whom you are responsible, purchase or receive from John Butterly, aged six years, of 212 Thistle Street, South Side, Glasgow, a person apparently under fourteen years of age, 16 pounds or thereby in weight of rags, contrary to the Glasgow Police Act, 1866, section 206 thereof: Whereby you are liable to a penalty not exceeding five pounds, and in default of payment to imprisonment for a period not exceeding thirty days."

The Court dismissed the complaint, whereupon the Procurator-Fiscal appealed by Stated Case.

The Case stated—"On the case being called before me the law agent for the respondent objected to the relevancy of the complaint in respect that the respondent was not charged with purchasing an article from the child named in the complaint, but 16 pounds of rags. Having regard to the words used in the clause defining the term broker in section 200, and also to the eighth clause of section 206 of the Glasgow Police Act, he submitted that a quantity of 16 pounds of rags, consisting of numerous miscellaneous pieces of different kinds of material, could not be held to be *an article* within the meaning of the said Act, and that therefore the complaint was irrelevant.

"I sustained the objection, and found accordingly."

The *question* submitted for the opinion of the Court was—"Was the complaint relevant?"

The following case was referred to in argument—*Patience* v. *Mackenzie*, 6 Ad. 545, 1912 S.C. (J.) 7, 49 S.L.R. 192.

LORD JUSTICE-GENERAL—It is not difficult to understand the policy of this statute. The object, as Mr Sandeman stated, is to prohibit a broker from buying anything which is susceptible of being bought from a child under fourteen years of age. Accordingly, when the complainer, the appellant here, charged the respondent with buying from a child aged six years 16 pound of rags, that is equivalent to charging him with buying sixteen pounds weight of articles, for rags are certainly articles.

It is said that although this is so in common parlance it is not so in this statute. The statute gives us no definition of "article." That is not surprising, for everyone understands the meaning of "article." A more comprehensive word could not by any possibility have been used. It is, however, argued that because "broker" is defined in the statute as a person who deals "in second-hand goods or articles, or in old metals, bones, or rags," therefore we must differentiate between articles on the one hand and old metals, bones, and rags on the other hand. That, it seems to me, is entirely inadmissible. The reason for the definition is obvious. Second-hand goods would not include old metals, bones, and rags, and therefore they are introduced in order to enable us to see exactly who is a "broker" in the sense of the statute. But it by no means follows that old metals, bones, and rags are not excellently described by the expression "articles."

This complaint appears to me to be quite relevant; and I therefore propose to your Lordships that we should answer the question put to us in the affirmative.

LORD DUNDAS—I agree. I think the magistrate's view is quite untenable. *Prima facie* one would have thought that a bundle of rags or rags in a bundle were an article or articles. I suppose "article" may mean either a specific thing or object, or a particular part of a composite whole; and accordingly one would have thought that either each of these rags constituted an article, or that the whole bundle may be regarded as an article; and in either case the complaint would seem to be relevant.

Mr Paton referred to section 200, and made the best he could of it; but I must say I think his construction was a very violent one, and would result in absurdities, because it would seem to come to this, that a broker may not purchase any article from a person apparently under fourteen years of age, but that he may none the less purchase any number of rags or bones or old metals from such a person with impunity. I am for answering the question in the affirmative.

LORD ANDERSON—I concur.

The Court answered the question in the case in the affirmative.

Counsel for the Appellant—Sandeman, K.C.—Crawford. Agents—Campbell & Smith, S.S.C.

Counsel for the Respondent—Paton. Agents—Menzies, Bruce-Low, & Thomson, W.S.

COURT OF SESSION.

Tuesday, December 15.

FIRST DIVISION.

[Sheriff Court at Hamilton.

