzie dated prior to 1st August 1848, it shall be lawful for any heir of entail born on or after the said 1st day of August, being of full age and in possession of such entailed estate by virtue of such tailzie, to acquire such estate in whole or in part, in fee-simple, by applying to the Court of Session for authority to execute, and executing," &c., an in-

strument of disentail, in the form and manner hereinafter provided. This section is amended by a subsequent statute, 16 and 17 Vict. c. 94, to the effect that a party desirous of disentailing, under the provisions of the Act of 1848, may first execute a deed of disentail and then come here and apply for authority to record it. This latter is the course adopted by the petitioner, and the question before us is, Whether the petitioner is an heir of entail within the meaning of the statutes? The deed of entail is dated prior to the year 1848, and therefore that condition of the statute is complied with. It is also established that the petitioner was born after that date, and also that he is of full age. So far therefore there is no room to doubt his right to proceed as he proposes. But there remains to be considered, Whether he is an heir of entail in possession of the entailed estate by virtue of the tailzie? And that unquestionably raises a difficulty of a very serious character. The petitioner's father is alive, and he under the entail was entitled to possession of the estate, and prior to the execution of a certain deed of propulsion, to be after noticed, he was unquestionably the heir of entail in possession under the tailzie. But by the said deed, executed on 5th July of last year, and which was recorded in the General Register of Sasines on 20th October last—by this deed Lord Kinnoull propelled the succession in favour of the petitioner. But he did not propel the succession as regarded the entire estate held under the tailzie, but only as regarded certain superiorities which formed a mere fragment of the entire entailed estate, it being reported to us by the conveyancer, to whom a remit was made by the Lord Ordinary, that their aggregate value was only between £10,000 and £12,000.

The question comes to be, in these circumstances, Whether the petitioner is heir of entail in possession in virtue of the tailzie in terms of the Act? He says that he is the heir of entail in possession in virtue of the tailzie of that portion of the estate which he proposes to disentail. That though he has not succeeded to this part he has obtained it by a perfectly legal and recognised method, namely, a propelling deed from the previous heir, and that he must therefore be held to be the heir of entail in possession in terms of the statute. Now, there are two questions involved in this consideration which I do not think it either necessary or expedient to determine. They are, 1*st*, Whether the heir of entail in possession under a propelling deed, supposing it to propel the entire estate, is an heir of entail in possession in virtue of the tailzie? and 2*d*, Whether a deed propelling the succession to a portion only of the entailed estate is a competent and lawful act on the part of the heir of entail in possession?

