HOUSE OF LORDS.

Thursday, June 24.

(Before the Lord Chancellor (Loreburn), Lord Macnaghten, Lord James of Hereford, Lord Dunedin, and Lord Shaw of Dunfermline.)

HENDRY (SIMPSON'S EXECUTRIX) *v.* THE UNITED COLLIERIES, LIMITED.

(*Ante*, 45 S.L.R. 944; 1908 S.C. 1215.)

Master and Servant — Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *secs.* 1 (1) *and* 2, *Schedule* 1, *sec.* 1 (*a*) (1)—*Succession — Title to Sue — Dependant — Executor of Deceased Dependant, who has not Claimed Compensation during Life, Making Claim—Limited Scope of Maxim Actio per sonalis moritur cum persona.*

Where a workman meets his death through accident arising out of and in the course of his employment a right to compensation from his employer is by the Workmen's Compensation Act 1906 conferred upon his dependants, which vests in them on his death, and is, subject of course always to the restrictions of the Act, transmitted on their death to their personal representatives, notwithstanding that during their lifetime they may have made no claim—*diss.* Lord Dunedin.

Observations on the scope of the maxim *actio personalis moritur cum persona.*

This case is reported *ante ut supra.*

The United Collieries, Limited (the respondents in the Court below) appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—The facts of this case are very simple. One Simpson, a workman in the employment of the United Collieries Company, was knocked down by a waggon while in the course of his employment on 9th July 1907. He died of his injuries on 14th July. His mother, averred to have been dependent upon him, died on 16th October 1907, without making any claim upon the company. Her executrix, the now respondent, made a claim on 10th December 1907, under the Workmen's Compensation Act as representative of the mother. The question is, can that claim be admitted in law?

There are conflicting authorities prior to the decision of the First Division in this case. In Ireland the Court of Appeal decided a similar case adversely to the claim. In England the Court of Appeal expressed a different view. I think that the First Division was right in adopting the English authority, though the dissent of Lord M'Laren and the judgment of the Irish Court of Appeal have naturally led your Lordships to regard the case with some anxiety.

The Workmen's Compensation Act by its first section makes the employer "liable to make compensation" in accordance with the First Schedule. In that schedule, in the event of death resulting from the injury, the amount of compensation for dependants wholly dependent upon deceased's earnings is expressly stated. As Lord Mackenzie says, it is not calculated with reference to the expectation of life of the dependant. In cases of partial dependence the amount of compensation is discretionary, subject to a maximum, but is not proportioned to the expectation of life. Now where the Act says that the employer is liable to make compensation in the event of death in case there are dependants, irrespective of their expectation of life, and they are described as the persons for whose benefit it is to be paid, that certainly looks like a debt arising on the death from employer to dependants. When I turn to the other provisions of the schedule I think they fit this view.

Paragraph 5 of the schedule requires payment in the case of death, "unless otherwise ordered or hereinafter provided," into the County Court, to be dealt with in discretion "for the benefit of the persons entitled thereto under this Act." This is, no doubt, in order to relieve the employer and ensure a proper custody, distribution, and application of the money, especially where there are minors or several dependants, or where there are persons for whom the County Court Judge thinks it advisable to take precautions.

The eighth paragraph also contemplates payment to a dependant. And though the ninth reserves a power to vary the apportionment, neither it nor any other paragraph proceeds upon any other view than that there is a definite right on the part of dependants as a class to the money subject to a parental power of the Court in dividing and applying it for their advantage.

If there is this right, when does it arise or become vested? The statute evidently treats it as arising because of the workman's death. It seems to follow that it arises on the workman's death unless some other event is fixed. Counsel for the appellant sought to invoke the second section of the Act, which declares that proceedings for the recovery of compensation shall not be maintainable unless notice has been given as soon as practicable, and the claim for compensation made within six months. This is merely a bar to the remedy unless conditions precedent to the remedy have been fulfilled, and is analogous to the numerous instances in which notice of action is required by statute. It does not help in determining when the right to compensation arises.

