Thursday, November 28.

FIRST DIVISION.

[Sheriff Court at Peebles.

EUMAN *v.* DALZIEL & COMPANY.

(*Ante* May 16, 1912 S.C. 966, 49 S.L.R. 693.)

Master and Servant — Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1)—*Death Resulting from Accident —Disease.*

A workman while at his employment was thrown to the ground through the slipping of a ladder on which he was standing, receiving a severe shaking and bruising and also an injury to his ankle. After being confined to bed for about a month, during which period he remained in a low state of health and suffered much pain, he died—the cause of death as certified by the doctor at the time being appendicitis peritonitis. In arbitration proceedings at the instance of his widow the medical evidence was conflicting, that for the claimant being that but for the accident the workman would not have died, and that "the condition of which he died was consequent, indirect if you will, of the accident," while that for the defenders was that his death was due to peritonitis. The arbitrator having awarded compensation the defenders appealed.

Held that there was evidence on which it could competently be found that the workman's death was the result of the accident, and appeal *dismissed.*

Observations (*per* the Lord President) as to the way in which the result of the evidence should be stated for consideration of the Court of Appeal.

[The case is reported *ante, ut supra.*]

Mrs Agnes Easton or Euman, widow of Robert Euman, mill foreman, Walkerburn, *respondent,* claimed compensation under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) from James Dalziel & Company, manufacturers, Walkerburn, *appellants,* in respect of the death of her husband, which she alleged to be due to an accident arising out of and in the course of his employment with the appellants.

On 16th May 1912 the First Division remitted to the Sheriff-Substitute (ORPHOOT) as arbitrator to state a case upon the following question of law, viz., whether there was evidence upon which it could competently be found that the death of Robert Euman was the result of an accident arising out of and in the course of his employment.

In obedience to the foregoing remit the arbitrator stated that the *facts* were as follows—"1. The respondent is the widow of the late Robert Euman, and at his death was dependent upon him. He was sixty-two years of age when he died.

"2. Up to the time of the accident after mentioned Robert Euman was a healthy man. He was a mill foreman in the employment of the defenders at Tweedholm Mills, Walkerburn.

"3. On 18th July 1911, in the course of and arising out of his employment by the appellants, Euman required to ascend a ladder supplied by the appellants in order to examine and take down from a shelf yarns for the mills in which he worked. While he was on that ladder it accidentally slipped, and he was thereby thrown to the ground, and sustained injuries to his right ankle and otherwise. He was dazed by the fall and suffered great pain, but was assisted, practically carried, home by two friends, who supported him one on each side to his house, which was close to the mill. He was at once put to bed, and in his trousers, which, owing to the pain he suffered, could not then be removed. The doctor, Dr MacRobert (the family doctor), was immediately sent for, and he found Euman suffering very much from general shock, and locally his right ankle was very badly damaged, though not broken, being what is known as a 'staved' ankle, *i.e.*, damaged inside the joint. Euman also complained of feeling being gone from the heel, and of pains generally all over him. A district nurse was immediately sent by the appellants. The treatment by the doctor was specially directed to the ankle.

"4. Euman was thereafter confined to bed till 10th August. The doctor thought that he called every day during July, and he certainly called every second day after that except on two occasions. For about two weeks of that time Euman's drawers could not be removed owing to the pain which he suffered on moving his body. To the nurse Euman always complained of pain all over the body. During that time the foot was slowly getting better, but the nurse never thought him really convalescent. Euman occasionally made general complaint of digestive mischief and constipation, which was treated with mild aperients. The rest of the medical treatment was directed to the ankle. During this period the motions of the bowels did not give proper relief, and several times when these motions occurred in presence of the nurse, Euman suffered so much pain that the nurse ordered him to get a little brandy to prevent him from fainting. During this period Euman's temperature was normal and his pulse about seventy-two.

"5. On 10th August Euman's ankle was better, but it had got better very slowly, and his vitality was very low. He was allowed by Dr MacRobert to get up in the afternoon, which he did. On Sunday, August 13th, he again rose. He then went to the garden with assistance, but on returning to his house he was very tired and glad to get back to bed.

"6. On Monday, August 14th, about 5 a.m., Euman was seized with violent pains in the stomach and all over. Dr MacRobert was sent for and found his temperature to

be 104, pulse at or over 120. The doctor prescribed remedies which relieved Euman's pain, but Euman never rallied and he died next day about 3 p.m. Dr MacRobert certified the death to be due to appendicitis peritonitis, but in Court he explained that while it was his opiniou that appendicitis and consequent peritonitis were the cause of death, that might have happened from ulceration and perforation of the duodenum, which might have existed although he did not think they were present. The sufferings of Euman on August 14th were such that a complete examination of the abdomen could not be made, and therefore while peritonitis certainly was present the cause of that disease could not be ascertained definitely."