M'TAGGART *v.* WILLIAM BARR & SONS, LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 8 (2)—*Industrial Disease—Presumption—Interval of Eight Months from Last Employment—"At or Immediately Before the Date of the Disablement."*

The Workmen's Compensation Act 1906, sec. 8 (2), enacts—"If the workman at or immediately before the date of the disablement or suspension was employed in any process mentioned in the second column of the third schedule to this Act, and the disease contracted is the disease in the first column of that schedule set opposite the description of the process, the disease, except where the certifying surgeon certifies that in his opinion the disease was not due to

the nature of the employment, shall be deemed to have been due to the nature of that employment, unless the employer proves the contrary."

A miner obtained from a certifying surgeon a certificate that he had been disabled from work in respect of an industrial disease, viz., nystagmus, on 26th March 1914. Eight months previously, on 11th July 1913, he had left his last employment, viz., mining, in respect of an accident which it was admitted did not cause or accelerate the disease. *Held* that in respect that the miner had not been so employed "at or immediately before the date of the disablement" the disease could not be "deemed to be due to the nature of that employment," and accordingly that the *onus* of so proving rested upon the workman, which *onus* the arbitrator was entitled, on the facts proved, to hold that he had not discharged.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 8 (1), enacts—"Where (*i*) the certifying surgeon . . . certifies that the workman is suffering from a disease mentioned in the third schedule to this Act . . . and the disease is due to the nature of any employment in which the workman was employed at any time within the twelve months previous to the date of the disablement . . . whether under one or more employers, he or his dependants shall be entitled to compensation under this Act as if the disease . . . were a personal injury by accident arising out of and in the course of that employment, subject to the following modifications:— . . . (*c*) The compensation shall be recoverable from the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due."

Sec. 8 (2) is quoted (*supra*) in the rubric.

By an Order of the Secretary of State under the power conferred by sec. 8 (6), dated 30th July 1913, the third schedule to the Act is extended to include the following:—

Description of Disease or Injury.	Description of Process.
12. The disease known as miner's nystagmus, whether occurring in miners or others and whether the symptom of oscillation of the eyeballs be present or not.	Mining.

Bernard M'Taggart, miner, 5 Muir Street, Larkhall, *appellant*, presented an application in the Sheriff Court at Hamilton for an arbitration under the Workmen's Compensation Act 1906 to recover compensation from Messrs William Barr & Sons, Limited, Allanton Colliery, Hamilton, *respondents*, in respect of an accident sustained by him to his left eye on 11th July 1913, or alternatively in respect of miner's nystagmus contracted by him while in the respondents' employment at Allanton Colliery, or in respect of both accident and miner's nystagmus.

Proof was led before the Sheriff-Substitute (HAY SHENNAN), who refused to award compensation, and on 22nd October 1914 stated a Case for the opinion of the Court of Session.

The Case, *inter alia*, stated—"The following *facts* were admitted or proved:—1. The appellant, who is fifty years of age, has spent his working life as a miner, chiefly in safety-lamp pits. For twenty years past he has worked, with occasional intervals, under the respondents in Allanton Colliery. 2. On 11th July 1913 the appellant received an injury to his left eye from a splinter in the course of his work in Allanton Colliery. This injury wholly incapacitated him, and the respondents paid him full compensation of 17s. 6d. per week down to 19th March 1914, when payment was stopped. 3. On 24th April 1914 the appellant obtained from a certifying surgeon a certificate that he had been disabled for work in respect of miner's nystagmus since 26th March 1914. The respondents appealed against this certificate, but the appeal was dismissed by the medical referee on 6th May 1914. 4. On 19th March 1914 the injury to the left eye received on 11th July 1913 had completely healed, but symptoms of nystagmus were visible. It was not proved that the accident of 11th July 1913 either caused or accelerated the nystagmus. 5. The appellant's working history during the twelve months preceding 26th March 1914 is as follows:—For the period between 26th March 1913 and 15th May 1913 there is only the appellant's statement that he worked during three weeks in Boghead Colliery with safety lamps. From 15th May 1913 to 11th July 1913, when he was injured, he worked in Allanton Colliery. He did no work between 11th July 1913 and 26th March 1914. 6. In the section in which the appellant worked the miners use naked lights unless they are told to use safety lamps. The fireman has known safety lamps to be used for as long as a week, but on an average the safety lamp is used one day a week. During the fortnight before the accident on 11th July 1913 the appellant stated that he used only a naked light. 7. While there may be other contributing causes it is always the use of the safety lamp which is emphasised as the prime cause of the onset of miner's nystagmus. 8. For a good many months before March 1913 the appellant noticed the light 'bobbing' in front of him, but this did not incapacitate him from work.