I observe that in Lord M'Laren's opinion, if the claim is made within the statutory period, and the dependant dies before an award has been made, the right to an award of compensation has vested in the dependant, and a right to follow out the proceedings in the arbitration passes to the legal personal representatives. But if the claim has not been made his Lordship thinks that the employer's liability is terminated by the death of the dependant.

That opinion is entitled to the greatest respect, but I cannot agree. I cannot see why the claim instead of the death is to be regarded as the signal for the right to compensation vesting. And even if it were so, the Act does not require that the dependant himself should make the claim, and I do not see why that right to make the claim should not pass to the executor.

It seems to me, therefore, that as the person represented by the respondent was the only dependant, her representative may properly claim all that she was entitled to, the right being transmissible as property. If there had been several dependants, the law would not be different, but the discretion of the County Court Judge or Sheriff in apportioning might very likely render the proceedings unprofitable. No doubt this Act was intended to save dependants from the loss they might sustain by being deprived of the support they previously had from the deceased workman, and if the dependants themselves die they require it no longer. And it seems anomalous to enforce payment when no dependant is still living to require support. The Act, however, provides a fixed sum, and this must be taken as the statutory provision, whether in the event it is needed or not. Perhaps if this result had been foreseen it might have been guarded against, but that cannot affect the judgment of a court of law.

LORD MACNAGHTEN — Notwithstanding the weighty opinion of Lord M'Laren and the unanimous judgment of the Court of Appeal in Ireland, in *O'Donovan's* case (1901, 2 I.R. 633), I think the order under appeal ought not to be disturbed.

With Lord M'Laren, I put aside the semblance of argument founded on the maxim *actio personalis moritur cum persona*. The application of that maxim is limited to actions in which a remedy is sought for a tort, or for something which involves at any rate the notion of wrongdoing. Liability under the Workmen's Compensation Act has no connection with any wrongdoing on the part of the employer. It does not result from any neglect or any default on his part. Indeed, in the case of death, or "serious and permanent disablement," the event may be the consequence of "serious and wilful misconduct" on the part of the workman while the employer is wholly free from blame, and yet compensation may be recoverable all the same.

On the other hand, I cannot agree with Lord M'Laren in thinking that a consideration of the policy of the Act leads to the conclusion that the liability of the employer is "contingent on a claim being made." Still less can I agree with the view expressed by one member of the Court of Appeal in Ireland, and apparently adopted by all his colleagues, "that on the construction of the statute it is clear there must be a living dependant on whose behalf the proceedings are to be taken."

It seems to me that the policy of the Act affords little help towards a right construction of its provisions. People may differ as to what the policy of the Act was exactly. Or, if they agree as to the general policy of the Act, they may not agree as to the extent to which that policy was intended to be carried, or as to the propriety of supplementing an enactment by implying or introducing provisions to meet difficulties apparently not within the contemplation of the Legislature when the Act was being passed. Nor do I think that much help is to be got from general propositions of law, or from instances of the devolution of other statutory rights. The answer to the question now in debate must, I think, depend solely on the meaning of the statute itself, gathered from its own language without the addition of anything that is not necessarily implied.

At the same time I must confess that the conclusion at which I find myself compelled to arrive is not altogether satisfactory to my mind. Certainly the result in the present case is rather startling. Here is a workman who met with his death by accident arising out of and in the course of his employment with the appellant company. The company was not in the least to blame for the accident. Still the Act says that in such a case compensation is to be paid by the employer to the workman's dependants. There was only one dependant at the time of the workman's death—an old woman wholly dependent on the workman's earnings. She died almost immediately after the workman was killed, and she died before making a claim. It has been held by the Court of Session that she became entitled, and that her executor is now entitled, at the very least to £150, a sum which may possibly be increased to £300 on a calculation of the workman's earnings, without reference to the injury, if any, which she sustained by his death, and even though it may be evident beyond all question that she sustained no injury at all. That seems a large measure of compensation—larger, I apprehend, than what would have been given by the most generous and liberal employer before the Act was passed. It is a startling result. And the result is even more startling if you contrast what happens in the case of a sole dependant wholly dependent on the workman's earnings with what would happen in the case of two or more dependants each only partially dependent on his earnings. For example, a workman dies. The employer is liable to make compensation in accordance with the First Schedule of the Act. He leaves, I will suppose, a sole dependant wholly dependent on his earnings—a grandmother, it may be, on her deathbed, or a granddaughter engaged to be married to a man well able to support a wife. The grandmother dies or the granddaughter is married before any claim for compensation is made. If the judgment under appeal stands, the married granddaughter or the personal representative of the grandmother, as the case may be, is entitled, by reason of the workman's death, to a considerable pecuniary benefit, wholly unexpected, and some might think wholly