The Case further stated—"The medical witnesses for the respondent were — Dr MacRobert, B.M.M.S., Glas., Innerleithen. Professor John Glaister, M.D. and D.Ph. of Cambridge, F.R.S., Edinburgh, Professor of Forensic Medicine in Glasgow University and in consulting practice there.

"The medical witnesses for the appellants were — Alexander Miles, M.D., F.R.C.S., Edinburgh, surgeon in Royal Infirmary, Edinburgh, and consulting surgeon to Leith Hospital. Archibald Nathaniel Shirlev Carmichael, M.B., C.M., Edinburgh, 1892, Fellow, late President of Royal Medical Society, resident medical officer of Chalmers Hospital.

"Dr MacRobert was of opinion that looking to the previous good health of Euman, to the accident with severe nervous shock and consequent lowering of vitality, then confinement to bed with digestive trouble, the strong probabilities are that Euman would have been alive now had he not met with the accident.

"Professor Glaister, proceeding upon Euman's previous healthy condition, upon the accident and the sequence of symptoms which followed upon it, 'was fairly clear of the view that the condition of which Euman died was consequent, indirect if you will, of the accident, and that in all probability Euman would not have died but for the accident.'

"Dr Miles could not see any causal connection between the accident and Euman dying of peritonitis, or between the symptoms during his illness and appendicitis. Euman would probably have had appendicitis just the same without any accident. Dr Miles did not hear the evidence in Court of the symptoms of Euman's illness, but he had seen a statement by Dr MacRobert as to the treatment of the deceased and the diagnosis of the deceased's symptoms.

"Dr Carmichael 'could not associate the accident as the cause of death.' Euman was just as likely to have died of appendicitis if there had been no accident.

"Dr Carmichael had read a statement of fact and precognition of Dr MacRobert taken by the defenders.

"While the medical witnesses for the defence saw no connection between the accident and the death or between the accident and appendicitis, they do not as specifically state that they saw no connection between the accident and ulceration and perforation of the duodenum—two possible causes of death.

"The preceding facts are those bearing upon the question whether the death of Robert Euman was the result of an accident.

"Upon the remaining question raised in the question of law remitted, viz.—Whether there is evidence upon which it can competently be found that the accident arose out of and in the course of Euman's employment as already stated, the appellants admit that the accident arose out of and in the course of his employment by them.

"Upon the foregoing facts proved or admitted before me, I was of opinion that there was evidence upon which it could competently be found that the death of Robert Euman was the result of an accident arising out of and in the course of his employment, and I therefore so found."

The *question of law* was — "Whether there was evidence upon which it could competently be found that the death of Robert Euman was the result of an accident arising out of and in the course of his employment."

Argued for appellants — The Sheriff's finding was not justified by the evidence, for there was no causal connection between Euman's death and the accident. The *onus* of proving that there was lay on the claimant, and she had not discharged it. It was not enough to say that but for the accident Euman would not have died at the time at which and in the way in which he did die—*Dunnigan* v. *Cavan & Lind*, 1911 S.C. 579, *per* the Lord President at p. 582, 48 S.L.R. 459. There must be proof that his death was in fact due to the accident—*Hawkins* v. *Powells Tillery Steam Coal Company, Limited*, [1911] 1 K.B. 988; *Dunham* v. *Clare*, [1902] 2 K.B. 292, *per* Collins, M.R., at p. 295; *Barnabas* v. *Bersham Colliery Company*, February 14, 1910, 3 Butterworth's Compensation Cases 216. The cases of *Ystradowen Colliery Company, Limited* v. *Griffiths*, [1909] 2 K.B. 533, and *Jackson* v. *Scotstoun Estate Company*, 1911 S.C. 564, 48 S.L.R. 440, relied on by the respondent, were distinguishable, for in both the chain of causation was complete. It was not so here, for the medical evidence showed that Euman's death was as much due to peritonitis as to the injury. That being so, the claimant had failed to discharge the *onus* of proof, and the defenders therefore should be assoilzied.