"I held that the *onus* was on the appellant to prove that the miner's nystagmus from which he suffers was (1) either caused or accelerated by the accident of 11th July 1913, or (2) due to the nature of his employment within the twelve months previous to the date of his disablement, *i.e.*, 26th March 1914. I was of opinion that he had not discharged the *onus* in either particular. In my opinion the effect of the evidence was that the appellant's nystagmus was contracted before 26th March 1913, and was not aggravated by the nature of his employment after that date. Accordingly I refused to award compensation."

The *questions of law* for the opinion of the Court were—"1. Was the arbiter right in holding that the *onus* of connecting the

ERRATA.

Page 378, col. 1, lines 4 and 5—*transpose* "negative" *and* "affirmative."

Page 690, col. 1, line 24—*for* "Babcox" *read* "Babcock."

Page 698, col. 2, line 6—*for* "1912" *read* "1911."

Page 732, col. 2, line 22 from foot—*the* ";" *should be a full stop.*

Page 806, col. 2, line 19 from foot—*for* "compulsorily" *read* "compulsory."

appellant's nystagmus with the accident of 11th July 1913 rested upon the appellant? 2. Was the arbiter right in holding that the *onus* of proving that the miner's nystagmus from which the pursuer was certified to be suffering was due to the nature of his employment rested on the appellant? 3. In the circumstances was the arbiter right in refusing to award pursuer compensation?"

Argued for the appellant—The phrase "at or immediately before the date of the disablement" in section 8 (2) of the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) implied a sequence of events and not of time. If therefore there was no employment intervening between a workman's last employment in a process mentioned in the Third Schedule to the Act and the date of his disablement, then, provided the employment was within twelve months of the disablement, the workman started with the presumption in his favour that the disabling disease was contracted in that employment —*Dean* v. *Rubian Art Pottery, Limited*, [1914] 2 K.B. 213, Evans (J.) at 222; *Merry & Cuninghame* v. *M'Gowan*, 52 S.L.R. 30. The only *onus* on the workman was to show that the disease was due to the nature of his employment within the twelve months previous to the disablement. On this point the certificate of the certifying surgeon was conclusive. The workman had brought evidence that he was engaged in mining within the statutory period, that conditions contributing to the disease were present in the employment, and that external contributing conditions were absent. The workman had therefore brought a *prima facie* case in his favour which the employers had done nothing to rebut—*Davison* v. *Henderson & Company*, March 12, 1958, 22 R. 448, 32 S.L.R. 313. The reason for laying the *onus* of proof on the last employer was that if there were no intervening employment between that employment and the date of the disablement the presumption was that the disease was due to that employment, whereas intervening employment raised the contrary presumption. The mere fact of a workman lying out of employment for a long period before disablement occurred indicated that the disease had already attacked him. Even were the *onus* of proof held to lie on the workman, on the facts of the case he was entitled to succeed. The finding of the medical referee was material evidence in the workman's favour. Though not final it raised a strong presumption as regards the source of the disablement—*M'Ginn* v. *Udston Coal Company, Limited*, 1912, S.C. 668, 49 S.L.R. 531; *Scullion* v. *Cadzow Coal Company, Limited*, 1914, S.C. 36, 51 S.L.R. 39.

