have been expressed in England. I think that in the judgment of Lord Moncreiff in the case of *Wildridge* v. *Anderson*, 25 R. (J.) 27, 2 Ad. 399, we have a very good summary of what the law of Scotland is. His Lordship said—"The general and salutary rule is that no man can be a judge in his own cause, and that rule within certain limits is rigorously applied. The reason of it is obvious, viz., to ensure not merely that the administration of justice shall be free of bias but that it shall be beyond suspicion. It is subject, however, to qualifications and exceptions. The result of the authorities which were cited to us may be stated as follows:—1. As a general rule a pecuniary interest, if direct and individual, will disqualify, however small it may be. 2. An interest although not pecuniary may also disqualify, but the interest in that case must be substantial. 3. Where the interest which is said to disqualify is not pecuniary, and is neither substantial nor calculated to cause bias in the mind of the Judge, it will be disregarded, especially if to disqualify the Judge would be productive of grave public inconvenience."

The last qualification was apparently introduced because if the plea there had been sustained the result would have been that all the cases would have had to be tried by the Sheriff, who would have had to be brought from Greenock to hear them.

I have not been able to see how the charge under the present complaint comes into correlation at all with the question that has been raised in the action now pending in the Court of Session. That action raises the question whether certain determinations of the Licensing Court and of the Appeal Court were *ultra vires* or not because of their character and the provisions of the Licensing Act. The question before the Magistrate was—"Did a certain sale of spirits take place on a certain day at a certain place to a certain person? and I cannot understand how it can be suggested that the Magistrate when called upon to adjudicate upon that case should be in any way biassed or likely to be biassed because of the pending action in the Court of Session. Accordingly in my view we should hold that there are no relevant averments here sufficient to disqualify the Magistrate from adjudicating upon this case.

LORD DUNDAS concurred.

LORD GUTHRIE — I agree. I think Mr Macmillan was well founded when he said with regard to the question of bias that whether in Scotland the same result would follow in individual cases as appears to have followed in certain English cases, at all events the principles of law in the two countries are the same. The courts of neither country, of course, can guarantee the correctness of their decisions, but each country is equally jealous of the purity of its proceedings. I agree that we have nothing here that will conform to the principles laid down in cases of disqualification. It is enough to disqualify if it appears that there is a real likelihood of bias, and it is equally clear that if the case is not one of pecuniary bias the bias must be both direct and substantial. It appears to me that there is no real likelihood that the Court of Session proceedings could produce in the average mind, which these rules always have in view, any bias either direct or substantial. As to whether any disqualifying risk of bias must in all cases be personal and not merely official, as Lord Trayner indicates in *Wildridge's* case, 25 R. (J.) 27, 2 Adam 399, it is not necessary to determine.

The Court refused the bill.

Counsel for Complainers—Hon. W. Watson, K.C.—Garson. Agent—James Purves, S.S.C.

Counsel for Respondent—Macmillan, K.C.—D. M. Wilson. Agents—Burns & Waugh, W.S.

COURT OF SESSION.

Thursday, May 25.

SECOND DIVISION.

[Sheriff Court at Aberdeen.

FERGUSON *v.* ABERDEEN PARISH COUNCIL.

Insurance—Fire—Jus Quæsitum Tertio—Insurance of Servant's Property by Master—Right of Servant to Recover from Master.

A parish council effected a policy of insurance against fire over the contents of a poorhouse belonging to them. The policy covered, *inter alia*, the property of their servants, who were not, however, cognisant of the fact, and had not ratified it. A fire occurred which destroyed, among other things, the effects of a children's superintendent who had rooms in the poorhouse. The total amount recovered by the council under the policy was, however, not more than the value of their own property destroyed by the fire. In an action at the instance of the superintendent against the council, *held* that the former was not entitled to recover any part of the amount of the loss of her property due to the fire.

Dalgleish v. *Buchanan*, 1854, 16 D. 332, *followed.*

Elizabeth Reid Ferguson, children's superintendent, Aberdeen Poorhouse, Oldmill, Aberdeen, *pursuer*, brought an action against the Parish Council of the City Parish of Aberdeen, *defenders*, for payment of the sum of £128, 5s. 3d., being the value of personal belongings of the pursuer destroyed by fire at the poorhouse, averred to have been recovered by the defenders under a policy of insurance against fire effected by them over these belongings.

The *policy* in column No. 2, in the schedule giving the specification of subjects covered, which column dealt with the contents of the Children's Block, read—"2. On

office and all other furniture, fixtures, other than landlord's fixtures, fittings and utensils, table and bed linen, and wearing apparel, telephones, pictures, printed books and unused stationery, medical and surgical appliances, provisions, and all other stores, the property of the insured, or held by them in trust, for which they are responsible; also on the personal property of every description belonging to any of the insured's servants or inmates, and on other contents, excluding what is named in columns 1, 3, 4, and 5—THREE HUNDRED POUNDS."