I propose to assume both these points in favour of the petitioner. I propose to assume, 1*st*, that did the propelling deed in this case propel the succession to the entire estate the petitioner would be heir of entail in possession under the tailzie in terms of the statute; and 2*d*, that the deed in the present case, though only propelling the succession to a portion of the entailed estate, was nevertheless a legal and competent deed. But conceding both these points the difficult question still remains, Whether a party possessing under such a partial propulsion is heir of entail in possession in virtue of the tailzie within the meaning of the Act of Parliament? Now, it appears to me that the question is to be solved, not by looking merely at the clause of the Act with which we are more immediately concerned, but by considering the whole series of statutes by which the fetters of strict entail have been relaxed of late years. There have been no less than nine such statutes passed, extending from the 10 Geo. III. c. 51, down to the recent Act of 1868, and the statute with which we are dealing is one of these. It goes indeed further than any of the others in relaxing the severity of the law of strict entail, but it is only one of several aiming at this common end. But perhaps we are bound to consider this matter even apart from these statutes under what may be called the common law, which has grown up around the statute law of entail. It is certainly of importance to ascertain what in the language of the common law of entail is understood by the term "heir of entail in possession in virtue of the tailzie." Now, I think I may say since the introduction of entails in Scotland it never was heard of that there were two heirs of entail in possession at the same time under the same tailzie; such a thing is not to be found in the whole history of entail law. It is quite inconsistent with the conception of the system which provides for a series of heirs each of whom shall take in his turn the full beneficial enjoyment of the entire estate. In the ordinary common law of entail the heir of entail in possession under the tailzie means the heir who is in possession of the entire estate. But under the statutes this is made even more clear. The powers given to proprietors of entailed estates commence with the Montgomery Act, which professed to give authority to proprietors of entailed estates to execute certain improvements at the expense of the estate or of succeeding heirs. And wherever that statute meant specifically to designate the proprietor of the entailed estate he is always called the heir of entail in possession. In the introductory clauses he is spoken of indeed as proprietor, but when it becomes necessary to be more particular the term heir of entail in possession is always used. And so in all the series of Acts referred to. In the particular Act in question—that of 1848—the same phraseology runs throughout every clause, and particularly the 33d clause, directing the method of application to the Court. Now, it is very difficult to conceive that the Legislature meant by this term to design anybody else than the heir of entail in possession of the entire estate. No doubt power is given to disentail in part, but that power is given to the person who is in possession of the entire estate, and whose interest, in so far as not antagonistic to that of the substitute heirs of entail, may be held to induce him to deal most beneficially with the entire estate. If we were to hold that a person in the position of the petitioner is vested with all the powers conferred by the statute with reference to the fragment of the estate of which he is in possession, consequences the most strange and embarrassing would necessarily follow. And I do not see how you could hold that he was thus vested with the powers of one statute without holding that he was likewise vested with those conferred by all the others. If then Lord Dupplin is entitled to disentail, he is equally entitled to exercise all the powers of the entire series of statutes. Would it not be a very strange thing that an heir so situated should be entitled to let on building leases or to feu? A thing which might be very advantageous and desirable for the estate as a whole, but which might be most undesirable

and even destructive to the rest of the estate if exercised by a person in possession of a small portion of it lying perhaps near the mansion-house, or otherwise in an inconvenient position—certainly the statute never intended that a party in possession of a mere fragment of the estate should be entitled to exercise this power. Again, suppose that such person thinks fit to enter into a contract of excambion—and consider how the bulk of the estate might be affected. What might be very expedient for the party excambing might be most injurious to the main body of the estate. In short, it is almost impossible to exhaust the list of embarrassing circumstances which might arise were we to hold that the petitioner, or a person situated like him, was entitled to the exercise of the statutory powers, though limited to a fragment of the entailed estate.

These considerations have led me to the conclusion that the petitioner is not the heir of entail in possession in virtue of the tailzie, in terms of the statute, even as regards that portion of the estate the succession to which has been propelled to him. I am therefore for refusing the petition.

Lord Deas—The question before us lies exactly where your Lordship has put it. It is, Whether Lord Dupplin is the heir of entail in possession in terms of the statute? The primary question—supposing all other difficulties removed, supposing that an heir of entail, under a deed of propulsion, is to be held an heir of entail in virtue of the tailzie—is this, Whether an heir of entail in possession, under a deed of propulsion, of only a part of the estate, is to be held heir in possession in terms of the statute? Now, there has been no such thing hitherto known, so far as I am aware, as a deed of partial propulsion. And it is a remarkable thing that the law of entail should have existed for well-nigh two hundred years and yet this be so. But even if there could be a valid deed of partial propulsion, it would not necessarily follow that the heir possessing under such deed would be the heir of entail in possession in virtue of the tailzie in the sense of the statute. On the grounds which your Lordship has so fully stated, and which I do not intend to repeat, I am of opinion that he is not such heir in possession in the sense of the statute, and that the petition should be refused.