Argued for the respondents—Section 8 (2) contemplated sequence of time alone. It contemplated, moreover, a strictly limited range of time. The words "immediately before" were inserted to prevent injustice in the case of a workman dying after knocking-off work a few days before his death, because by section 8 (4) (*b*) in the case of death without obtaining a certificate, the date of disablement was to be deemed to be the date of death. The section contemplated, therefore, at the most an interval of a few days—*Dean* v. *Rubian Art Pottery, Limited* (*cit. sup.*), Eve (J.) at 225. In that case one month had been held sufficient to displace the presumption in favour of the workman, whereas in the present case an interval of eight months had elapsed. The *onus* of proof therefore lay on the workman. This the Sheriff had held he had failed to discharge, as he was perfectly entitled to do. The Court could not therefore disturb his finding. In *Merry & Cuninghame, Limited* v. *M'Gowan* (*cit. sup.*) the *onus* of proof undoubtedly lay on the employers, who had failed to discharge it. The case of *Scullion* v. *Cadzow Coal Company, Limited* (*cit. sup.*) was decided previously to the Order of the Secretary of State of 30th July 1913, which extended the provisions of the Act to those other than miners who were suffering from nystagmus, and was therefore not in point, but even had it been decided under that Order the workman there would still have had to prove his case.

At advising—

LORD PRESIDENT—This case raises two questions, one of general importance and interest relative to the construction of a difficult section of the Workmen's Compensation Act 1906. The appellant, who is a miner, was engaged during the greater part of his active life in mines where safety lamps were used. In the month of April last he obtained from a certifying surgeon a certificate to the effect that he had been disabled from work in respect of miner's nystagmus since 26th March 1914. Miner's nystagmus is a disease mentioned in the first column of the Third Schedule to the statute, and in terms of the 8th section the disablement is treated as an accident happening at its date, and the appellant is entitled to claim compensation as for a personal injury arising out of and in the course of his employment. That compensation is recoverable from the employer who last employed him in the process—of mining in this case.

The last employers of the appellant were the respondents. But on the 11th July 1913, in consequence of an accident which it is found did not cause or accelerate the disease, the appellant left the respondents' employment. Eight months, therefore, had elapsed between the date of his last employment and the date of his disablement. In these circumstances the question arises whether or no the workman is entitled to claim the benefit of the statutory presumption set up by the 2nd sub-section of section 8 in favour of the workman. To enable him to do so three statutory prerequisites must exist. In the first place, he must have been employed during the preceding twelve months in a process set out in the third column of the Second Schedule. That statutory prerequisite was complied with in this case—he was employed in mining. Second, the disease which caused the disablement must be one set out opposite the process of mining. That prerequisite was also complied with; the cause of disablement was miner's nystagmus. The third prerequisite is that "at

or immediately before the date of the disablement" he must have been employed in the process—of mining in this case. That statutory prerequisite was not in my opinion complied with. At the date of disablement the man was out of employment, and immediately before the date of the disablement he was likewise out of employment. Eight months had elapsed during which he had been idle, and that period, therefore, had transpired between the date of his last employment in mining and the date of disablement.

All this seems plain enough if the meaning of the expression "immediately before" relates to sequence in time and not to sequence of events, and in my opinion, according to the plain and natural meaning of the language used, "immediately before" must refer to time and not to events. That appears to me to be very clear on the face of the statute. This view was taken in the English Court of Appeal in the case of *Dean*, [1914] 2 K.B. 213, to which we were referred—a case in which the circumstances were stronger for holding that the workman was not deprived of his statutory presumption, because in that case only a short period of three or four weeks elapsed between the date of the workman's last employment and the date of the disablement. It is quite true, as appears from the report, that during that short period the workman had been engaged in odd jobs, but that circumstance was not founded on in any of the opinions delivered by the learned Judges in the Court of Appeal.

An ingenious and subtle argument was presented to us to the effect that the expression to which I have referred relates to sequence of employments and not to sequence of hours, days, and months; and accordingly, if there was no intermediate employment engaged in between the date of the last employment in mining and the date of disablement, then the last employment in mining, however far distant within the twelve months, must be considered in the sense of the statute "immediately before" the date of the disablement. To this a complete answer seems to be that the statute does not say so. I forbear to speculate upon the consequences which might follow if such an interpretation were adopted, because I freely allow that we are here moving in the region of artificial rules founded on no well-known and well-established principle of law, and in endeavouring to reach the true meaning of the statute our sole guide must be, What has the statute said?