undeserved. On the other hand, if this workman had left both a grandmother and a granddaughter in similar circumstances, but each only partially dependent on his earnings, and the one married and the other died before a claim was made, or even after claim made, but before determination of the amount of compensation, it might be that neither the granddaughter nor the representative of the grandmother would be awarded one farthing. Clause (1) (*b*) of the First Schedule provides that, if the workman leaves only dependants in part dependent on his earnings, the sum payable in default of agreement is to be the amount which may be determined "to be reasonable and proportionate to the injury to the said dependants." There is no similar provision or qualification in Clause (1) (*a*).

I now turn to the Act. It is enacted in section 1 that if in any employment personal injury by accident such as therein described is caused to a workman, his employer is liable to pay compensation in accordance with the First Schedule of the Act. The measure of liability is to be found in the First Schedule. But the liability falls upon the employer on the happening of the accident. It is the accident and nothing else which creates the liability. Is the liability contingent on a claim being made, as Lord M'Laren considers? I do not think it is. The Act itself treats the liability as a subsisting liability from the very moment of the accident, and as a present right. For instance, Schedule 1 (15) provides that if a workman on being required so to do, refuses to submit himself for examination, "his right to compensation and to take or prosecute any proceedings under this Act in relation to compensation . . . shall be suspended until such examination has taken place." Now the request for medical examination might, and indeed probably would, be made after notice of the accident, but before any claim is put forward. And yet the Act speaks of the right to compensation as well as the right to take or prosecute proceedings as a right belonging to the workman. Then again, in section 5 of the Act, sub-section (3), there is included among preferential payments in bankruptcy the amount due in respect to any compensation "the liability wherefor accrued before the date of the receiving order." The accruer of liability spoken of in that section must date from the occurrence of the accident. Now if the liability falls upon the employer by reason of the accident, and as its immediate consequence, there is nothing I think in the Act to indicate that the nature or quality of that liability is altered or affected by the notice of the accident or by the claim for compensation. Of course, if arbitration becomes necessary, there must be a claim in order to raise a question for arbitration. But in the normal case of agreement no claim is required. The Act might of course have made the claim a condition-precedent, but it certainly has not done so in terms. And it is to be observed that in the present Act the requirements as to the claim are less rigid than they were under the original Act. The failure to make a claim within the prescribed period is not now a "bar to the maintenance of proceedings if it is found that the failure was occasioned by mistake, absence from the United Kingdom, or any other reasonable cause."

In my opinion the intention of the Act is shown in one of the alterations made in the First Schedule to the original Act. In the absence of agreement the amount of the compensation in the case of death is now to be paid into Court, and the Court may keep its hand upon the money. But there is no provision for any refund. The absence of any such provision in the case of the dependant dying before the fund is exhausted seems to show that the Act intended that, when once the compensation was fixed the employer was to have no claim to a refund in any case. And if that is so in the case when a refund might easily have been provided for, it seems to me to show that in the case of death, when the liability has once accrued and the right of the dependant has come into existence, it falls upon the employer to satisfy the liability, and that he has no further concern in the matter.

It seems to be admitted on all hands that if a proper claim is made the right of the dependant in the case of death is indefeasible, but I do not think that the claim is a condition-precedent. And I think that the claim of a sole dependant wholly dependent on the workman's earnings is indefeasible on that dependant surviving the workman who has met with a fatal accident arising out of and in the course of his employment. If this is so, the claim in this case was made by the proper person, being made, as the Act prescribes, "by the person entitled."

For these reasons I am of opinion that the order appealed from should be affirmed.