Lord Ardmillan—I confess I have felt very considerable difficulty in the consideration of the question. I concur very much in the remarks addressed to us by the Solicitor-General as to the principle of construction applicable to deeds such as this. And if a question were to arise involving freedom from the fetters of an entail, I should readily adopt them. I think the recent statute of 1848 was one of those framed for the purpose of relaxing the severity of entail law; and if we were now in a question under this statute as to the freedom of an heir of entail from the fetters of such entail, I should be disposed to give a more favourable consideration to the petitioner's case. But that is not the case before us. We have here to determine whether an heir receiving the entail through a deed of propulsion of part only of the entire entailed estate is entitled to exercise the powers conferred by statute upon the heir of entail in possession in virtue of the tailzie in the sense of the statute. This is a very different question from how far he is liberated from the fetters of the entail. Now, where the whole estate is propelled, it may be that the heir to whom it is propelled is so liberated. But when only a proportion is propelled, I am unable to come to any other conclusion than that arrived at by your Lordships, namely, that the embarrassment which would be caused by the state of matters so produced make it impossible to hold that the heir in possession under such deed is the heir in possession in the sense of the statute. I do not mean to say that it is impossible to propel an estate in part, but merely that the heir under a deed of partial propulsion is not heir of entail in virtue of the tailzie in the sense contemplated by the statute.

Lord Kinloch—The present petition for authority to disentail is presented on the ground that Lord Kinnoull, the petitioner's father, has propelled to him the succession of a part of his entailed estate, and that by virtue of this propulsion the petitioner is as to that part heir of entail in possession born after 1st August 1848, and therefore entitled to execute a disentail by his own act without consent of anyone.

Admittedly Lord Kinnoull, the father, could not execute a disentail, for he would require the consent of Lord Dupplin, given after he attained twenty-five, and his Lordship has not yet attained that age. The disentail by Lord Dupplin in his own supposed right may take place without consent, he having attained legal majority.

There can scarcely fail to arise a suspicion that this is an arrangement to do indirectly what directly Lord Kinnoull could not do. But if the act of propulsion be a legitimate act, I do not at present see that we could deny effect to the act of disentail. The petitioner would in that case possess the entailed estate in his own right, no one else having any right in it, and I do not see how he could be denied any of the privileges of an heir in possession.

This directly raises the question, which it appears to me I cannot avoid determining in order to decide the present case, Whether the act of propulsion was a legitimate and valid act? And my opinion is against its validity.

That an entailed estate may, as a whole, be propelled by the party in possession to the heir *alioqui successurus*, I consider to be undoubted. The proceeding is substantially equivalent to a renunciation of his right by the party in possession. The effect is just what his death would have. Such propulsion is very ancient in the practice of the law. But I am not aware of any authority (none has been pointed out to us) for a partial propulsion of the estate. It is a propulsion of the whole estate with which, so far as I am aware, we have had invariably to deal. I am of opinion that a propulsion of an entailed estate *pro parte* is incompetent and inadmissible. To destroy the unity of the estate is, I think, against the conception of an entail. It is altogether anomalous to have two heirs of entail co-existing in the same entailed estate. This is quite a different case from a propulsion in fee, reserving the granter's liferent. Even that is a case which may admit of serious doubts as to the respective rights and privileges of the parties. But it only infers the constitution of a single fee comprising the whole entailed estate. The contemplated propulsion in the present case splits down the undivided fee into two co-existent fees held by two separate fiars. The proposal at once raises questions of difficulty; and the difficulty of which strongly confirms the incompetency

of the proceeding. In Lord Kinnoull's hands an act of contravention committed with regard to any portion of the estate, however small, would irritate the right to the whole. What effect would a contravention by Lord Dupplin have on the right of Lord Kinnoull? How are family provisions, or claims for meliorations, to be arranged in such a case? These, and many such questions, are more easy to be asked than answered. They are only avoided by assuming that two entailed estates are created, with all the incidents of two separate estates, as much as if they came to the different parties by two unconnected deeds of entail. But this overcomes lesser difficulties by the greatest difficulty of all. For nothing is, generally speaking, more clearly beyond the power of an heir of entail than to split down the entailed estate into two estates held by two co-existent fiars.

It is said that under the Entail Amendment Act it is competent to disentail an estate "in whole or in part." But this is under statutory authority. The question here is, What may be done without such authority? The Entail Statutes convey no right of propulsion, which rests entirely on the anterior law. They refer indeed to propulsion, but it is to that instance of it in which a propulsion is made manifestly of the whole estate, reserving the liferent of the granter, when they provide that the consents necessary to disentail shall be those required in the case of the liferenter—thereby affording a strong implication against disentail by the propellee, as in his own right, being contemplated. No authority for the present proceeding is to be found in the Entail Acts. We are called on to determine the point on the general principles of our entail law. I am of opinion that this partial propulsion derives no support from these.