I pass to consider the second question presented for decision. The learned arbitrator in this case refused compensation to the workman, and the question is whether the facts found by him warranted that conclusion. I am of opinion that they did. The question to which the arbitrator here applied his mind was, I take it, this—Did the appellant prove that his disablement was due to work in the process of mining during the twelve months anterior to the 26th March 1914? Both parties, I think, were agreed that this was the question to which the arbitrator had to address himself if his view with regard to *onus* was correct.

Now, on the facts found, I have no doubt that the arbitrator was well entitled to reach the conclusion which he did. The industrial history of the man was during the period of twelve months prior to the date of disablement, as follows:—From 26th March 1913 until 15th May 1913 there is only his own statement to the effect that he was employed in a mine where only safety lamps were used. I gather from the case as stated that the learned arbitrator did not hold that statement to be proved. From 15th May 1913 to 11th July 1913 he was employed with the respondents in a mine where safety lamps were used on an average one day in the week. For the fortnight preceding the date of the accident which befell him on 11th July 1913 no safety lamps were used, only open light, in the mine. The accident of 11th July 1913 had no effect either in causing or accelerating the progress of the disease which finally disabled him. But prior to the period in question—many months anterior to 26th March 1914—a characteristic symptom of nystagmus had appeared. The prime cause of nystagmus—so finds the arbitrator—is usually considered to be the use of the safety lamp in a mine. These are all the facts, so far as I can gather, which the learned arbitrator found. On these facts I do not doubt that he was entitled, if he thought fit, to come to the conclusion that the appellant had failed to prove what he held was incumbent upon him to prove, to wit, that his disablement was due to work in a mine during the twelve months anterior to 26th March 1914.

For these reasons I propose that we should answer the second and third questions put to us in the affirmative. We were not invited to answer the first question.

LORD MACKENZIE—The workman, who is the appellant, obtained from the certifying surgeon a certificate that he had been disabled for work in respect of miners' nystagmus since 26th March 1914. He did no work between 11th July 1913 and 26th March 1914. From 15th May 1913 and 11th July 1913 he had worked with the respondents at Allanton Colliery.

In these circumstances the appellant argued that his case comes within section 8 (2) of the Workmen's Compensation Act 1906. His contention was that he was employed "at or immediately before" the date of disablement in mining, that his disease is miners' nystagmus, and that he is therefore entitled to the benefit of the presumption under that sub-section that the disease was due to the nature of his employment. The basis of this argument is that "at or immediately before" refers not to time but to the sequence of employment; that there is no claim under the Act if the workman merely contracts the disease, the only relevant point of time being the date at which the disease reaches the stage of disablement; that it is reasonable the employer should be liable in whose employment the workman was just before the disablement; that the

interjection of employment with another employer excludes the presumption, because it shows the workman to have been fit for work; but that if no employment is interjected, then the mere length of the interval in time (assuming it to be within the twelve months) will not displace the presumption that the workman left his work because he was not fit to go on.

This argument, which is ingenious, appears to me not possible on the language of the sub-section. The words "at or immediately before" refer to time and time only. This is the view taken of these words in the case of *Dean* v. *Rubian Art Pottery, Limited*, [1914] 2 K.B. 213, and in the views expressed upon that branch of the case I agree. Whatever difficulty may arise as to the application of this provision in special circumstances none arises here. The 11th of July 1913 cannot be said to have been "at or immediately before" the 26th of March 1914. It follows that the arbitrator was right in holding that the *onus* rested on the workman of proving that the miners' nystagmus from which he was certified to be suffering was due to the nature of his employment. I further think the arbitrator right when he says that what the appellant had to prove was that the disease from which he suffered was due to the nature of the employment, to wit (in this case) mining, within the twelve months previous to the date of his disablement. This, in my opinion, is the necessary result of the leading provision in section 8 (1) (i). What that section does is to make disablement by disease "due to the nature of any employment in which the workman was employed at any time within the twelve months previous to the date of the disablement" equivalent to "personal injury by accident arising out of and in the course of that employment." The provisions of section 8 only become operative if this condition is fulfilled. If the disease is not due to the nature of the employment within twelve months, then the succeeding sub-sections do not come into operation. The disablement from disease is then not an injury by accident.