Argued for respondent—The Sheriff was right. It was enough for the claimant to show, as she had done, that Euman's death had been accelerated by the accident, provided that no new cause had intervened—*Ystradowen Colliery Company, Limited* (*cit.*), *per* Buckley, L.J., at p. 536 *et seq.*; *Golder* v. *Caledonian Railway Company*, November 14, 1902, 5 F. 123, 40 S.L.R. 89. The case of *Dunnigan*, cited by the appellants, was distinguishable, for what was there taken exception to was the form of question—the decision on the merits was

in the respondent's favour. Where, as here, the medical evidence was conflicting, the question was one of fact, on which the arbiter was entitled to find as he did—*Jackson* (*cit. sup.*).

At advising—

LORD PRESIDENT—The question in this case arises upon a Stated Case which was stated in deference to an interlocutor of your Lordships. The learned Sheriff-Substitute, as arbitrator, originally found that there was a claim for compensation, but the respondents were desirous that the facts should be set forth in order that they might be enabled to argue that no evidence had been led upon which it could competently be found that the death of the man whose widow is claiming was the result of an accident arising out of and in the course of his employment. The Sheriff-Substitute has now stated a case, and from the facts which he there states it appears that on 18th July 1911 the deceased workman Euman had a bad fall off a ladder. He was thrown to the ground and was shaken and bruised, and in particular he suffered locally from an injured ankle. He was thereafter confined to bed from 18th July to 10th August. During the time that he was in bed (I abbreviate the findings) he complained of pain all over the body, and had a certain amount of what might be called disturbance of his bowel arrangements. He was attended by a doctor, but the treatment was, not unnaturally, mainly directed to what was obviously thought at the time to be the chief if not the only injury, the injury to his ankle. On 10th August his ankle was rather better, but he was in a low state. He was allowed to get up in the afternoon. On the 13th he again got up for a little and went out, but he was very tired and came back and went to bed. On the 14th he was suddenly seized with violent pains in his stomach. His temperature went up considerably, and he died next day about 3 p.m. He never rallied. The cause of death, as certified by the doctor at the time, was appendicitis peritonitis. I take it that the collocation of those two words means that there was severe inflammation of the appendix, and that the inflammation had spread to the peritoneum. He was in such pain that a complete examination of his abdomen could not be made, and there does not seem to have been a *post-mortem* examination upon him.

The learned Sheriff-Substitute, after stating those facts, goes on to tell us who the medical witnesses were and what they said. I do not think that is quite the form the Stated Case should have taken. It is not for us to judge of what the witnesses said; it is for the learned Sheriff-Substitute to find as the result of their evidence the facts which he held to be proved. But taking the case as it stands we are told that two doctors were examined for the workman's representative and two doctors for the employer. The first doctor, if his testimony is correctly reported by the Sheriff, makes that old mistake which I have already had to call attention to in other cases, of substituting a test of his own for the test of the statute. He says that "the strong probabilities are that Euman would have been alive now had he not met with the accident." Well, that is not the question that he really had to answer. The question that ought to have been put to him, and that he ought to have been made to answer directly one way or another, was whether, in his opinion, seeing the man's symptoms, death was the result of the accident. The next doctor, Professor Glaister, does, I think, go that length. He says that he is "fairly clear of the view that the condition of which Euman died was consequent, indirect if you will, of the accident, and that in all probability Euman would not have died but for the accident."

The other two doctors could not see any connection between the accident and Euman dying of peritonitis. They said he might have had appendicitis peritonitis without the accident; but they did not say that it was impossible that the accident should have caused the general condition upon which the tendency to inflammation seized, which was the cause of the peritonitis and appendicitis. As regards that there are a few words in the judgment of Fletcher Moulton, L.J., in the case of *Egerton* v. *Moore* (1912, 2 K.B. 308) which are very much to the point. In that case his Lordship points out that a blow—and the same thing might be said of a fall—could never, in one sense, be the direct cause of a thing like an abscess, but that, like any other lesion of the tissues, it might produce a state of things which would cause a tendency which was in the man's system to declare itself. I suppose there is no question, and the state of modern knowledge is, that an abscess itself, if you want the actual cause, is caused by the presence of a certain bacillus, but still an abscess is in the class of diseases that might be brought about by an accident or blow.

Your Lordships will remember that before he stated the case the Sheriff-Substitute had already found that the workman's representative was entitled to compensation—that is to say, he had made a positive finding that the accident did arise out of and in the course of the employment. He now says, first, that the appellants admitted that the accident arose out of and in the course of the employment in this sense, that when he had the fall from the ladder the workman was actually engaged in his employment. Then he says, "upon the foregoing facts, proved or admitted before me, I was of opinion that there was evidence upon which it could competently be found that the death of Robert Euman was the result of an accident arising out of and in the course of his employment, and I therefore so found."