On this ground I am of opinion that the present petition should be refused.

Agents for Petitioner—Mackenzie & Kermack, W.S.

Wednesday, November 15.

LAW & BRAND *v.* (POOR) EDGAR.

Reparation—Solatium—*Mines Regulation Act,* 18 *and* 19 *Vict. c.* 108. Where the special rules of a colliery, issued and published to the men under authority of the Mines Regulation Act, 18 and 19 Vict. c. 108, for the conduct and management of the colliery and the workmen employed therein, contained provisions intended to secure the safety of the workmen —*Held,* in an action of damages for loss of life through an accident occurring in the pit, that the men were entitled on their part to rely upon the observance of these regulations, and that the coal-masters had been guilty of a culpable neglect or breach of duty in not observing them. *Held* further (*contra* opinion by the Lord President), that all the pursuer required to do was to show that there was a reasonable probability that the accident would not have occurred but for this neglect or breach of duty on the part of the coal-masters; and that there was no *onus* on the pursuer to prove absolutely that the accident was caused by the defenders' neglect of duty, or would have been prevented by their observance of it.

This was an action of damages raised in the Sheriff Court of Lanarkshire at Airdrie by Mrs Mary Fleming or Edgar, widow of Joseph Edgar, a collier, against Messrs Law & Brand, coal-masters, at Drumshangie Colliery, near Airdrie, for damages or *solatium* in consequence of the death of the said Joseph Edgar, her husband, who had been killed while working in the defenders' pit.

The summons set forth that the said Joseph Edgar had been killed "by and through the culpable negligence and gross recklessness and carelessness of the defenders, or of those acting under them, or for whom they are responsible, in consequence of the engine at said pit having been wrongfully started while the deceased was placing his hutch on the cage, or adjusting the same, at the bottom of the shaft of said pit, for being taken up said shaft, and before the same was ready for being raised, or the safety of the deceased provided for, whereby said cage was lifted before the deceased could escape, and he was thereby raised and crushed betwixt the said cage on which he had placed his hutch and the roof or sides of the pit, and was thereby killed; and which death in any case was caused by the culpable carelessness, fault, and negligence of the defenders, or others for whom they are responsible, in not having taken proper measures for the safety of their workmen while engaged in working in said pit, and specially of the said deceased while working there as aforesaid; and from their not having provided proper means of communicating distinct and definite signals from the bottom of the shaft to the surface, and from the surface to the bottom of the shaft, and not having secured or used due caution for the securing of said signals being safely and properly made from the bottom of the shaft to the surface, and from the surface to the bottom of the shaft, especially for the starting of the engine at said pit for raising and lowering men and material; and also from their culpable recklessness and negligence in not having a bottomer or signalman employed in said pit to make the appointed signals necessary for regulating the ascent of men and materials, which they were bound to do for the safety of their workmen in said pit, and although a bottomer or signalman is provided for in the 'Special Rules' for the conduct and guidance of the persons charged with the management, and of the several workmen employed in and about the defenders' said colliery, the duties and requirements of such bottomer or signalman being, and they are defined in said rules," &c.

Against this action the defenders pleaded, *inter alia*—"(2) The pursuer not having averred acts or omissions on the part of the defenders, or those for whom they are responsible, causing the death in question, the defenders fall to be assoilzied with expenses. (3) The pursuer having failed to aver in the record any facts or circumstances sufficient, even if proved, to show that the death in question was caused by any wrongous act or omission of the defenders, or of those for whom they are responsible, or by any defects in the construction of the pit and machinery attached thereto, the defenders fall to be assoilzied with expenses;" and the said pleas were held as repeated *brevitatis causa* as pleas on the merits.

The accident through which Edgar met his death is thus described in the evidence of Bernard Bannan, who was the only eye-witness:—"I wrought in defenders' pit at the time Edgar was killed. There was no bottomer in the pit that I saw. . . . I was at the pit-bottom at the time,