The arbitrator states that he was of opinion that the workman had not discharged the *onus*. He says—"In my opinion the effect of the evidence was that the appellant's nystagmus was contracted before 26th March 1913, and was not aggravated by the nature of his employment after that date." There is, in my opinion, evidence in the case upon which he was entitled to come to this conclusion.

In taking the view that the appellant could not succeed if the nystagmus was contracted outwith the twelve months, and was not aggravated by the nature of his employment since, I think the arbitrator puts the sound construction on the Act. If the nystagmus was contracted outwith the twelve months it could not be due to the nature of the employment within the twelve months whether employment be taken to mean mining in general or the employment in a particular pit.

LORD SKERRINGTON—The appellant is fifty years of age, and has spent his working life as a miner chiefly in safety lamp pits. For twenty years he has worked with occasional intervals under the respondents in Allanton Colliery. Upon 24th April 1914 he obtained from a certifying surgeon a certificate in terms of section 8, sub-section 1 (1), of the Workmen's Compensation Act 1906 to the effect that he had been disabled for work in respect of miner's nystagmus since 26th March 1914. By sub-section 4 of section 8 the date of disablement for the purposes of that section is the date stated in the certificate. Miner's nystagmus is not one of the diseases mentioned in the Third Schedule to the Act, but by an Order made by the Secretary of State under the power conferred by sub-section (6) and dated 30th July 1913, miner's nystagmus is scheduled as follows—[*quoted supra*].

On 11th July 1913 the appellant while in the employment of the respondents received an injury to his eye from a splinter in the course of his work at Allanton Colliery. He was wholly incapacitated in consequence and was paid by them full compensation of 17s. 6d. per week down to 19th March 1914, when payment was stopped. On this latter date the injury to the eye received on 11th July 1913 had completely healed but symptoms of nystagmus were visible. The arbitrator has decided that the appellant failed to prove that the accident of 11th July 1913 either caused or accelerated the nystagmus. This finding was not impugned by the appellant's counsel, and the first question in the Stated Case must be answered of consent in the affirmative.

The claim of the appellant for compensation (if he has one) must therefore be based upon section 8 of the Act, which, when it applies, directs that a workman's disablement from what the sidenote conveniently describes as an "industrial disease" shall be treated as the happening of an accident. The second question in the Stated Case is whether the arbitrator was "right in holding that the *onus* of proving that the miner's nystagmus from which the pursuer was certified to be suffering was due to the nature of his employment rested on the appellant?" If the appellant could bring himself within the terms of sub-section (2) of section 8 he would cast upon the respondents the burden of proving that the disease which caused his disablement was not "due to the nature of the employment." But in order to have the benefit of the presumption that the disease was due to the nature of the employment the appellant must show that "at or immediately before the date of the disablement," viz., 26th March 1914, he was employed in the process of mining. The last day on which he worked as a miner was 11th July 1913, more than eight months before the date of the disablement. If the expression "immediately before" has reference to the interval of time between the workman's leaving the employment and his disablement it cannot be suggested that the 11th of July occurred immediately before the 26th of March in the following year.

Accordingly the appellant's counsel argued that the expression "immediately before" must be construed as equivalent to "last before," and that his client was entitled to the benefit of the presumption in respect that his last employment prior to the date of his disablement was employment as a miner in the service of the respondents. I cannot accept this ingenious suggestion as the true construction of sub-section (2). Accordingly I think that the arbitrator was right in holding that the burden of proof lay upon the appellant. It follows that the second question should be answered in the affirmative.