The pursuer averred—"(Cond. 2) As part of her emoluments pursuer is entitled to board and lodging at the said poorhouse, and the sitting-room and bedroom set apart for her use were, at the date of the fire hereafter condescended on, situated in the children's block, which was a building separated from the main buildings of the poorhouse, and which consisted of the schoolroom, two playrooms, two large and two small dormitories, a kitchen, and the said sitting-room and bedroom. (Cond. 3.) On the evening of 11th December 1914 a fire occurred in the schoolroom of the said children's block, as a result of which the whole block was completely destroyed. The whole personal belongings of the pursuer, consisting chiefly of articles of wearing apparel, at the time stored in her sitting-room and bedroom, were destroyed in the said fire. (Cond. 9) It was the duty of the defenders, in terms of the rules and regulations, to see that all the furnishings, &c., of the poorhouse were insured against damage by fire for a sum sufficient to cover any probable loss. The pursuer believes and avers that in the policy of insurance taken out by the defenders to provide against loss for damage by fire to the buildings and furnishings at said poorhouse there was also included the personal property of every description belonging to any of their servants or inmates, and the defenders are called upon to produce said policy. After the fire took place the Convener of the House Committee of said poorhouse requested the pursuer, with the view of including the pursuer's loss in the claim against the insurance company under the policy, to hand her claim for the loss of her personal belongings in consequence of the said fire to the Governor of the Poorhouse, and whose orders she is bound to obey, and this she did on 16th December 1914. The pursuer further believes and avers that the amount for which the said furnishings and personal property of the inmates and servants was insured against loss for damage by fire was £300, and that the defenders claimed and recovered payment under said policy for the full amount thereof. They are bound to account and pay to the pursuer, out of the sum recovered, the amount of the pursuer's loss, or at least a rateable proportion."

The pursuer pleaded, *inter alia*—"3. The pursuer's property having been insured by the defenders against loss for damage by fire, and they having claimed and recovered under the policy of insurance, are bound to apply the sum recovered towards satisfaction of her loss."

The defenders pleaded, *inter alia*—"5. *Esto* that the fire was caused through the fault and negligence of any of the defenders' servants as condescended upon, the pursuer's averments are irrelevant to support the conclusions of her action against the defenders, and the same should be dismissed, with expenses. 6. The averments in article 9 of the condescendence are irrelevant, and should not be remitted to probation. 7. The defenders not having claimed or recovered anything under their policy of insurance on account of the pursuer's property, they are under no liability to account to her in respect of any sum received by them from the insurance company."

On 7th December 1915 the Sheriff-Substitute (LAING) sustained the fifth plea-in-law for the defenders, and allowed a proof before answer.

The pursuer having appealed for an allowance of proof on this question the defenders intimated that they would ask the Court to dismiss the action on the ground that the pursuer had set forth no relevant claim to the insurance money.

Argued for the pursuers—The employers had in fact insured the property of the pursuer even though they had no insurable interest, and when that was so it could not be presumed that the pursuer took the risk of fire. Where the insurance company had actually paid the money the *cestui que* trust had a right to recover even though there was no express contract between her and the insurance company. If the money was paid under the policy in respect of certain articles the payment was appropriated to the loss of these articles—*Cochran & Son* v. *Leckie's Trustee*, 1906, 8 F. 975, 43 S.L.R. 715. The pursuer was therefore entitled to recover the value or a rateable proportion thereof.

Argued for the defenders — No right attached to a person whose goods were insured by another if in point of fact that person neither authorised the taking out of the policy nor subsequently ratified it. Where the servant did not know that the master had insured her risk she could have no right to recover—MacGillivray on Insurance, p. 151. She could not ratify the contract after the loss had occurred—*Grover & Grover, Limited* v. *Matthews*, [1910] 2 K.B. 401. In any event there was no surplus here, and that being so the pursuer could not claim—*Dalgleish* v. *Buchanan*, 1854, 16 D. 332, at pp. 335, 337, and 338. The defenders were in no sense trustees of her property for the pursuer, so that she had no claim on that ground—*North British and Mercantile Insurance Company* v. *Moffat*, 1871, L.R., 7 C.P. 25. Neither did the defenders claim the insurance money as agents for the pursuer.