LORD JAMES OF HEREFORD—I was during the hearing in some doubt as to the decision in this case, but in the end I have come to the conclusion that the judgments which have been delivered by my noble and learned friends, the Lord Chancellor and Lord Macnaghten, are correct in every respect. I entirely concur in those judgments and in the reasons on which they are founded.

LORD SHAW OF DUNFERMLINE—Upon the death, in July 1907, of Simpson, a workman in the appellants' employment, a liability emerged, under the Workmen's Compensation Act 1906, upon his employer to compensate his mother as his sole dependant. She, however, died in October without making a claim upon the company; and the question for determination is whether a claim in respect of this liability is maintainable by her executor, or whether, on the contrary, the fact of the dependant's death before lodging a claim extinguishes the liability created by the statute.

In support of the latter proposition there has been cited to us the case of O'Donovan,

decided by the Irish Court of Appeal. The maxim *actio personalis moritur cum persona*, appears to have bulked largely in the Irish case, and especially to have appeared of cogency to Lord Justice Fitz-Gibbon and Lord Chancellor Walker. It was alluded to, rather than founded on, in the argument at your Lordships' Bar.

If this be an *actio personalis*, and if the maxim be generally or comprehensively applicable as a legal maxim, the pursuer's case cannot be maintained. This term itself has been analysed and the history and scope of the so-called maxim have been examined by two very learned Judges, viz., by Lord Neaves in *Auld* v. *Sharp* (2 R. 191) and Lord Bowen, then a Lord Justice, in *Finlay* v. *Clairney*, 20 Q.B.D. 502. As Lord Watson remarked in the case of *Darling* v. *Gray* (19 R. (H.L.) 31), the maxim "has very limited application in the law of Scotland." An *actio personalis* was, *eo nomine*, or at least in connection with such a brocard, unknown to the law of Rome. I presume it is meant to be analogous to an *actio in personam*, but it cannot be completely analogous to that, because there were many *actiones in personam* which transmitted after death. Still further limiting the analogy, it must at least be confined to the *actio injuriarum*, one of the *actiones in personam*. As Lord Neaves shows, the reason why an *actio injuriarum* is not transmissible is that it is treated as a penal action, and "there is an obvious distinction in principle between an action of a penal or criminal character for punishment or for vindication of the law and an action for money reparation."

Lord Neaves quotes with approval Mr Bell's dictum (Principles, section 546)—"The civil action for reparation grounded on delict is not, like the penal action in criminal law, confined to the delinquent. The wrongdoer's representative is liable for reparation"; and as to those who suffer from a wrong he cites the judgment of Lord Wood in *Neilson* v. *Rodger*, where a claim for damages or even for *solatium* arises, "the right vests *ipso jure* and *ipso facto* prior to any proceeding or decree for its constitution." I may observe that this judgment of Lord Neaves is cited as an elaborate one and without disapproval in this House in the case of *Darling* v. *Gray*.

For the reasons I am about to assign, it is not necessary for me to say whether I go the full length of the various dicta pronounced and cited by Lord Neaves, for, in my opinion, what your Lordship's have to determine here is whether the liability and claim sanctioned by the statute in the reason and nature of the case do or do not transmit. As in nearly all, if not all, the cases in which it is cited, the maxim does not advance the position, and I observe that Lord M'Laren, even in his dissent in the present case, dissociates himself from the Irish Judges in founding upon it. The truth is that this maxim, *actio personalis moritur cum persona*, is of doubtful origin, has produced confusion rather than guidance in specific cases, and is used rather to dress up a conclusion already formed than as a safe guide towards a conclusion. I agree with Lord Kinnear in thinking, so far as this case is concerned, that "it has no bearing on the question of the Workmen's Compensation Act."

But apart from the alleged general principle to which I have referred, a specific contention is maintained under the Act just mentioned, viz., that while it may be true that the employer became liable in compensation to a quantified amount in money to the dependant, yet, until a claim had definitely been preferred for it, no right transmissible to executors emerged as against the employer. Stress is laid upon the manifest intention of the Act to favour dependants as such.