The third question in the Stated Case is whether "in the circumstances was the arbitrator right in refusing to award pursuer compensation?" The arbitrator decided that against the appellant upon the ground that the effect of the evidence was that the disease was contracted before 26th March 1913, and was not aggravated by the nature of his employment after that date. In other words, the disease was not contracted either wholly or partially within the twelve months previous to the date of the disablement. In so far as this finding is one of fact, I see no reason to doubt that the arbitrator had evidence before him which entitled him to make it. In so far as it involves a particular view as to the meaning of the statute the finding cannot be disturbed in this appeal, because the arbitrator was not asked, nor were we asked, to make any determination as to the meaning and effect of section 8. For my own part, however, I should like to hear argument on the question whether sub-section (1) of that section really makes it a condition of a workman's right to recover compensation in respect of disablement from an industrial disease that the disease should have been contracted either wholly or partially within the statutory period of twelve months. It is at least arguable that the section draws a distinction between a disease being "due to the nature of" a workman's employment with a particular employer and its having been "contracted" either wholly or partially while the workman was in that employment. In this view all that it was incumbent on the appellant to prove was (*a*) that he had worked as a miner within twelve months of his disablement, and (*b*) that the miner's nystagmus referred to in the certificate was not due to some accident or disease unconnected with mining, or to his having worked in some other industry the conditions of which might have caused the disease. I make the suggestion with hesitation, because the opposite construction of the section was assumed to be the correct one in the case of *Scullion* v. *Cadzow Coal Company*, and was adopted by the Court of Appeal in England in *Dean* v. *Rubian Art Pottery, Limited*. I still, however, feel the doubts which I expressed in my opinion in the case of *M'Gowan* v. *Merry & Cuninghame, Limited*, as to the true meaning of the section. Another reason for giving a liberal construction to sub-section (1) of section 8 is to be found in the terms of sub-section (10), which apparently confine the workman's remedy in respect of a scheduled disease to proceedings under the section, and do not permit him, as was done in the present case, to make a claim without reference to the section.

The Court answered the second and third questions of law in the affirmative, the first being of consent superseded, and dismissed the appeal.

Counsel for the Appellant — Moncrieff, K.C.—Fenton. Agents — Simpson & Marwick, W.S.

Counsel for the Respondents — Horne, K.C. — Carmont. Agents — W. & J. Burness, W.S.

Thursday, December 10.

SECOND DIVISION.

[Sheriff Court at Glasgow.

WALLACE *v.* BERGIUS.

Reparation—Road—Negligence—Contributory Negligence—Motor Car—Liability for Collision.

The driver of a motor car continued on the wrong side of the road until a collision with a motor car approaching from the opposite direction seemed imminent, when he swerved to his proper side. The driver of the approaching car, however, in the belief that he must do something to avoid the imminent collision, swerved also to the same side and the two cars collided. *Held* that the driver of the approaching car was not guilty of contributory negligence in swerving away from his proper side of the road.

Per Lord Justice-Clerk—"I think the driver of a motor car is in the same position as the master of a ship in this respect, that if at the last moment he reasonably judges that a collision is absolutely inevitable unless he does something, and if that something might avoid a collision, he acts perfectly reasonably in taking that course."

Observed per Lord Guthrie — "On a clear road with nothing in sight a driver is entitled to take any part of the road he likes."

J. H. Wallace, stockbroker, Kilmalcolm, *pursuer*, brought an action in the Sheriff Court at Glasgow against A. Norman Bergius, Glasgow, *defender*, for £400, 10s. 3d. damages in respect of loss sustained by the pursuer arising out of injuries caused to his motor car which were the result of a collision between it and a motor car belonging to the defender on 31st October 1912. The defender made a counter claim for £320 in respect of loss sustained by him arising out of injuries caused to his motor car in the collision.

The following *narrative* of the *facts* is taken from the opinion of the Sheriff (*infra*) —". . . Without going into the details, I think it is proved that shortly after five o'clock on the date in question the Bergius