I think there the Sheriff-Substitute has fallen into a very unfortunate form of expression, because he is really confounding the question your Lordships have to decide upon the Stated Case with the ques-

tion which he himself had to decide as arbitrator. But notwithstanding that unfortunate form of expression I do not think there is any reasonable doubt—if I did I would remit the case again to the Sheriff-Substitute—that the Sheriff-Substitute found as he did find because he preferred the evidence of the doctors who said that Euman's death was the consequence, indirect if you will, of the accident, to the evidence of those who saw no connection at all between the two occurrences. It is no business of the arbitrator to find that there is possible evidence on which some finding can be supported; he has got to judge between the evidence on the one side and on the other, and in a case of conflict like this there is evidence upon which a decision in favour of either party could be supported. The phrase used by the Sheriff is one which, in cases under this Act, is appropriate only to this tribunal, which does not review the arbitrator's judgment as a Court of Appeal reviews the decision upon fact of the Court below, but simply inquires whether there is evidence upon which the arbitrator's judgment can fairly be supported.

Now coming to that question, which is the question for us, I am of opinion here that there was evidence upon which the arbitrator's judgment can be supported, and that, therefore, he having given his decision, we should not disturb it. I think the case is a very narrow one, and I do not say what I would have done if I had been the arbitrator. I do not think it necessary to make up my mind as to that. This arbitrator has said that he is satisfied, and I think there was evidence on which he might say so.

I desire to say most emphatically that I entirely accept as the law of this matter what was laid down by the Court of Appeal in England in the case of *Hawkins* v. *Powell's Tillery Steam Coal Company, Limited* ([1911] 1 K.B. 988). I respectfully adopt the judgments in that case, which professed to follow—and I think they do follow—the law laid down by the House of Lords in several cases, but particularly in the case of *Barnabas* v. *The Bersham Colliery Company* (1910, 103 L.T. 513). I shall quote from Lord Justice Fletcher Moulton's opinion in *Hawkins'* case, and with great respect I should like to adopt it as my own. But I shall first, for clearness, state what the facts of the case were. An elderly man was engaged on a morning shift in helping to push empty trucks up an incline and tumble them from off the rails. Ten minutes later he complained of pain, and he died in the evening of angina pectoris. There was a *post-mortem* examination, and the medical evidence upon it included these statements—"There was a patch of atheromatous disease at the aortic valve, and another small patch at the mouth of one of the coronary arteries. . . . Having regard to the existence of these two patches very mild exertion on the part of a man of Hawkins' age might bring on a spasmodic attack of the heart, which might or might not end fatally." And then it was also proved that very many other things might bring on angina besides exertion in the case of a man who had this tendency to it—"it might be brought on by walking against a wind or by walking upstairs, or even by emotional excitement."

Now Lord Justice Fletcher Moulton went so far as to say this, that if he was asked his own opinion as a man of ordinary common sense, he thought that the most probable conjecture was that the exertion which Hawkins had in the course of his employment was the real cause of the attack of angina pectoris; and now I quote textually (at p. 995)—"So far I go with the applicant. But that is not sufficient to establish the case of those who are applying for compensation. They have to prove their case—that is to say, they must show with reasonable clearness that the accident actually did come from the employment. Many phrases have been used in this connection, all of them useful but all of them liable to abuse. Inference is certainly not excluded if it be a legitimate inference. Proof is required, but, on the other hand, proof does not mean proof to rigid mathematical demonstration, because that is impossible. It must mean such evidence as would induce a reasonable man to come to the conclusion as a fact that the employment was the cause of death. If that evidence is forthcoming that is sufficient to establish the applicant's case." Now I think that really states the matter fully, so far as it can be stated in a general proposition. Then the learned Judge goes to the facts of the particular case which I have just given to your Lordships, and says (at p. 995)—"We are bound to say that when dependants leave the case in that condition"—that is to say, not proved the one way or the other—"they have not given evidence justifying a judge in deciding in their favour."