The Irish judgment referred to, and the dissent of Lord M'Laren in the Court below in this case, compel very careful consideration of the point. Substantially, I do not think it doubtful that upon the one hand the statute creates a liability and upon the other a right, and that these two things are correlative to each other. It may be convenient, therefore, to consider what was the nature of the liability of the employer under the statute, and in particular whether it, upon its side, had the element in it of transmissibility. Upon this point section 5 of the Act is not without importance. It provides (sub-section 3) for the case of the bankruptcy or winding-up of the employer's firm, and stipulates that "there shall be included among the debts . . . to be paid in priority to all other debts an amount not exceeding in any individual case £100 due in respect of any compensation the liability wherefor accrued before the date of the receiving order or the date of the commencement of the winding up."

In this sub-section it is accordingly clear that the liability to the workman is, in the circumstances mentioned, not only to be treated as a debt but as specially preferable among debts. And the kind of thing which is thus created a debt is "compensation the liability wherefor accrued before" bankruptcy. Take another case, viz., under sub-section 1, which provides for bankruptcy of an employer who is insured "in respect of any liability under this Act to any workman." The sub-section provides that the insurer's liability to the employer is, in the case of the employer's bankruptcy, to be transferred "to and vest in the workman."

In view of these provisions of the statute it seems to me impossible to contend successfully that the liability of the employer was not of the nature of a debt.

I have already stated my opinion that the right of the dependant is correlative to the liability of the employer, and if the liability of the employer be of the nature of a debt, the right of the dependant is that of a creditor in such debt. It is true that the creditor's right is not enforceable by action in the ordinary case after six months from the date of the death, but I do not think this limitation of time for a remedy affects the quality of the right. And I think it is a misuse of the term "condition-precedent"

to apply it, as is attempted, for the purpose of extinguishing the debt simply because for obvious reasons there is a limitation of the period of a right to sue. On both sides of the account, whether as a liability and debt of the employer on the one hand or a right and asset of the dependant on the other, I think the principle of transmissibility applies. It would be strange if a liability is so little personal in the employer's case that it transmits against his insurers and against his bankrupt estate, and yet that the corresponding right should be so personal to the dependant of the workman that it forms no part of the dependant's executory estate.

The case which I figure as not at all improbable under the statute is a case (like the present) of a sole dependant, who is left suddenly to make arrangements for her future, arrangements which may involve advances or credit to her until compensation is actually paid. And when it is urged that liability flies of because a claim had not been preferred, it must be remembered that the omission to claim may be accounted for by reason of sickness or for other very intelligible and excusable causes. Her death prior to the claim would not lessen the sum payable, because that sum is quantified without any reference to the duration of the life of the dependant, and I agree with Lord Mackenzie that it seems likely that "it was intended the right to compensation should vest from the time of death so as to form a fund of credit." There do not appear to me to be any sound considerations of policy against this.

With regard to the liability itself, it appears to me that under section 1 of the statute that liability emerges if (1) the death or injury have occurred by accident arising out of or in the course of the employment; (2) that the person injured should be a workman; and (3) that the workman should leave dependants, that is to say, that dependants should be in existence at the time of death. I do not think that a further condition is added by the statute, viz., the survivance of the dependant, and it appears to me that the liability emerges and the right accrues although the dependant should predecease (1) either actual payment, (2) an action for payment, or (3) a claim. This, of course, in no way removes the necessity for those who do make the claim observing the statutory time limit.

I desire to express my concurrence with the terms of the judgment of Lord Kinnear in the Court below and of Lord Collins (M.R.) in *Darlington* v. *Roscoe*, which case was, in my opinion, rightly decided.

LORD DUNEDIN—(Read by the LORD CHANCELLOR)—I am unable to agree with the opinion of the Lord Chancellor and of the majority of the learned Judges of the Court below. I come to the same conclusion as that come to by Lord M'Laren and by the Irish Court of Appeal in the case of *O'Donovan*.

The view of the majority of the First Division is based entirely on this, namely, that by statute on the death of a workman through accident arising in the course of his employment there is created a vested right in his dependant or dependants to a sum of money to be paid by the employer. If that is so, then I agree with the conclusion reached. In other words I agree with Lord Kinnear when he says—"Now, if there is a statutory right to a sum of money accrued, I am unable to see any ground in law for holding that it does not transmit to the representative of the person to whom it accrued."