LORD JUSTICE-CLERK—In this case there are two branches, which depend upon separate averments and separate principles of law. The first relates to the question whether the pursuer here is in such a position that the defenders were not entitled in the circumstances to avail themselves of the

plea-in-law founded on the doctrine of fellow-workman or *collaborateur*. [*His Lordship having dealt with the question continued*]—The second part of the case relates to the point raised by the pursuer's third plea-in-law, that she was entitled to take benefit from the fact that the Parish Council had effected a policy of insurance which in terms appeared to cover the lost articles belonging to her. The Sheriff-Substitute allowed her a proof of her averments relative to that matter. After carefully considering the averments I think the Sheriff-Substitute has read into them more than they can be held to contain. He says in his note—"It seems to me clear both in law and in equity that if the defenders recovered from the insurance company a proportion of the proceeds of the policy in respect of the pursuer's personal loss, they are bound to hand it over to her."

I do not express any opinion whether that would have been so or not, for I confess that, having regard to the case of *Dalgleish* v. *Buchanan & Company*, 16 D. 332, I think there is considerable doubt upon the point. But the pursuer has made no averment that the Parish Council received from the insurance company such a sum as, after deducting the value of the property they themselves lost, would leave any surplus. There is not even an averment that a claim was made on behalf of the pursuer by the Parish Council against the insurance company. I think the authorities cited establish the proposition that if an insurance be effected by A on the goods of B without the knowledge of B, B cannot adopt the contract of insurance after a loss has occurred. Accordingly in my opinion the Sheriff-Substitute has gone wrong in this part of the case, and we should find that the pursuer has not made any relevant averment in support of her third plea-in-law.

LORD DUNDAS concurred.

LORD SALVESEN—[*After dealing with the first branch of the case*]—On the other branch of the case, which raises an interesting question of law, I agree with your Lordship in the chair. The defenders took out this policy in their own name. They throughout paid all the premiums. The pursuer was never made acquainted with the fact that they had included in the contents which they insured the property belonging to their servants. It is not said, as I read the pursuer's averments, that the defenders recovered any more under the policy than the loss which they themselves sustained.

Now that being so I think it is quite an unfounded proposition in law that a person who insures for his own benefit, and incidentally and gratuitously includes in the insurance the property of some other person in whose goods he has no insurable interest, is bound to subordinate his own claim of loss to the claim of the third party, who could not, as your Lordship has said, adopt or ratify the policy after a loss had been incurred. Even if the defenders had recovered in respect of the pursuer's property from the insurance company any sum, I share the doubts of Lord Ivory in *Dalgleish's* case, 16 D. 332, at p. 336, as to whether the defenders would be bound to hand over the amount to the pursuer.

We are familiar in another department of insurance law with honour policies. When the defenders, having no insurable interest, insured their servants' property it was a mere honour policy, and if the insurance company chose to honour it the defenders would get the benefit. But to say that the pursuer can demand payment of an indemnity under a contract the pecuniary part of which has always been discharged by the defenders is entirely out of the question. I have not the least doubt that if these defenders had insured for their servant's benefit and had recovered in respect of the servant's loss they would have been only too glad to have handed over the money to her. But it is a very different thing to say that in such circumstances there is a legal right or even a title on the part of the pursuer to recover any sum which the insurance company, knowing the facts and having no legal liability to pay at all, have in fact paid.

I do not think the Sheriff-Substitute's attention could have been called to the case of *Dalgleish*, which in my judgment is conclusive against the pursuer on this second branch of the case.

LORD GUTHRIE concurred.

The Court recalled the interlocutor of the Sheriff-Substitute and repelled the third plea-in-law for the pursuer.

Counsel for the Pursuer—Chisholm, K.C.—A. M. Mackay. Agents—Graham, Johnston, & Fleming, W.S.

Counsel for the Defenders—Sandeman, K.C.—Lippe. Agents—Alex. Morison & Company, W.S.

Tuesday, June 27.

FIRST DIVISION.

[Scottish Land Court.

SCOTT *v.* DUFF.

Landlord and Tenant—Property—Small Holding—Small Landholders (Scotland) Act 1911 (1 *and* 2 *Geo. V, cap.* 49), *secs.* 26 (3) (*a*)—"*Present Rent.*"

A tenant on a nineteen years' lease of a farm at a rent of over £50 received in respect of a piece of land resumed a deduction which made the rent less than £50. This deduction came into operation from Whitsunday 1912, and continued till the end of the lease. The Small Landholders (Scotland) Act 1911 came into operation on 1st April 1912. *Held* (*dub.* Lord Johnston) that the right of the tenant to apply to the Scottish Land Court as a statutory small tenant depended upon the rent actually paid by him for the last year of his lease, not the rent payable as provided for at the commencement of the Act.