I do not quote any more, because it would make my remarks too long, but the judgments of the Master of the Rolls and of Lord Justice Buckley are precisely to the same effect. Now I accept all that law, and when you come to the application of that law to the facts of this case, I do not disguise from myself that it is a very narrow question whether the result should not be here the same as there. It was argued to us with great force that the case was left in this position, that although it was very possible that this fall may have caused the appendicitis peritonitis, still there were other causes that might have caused it, and that consequently the case remains unproved. If the evidence of the doctors for the employers had been the only evidence in the case that would be so. That is precisely the state of their evidence. They do not exclude the fall as a possible cause of peritonitis, but they say there is no reason that it should have been the cause more than something else, and they do not know what the actual cause of death was. But then I think that the other doctors whom the learned arbitrator has preferred do go the length that

is necessary, and accordingly if that evidence commended itself to the person made judge in this matter I think that is enough.

If it is incumbent on me to note a distinction between the facts of this case and the facts in *Hawkins'* case, there is one very obvious distinction. In *Hawkins'* case there had been no accident in the popular sense of the word at all. I am quite aware that the word "accident" is used all through these discussions in connection with this statute in two different senses. The matter was noticed long ago by Lord Lindley in his judgment in the case of *Fenton* v. *Thorley & Company, Limited* ([1903] A.C. 443). His Lordship at p. 453 says this—"The word 'accident' is not a technical legal term with a clearly defined meaning. Speaking generally, but with reference to legal liabilities, an accident means an unintended and unexpected occurrence which produces hurt or loss. But it is often used to denote any unintended and unexpected loss or hurt apart from its cause, and if the cause is not known the loss or hurt itself would certainly be called an accident. The word 'accident' is also often used to denote both the cause and the effect, no attempt being made to discriminate between them." In the beginning of the series of cases it was strenuously argued that in order to entitle a person to recover there must be an accident in the sense of something happening extraneous to the person concerned, but that argument was finally set at rest by the case of *Fenton* v. *Thorley* and by the other well-known case — the aneurism case — of *Clover, Clayton, & Company, Limited*, v. *Hughes* ([1902] 2 K.B. 292), so that there is no doubt that in the sense of the statute an accident need not mean an extraneous occurrence, though in popular parlance it often does. In *Hawkins'* case there was no accident. Nothing happened. The man pushed the truck in the ordinary way with other men, and he upset it in the ordinary way. Nothing extraneous happened at all. In the case before your Lordships there was an accident. In popular language anybody would have said this man had met with an accident, because he tumbled from a ladder and fell to the ground and hurt himself very much; and then you have this, that the man goes to bed, no doubt with a bad ankle, but also with a bad shake, and he falls ill, and he is in a low condition, and he never recovers from that low condition up to the moment of his death.

It seems to me that in the present case it was very much easier to reach the inference (and Lord Justice Fletcher Moulton points out that inference is not excluded so long as it is fair inference) that the illness of which the man died was the result of accident than it was in the case of *Hawkins*, where there was nothing to connect in time the angina pectoris with the particular exertion that had taken place at the time of pushing the truck. The first symptom did not appear until some time afterwards, and therefore the case was left in such a position that you could not tell what had brought on the attack. Here the case is left in a position in which you are certainly very far from mathematical certainty; but at the same time one cannot say that a person who draws the inference has no facts from which he could reasonably draw it. That inference has been drawn by a medical man. It has commended itself to the person who is made the judge of the facts—the arbitrator—and I cannot say that the arbitrator is wrong.

Accordingly upon the whole matter I am of opinion that we should answer the question of law by holding that there was evidence on which it could competently be found that the death resulted from the accident, and that the arbitrator's finding to that effect should stand.

LORD KINNEAR—I have found this case of very considerable difficulty, and if the statement by the learned Sheriff-Substitute of the facts and of the opinion he had formed upon them were subjected to any severe critical analysis, I should say there was strong ground for the argument, that was in fact maintained, that there was nothing really before us to show more than that there was a probability one way and a probability the other way, and that the Sheriff himself had come to no final conclusion upon the question of fact. But then I think that is not the proper way of dealing with a case of this kind. We must take the whole case as it is laid before us to see if we can find it out what the arbitrator really intended to decide and what he has decided in fact; and so treating it I have come to think with your Lordship that the Stated Case clearly discloses a question of medical fact which the arbitrator was called upon to decide, and that the case states sufficiently clearly the decision upon that question at which he actually arrived.