But is there such a vested right? If there were it seems to me that it could be sued for. I cannot call to mind any vested right which cannot be asserted by action, unless statute takes away right of action. Here there is no taking away of the right of action unless such can be inferred from the provisions as to arbitration, and such provisions are not, in the case of a workman leaving dependants wholly dependent on him, in any way necessarily invoked—Schedule I (1) (*a*) (1). Yet it has been said again and again in decided cases that no action lies for compensation, the only method being, failing agreement, to proceed to arbitration, and thereafter recover by means of a registered memorandum. This leads me to examine with greater minuteness precisely what the right given is.

It is noticeable first of all that there does not exist what might have been expected, any creation of a right in phraseology positive in the recipient. The only actual creation of a right is in section 1 (1), and that is expressed as a liability on the part of the employer to pay. It is not said to whom the payment is to be made. But as the payment is to be made in accordance with the First Schedule, one naturally looks to the First Schedule to see to whom the payments are to be made.

The First Schedule begins with the case of death, an event which necessarily excludes the idea of actual payments to the workman himself, but does not exclude the idea of a vested right in the workman to receive, because such a right might be made good by executors. But the schedule at once puts an end to such an idea by providing that the sum payable is to be calculated according as he does, or does not, leave "dependants." Now dependants are not executors, they are not even a class known to the law, but they are a class created, so to speak, and defined by the statute. It then goes on to deal with the case of partial or total disablement. In neither of these cases is there any expression in terms of the right to receive. Naturally I look upon it as a necessary inference that there should be a right to receive in the persons mentioned or assumed, that is to say, dependants in the case of death, the workman himself in the case of incapacity. I am only concerned to notice that there is nothing so far in expression which points to any period of vesting of a right. As I understand the judgment, however, it is said that once you get the liability to pay, and the cor-

responding right to receive, there is no reason why you should not hold vesting to take place at the date which determines the right to receive. But is this consistent with other parts of the statute? I cannot imagine that in this matter there should be a difference between the right of the workman and that of the dependants. The respective dates would then be the accident and the death. The necessities of the dependants, says Lord Mackenzie, commence at the death. The necessities of the workman similarly commence at the accident. But surely it is clear that so far as the workman is concerned he has no vested right as from the accident. Take the case of a workman who is injured, lies for several weeks ill, and then dies, no payment having in the meantime been made. Can it be doubted that the dependant would be entitled to the whole three years' earnings, or £150? But if the opposite theory is correct, the right to the sum due for the weeks of illness ought to be given to the executors; and there is then the extraordinary anomaly in section (1) (*a*) (1) of Schedule I, that there is no provision for the deduction which would be made if the payments had been made to the workman himself. Up to this point, therefore, I leave section 1 of the schedule and find no provision as to vesting, but rather indications the other way.

I now come to section 2 of the statute. This seems to me to define the only way in which the right created by the statute is to be made available, namely, by proceedings under the Act; and these proceedings must be taken within six months, and are subject to the further condition-precedent that notice must be given of the accident. I do not detail the provisions as to the method of arbitration, which are familiar. It is enough to know that they end in a finding which fixes a compensation for which no decree or judgment can be given by the assessing tribunal, but which finding, being registered in the form of a memorandum in the books of a specified court, can then be enforced as a decree at law.

Even here, if the finding is registered and execution proceeds upon registration, the employer does not pay to the dependants; he pays into Court—Schedule I (5). The subsequent directions as to the power of the court seem to me to be against the idea of a vested right. I do not consider this argument as conclusive, because I am not insensible to the explanations given by Lords Kinnear and Mackenzie. But such as they are they seem to me to point in the direction to which the other parts of the statute have inclined me.

My view on the whole matter is that the whole position is statutory and anomalous, and that there is in the proper sense no vested right conferred, but merely a right to take proceedings of a certain kind which will result in the recovery of money; that the right to institute such proceedings, which is only given inferentially, cannot be extended beyond the recipients specified by the Act, namely, the workman himself, his dependants, or the persons who, failing dependants, have defrayed the expenses of his funeral, each in the appropriate case; and that consequently in the present instance, no proceedings having admittedly been taken by any of these three classes, the present proceedings are precisely excluded by the wording of section 2. I do not find any difficulty in reconciling this view with the provision as to preferential debts in section 5, because that section is equally workable whether the liability is held to "accrue" at the one period or the other.