There is no dispute that an accident happened to this unfortunate man arising out of and in the course of his employment, and that he was injured by it. The only question is whether it was the cause of his death. Now it is plain enough upon the learned Sheriff-Substitute's statement that no one without sufficient medical knowledge could say that the death was plainly and obviously the natural consequence of the accident. It was a question for skilled opinion. There was, as is not unusual, a conflict of medical opinion. The doctors called by the employers are of opinion that there was no causal connection so far as they could see between the accident and the peritonitis which caused death. One of the doctors examined for the respondent, the claimant of compensation, does not go further than to say that in all probability the workman would have been alive now if he had not met with the accident. If the evidence stood there it would be very unsatisfactory and insufficient, but then there is another doctor who says in quite plain language that he was clearly of opinion "that the condition of

which Euman died was consequent . . . of the accident," and he qualified that so far as to say that it may have been an indirect consequence but a consequence it was.

Now upon the question as to which the medical witnesses were so divided, it was necessary that the Sheriff-Substitute should form his opinion as to which testimony he preferred, and he preferred to accept the evidence of Professor Glaister, which was to the effect I have already read, rather than the evidence of the other doctors. That was a question for him. I do not think it is possible for us to see upon his statement—nor is it necessary that we should see—why he preferred Dr Glaister to the other, and no court could form any satisfactory opinion upon a question of that kind except the court which heard and saw the witnesses set up against one another. I think there was here a clear question for the Sheriff-Substitute which he had to decide upon evidence which was competently before him. That the opinion which he gave was an inference of fact from facts specifically proved is true, but that makes no difference either to the logical or the legal effect. As to the Sheriff-Substitute's final deliverance, I think it would be putting an undue strain upon language to say that he had not in fact decided anything more than that the evidence was competent. I cannot entertain any doubt that what he meant to say was that, the evidence being competent, he had taken it into account and decided the case in the way in which he had previously given effect to his views before he was asked to state this case.

Upon the whole I have come to the opinion of your Lordship that there is no ground upon which we ought to interfere with the decision of the Judge who is final upon fact.

LORD MACKENZIE—I have had very great difficulty in this case, but in the result I am prepared to hold that that difficulty arises more from the form in which the learned Sheriff-Substitute has presented the case for our consideration than from the substance of the case itself. I agree with the view of your Lordships.

LORD JOHNSTON did not hear the case.

The Court answered the question of law in the affirmative and dismissed the appeal.

Counsel for Pursuer—Wark—T. G. Robertson. Agents—J. & J. Galletly, S.S.C.

Counsel for Defenders—Wilson, K.C.—W. J. Robertson. Agents—Steedman, Ramage, & Company, W.S.

Thursday, November 28.

FIRST DIVISION.

(BILL CHAMBER.)

STEELE (TOSH'S FACTOR) PETITIONER.

Judicial Factor—Powers—Lease—Urban Subjects.

A judicial factor presented a note craving special power to grant a lease for ten years of urban subjects forming part of the factory estate.

The Court *remitted* to the Junior Lord Ordinary to grant the prayer of the note, but expressed the opinion that where, as here, the circumstances were in no way complicated, and the Accountant of Court was satisfied that the course proposed by the factor was beneficial for the trust estate, the application for special power was unnecesssary, the letting of urban property being within the ordinary powers of a factor.

On 11th July 1912 H. M. Steele, C.A., Glasgow, judicial factor on the trust estate constituted by minute of agreement between Mrs Jane Lauder or Tosh, widow of Henry Tosh, ironmonger, Glasgow, of the first part, her children of the second part, and others of the third part, presented a note to the Court for authority to grant a lease for ten years of certain heritable property in Buchanan Street, Glasgow, belonging to the trust estate.

The purposes of the trust were to hold the estate for Mrs Tosh in liferent and her children in fee. At the date of the note two of the beneficiaries—the issue of a predeceasing child—were in pupillarity.

On 11th April 1912 the judicial factor lodged with the Accountant of Court a report setting forth the circumstances in which he craved special power to grant the lease in question.

On 8th July 1912 the Accountant issued the following opinion:—"The estate under the factor's management includes, *inter alia*, the heritable subjects of Nos. 197 to 201 Buchanan Street, Glasgow, having an assessed rental of £380. This property, which is burdened with a bond and disposition in security for £6000, was at the time of the factor's appointment in a bad state of repair, and in consequence for the most part unlet, as is shown by the report dated 18th January 1911 of Messrs Thomas D. Smellie & Fraser, valuators, Glasgow, of which a copy is produced. By applying the proceeds of one of the other properties belonging to the estate, which he sold under powers obtained from the Court, the factor has had the Buchanan Street property put into a lettable condition, and has already secured tenants for various portions of the subjects. The bondholders are pressing for reduction of the amount of their loan, and it is important that the subjects should be fully let when they come to be realised, either to satisfy the claims of the bondholders or