If it is said that this result is reached by a narrow and metaphysical construction of the sections, I answer that if we abandon textual construction and go to general considerations, then I think that Lord M'Laren's view as to the general policy of the Act is irresistible. The Act was passed in order to treat as an expense of production the sum necessary to compensate a workman during his disablement or his true dependants after his death, not to benefit persons who had no connection with the workman at all.

The *reductio ad absurdum* of the opposite result is reached when we consider that in the case of a bastard dependant who has made no claim, it is the Crown who under the present judgment is entitled to prosecute it. And further, though I agree with the criticism made upon the opinions of some of the Irish Judges, namely, that this not being an *actio*, the maxim *actio personalis moritur cum persona* cannot apply, yet I think the argument is true enough in substance. For after all there is an underlying common sense to the maxim, and that common sense is, I think, equally outraged in this case as it would be in cases falling under the maxim if the maxim were not given effect to. Lord Kinnear says he is not moved by the argument as to the policy of the Act, because the question is not whom did the Act mean to favour, but what is the quality of the right conferred. But surely the policy of the Act may throw light on whether it was intended to give a vested right or not. And if I find, as I do, indications pointing in opposite directions as to whether the right given is a vested one as at date of the accident or death, or is only given when made good for proceedings, then I am moved by the consideration that the latter view makes the effect of the Act what its title denotes, viz., to give "compensation" to someone who has lost by the accident, *i.e.*, the workman himself or those actually dependent on him, while the other view which has prevailed in the judgment is to give a windfall to those who never suffered, at the expense of those who were never intended to make a contribution to such a class.

Their Lordships dismissed the appeal with expenses.

Counsel for the Appellants—Clyde, K.C. —Carmont. Agents—T. Craig, Glasgow—W. & J. Burness, W.S., Edinburgh—A. & W. Beveridge, Westminster.

Counsel for the Respondents—Dean of Faculty (Scott Dickson, K.C.)—M'Gillivray. Agents—Hay, Cassels, & Frame, Hamilton—Simpson & Marwick, W.S., Edinburgh—Smiles & Company, London.

Tuesday, June 29.

(Before the Lord Chancellor (Loreburn), Lord Ashbourne, Lord James of Hereford, Lord Gorell, and Lord Shaw of Dunfermline.)

HUNTER'S EXECUTRIX *v.* GENERAL ACCIDENT, FIRE, AND LIFE ASSURANCE CORPORATION, LIMITED.

(In the Court of Session, 46 S.L.R. 150, and 1909 S.C. 344.)

Insurance — Contract — Accident — Conditions of Policy—"Registration" of Holder's Name—Date of Registration.

A coupon policy of insurance against accident, contained in a diary, had this condition—"Provided that at the time of such accident the person so killed or injured was the owner of the publication in which this insurance coupon is inserted, that such person had duly caused his or her name to be registered at the head office of the Corporation in Perth, and had paid the fee for registration and cost of acknowledgment, and that notice of claim is sent to the registered office of the Corporation at Perth within fourteen days of the occurrence of the accident, and that such claim be made within 12 months of the registration of the holder's name."

On 25th December 1905, A, the owner of a diary, wrote applying for registration and sending the necessary remittance to the company, to whom the application was delivered on the 26th and by whom it was actually received on the 27th. On 4th January 1909 A received a letter dated 3rd January enclosing an acknowledgment dated 29th December 1905. The company kept no register. Applications on being received were tied in a temporary bundle, dated, and the daily amount of remittances entered in a book, but in connection with this no names appeared. They were subsequently taken from the temporary bundle and tied in another bundle alphabetically, and that bundle was filed to be kept "until the liability thereon expired." The date when A's application was alphabetically bundled was uncertain, but as the bundle contained applications dated 1st January it was presumably not earlier than the 3rd. A was injured by accident on 28th December 1906, died on the 29th, and a claim was made on the Insurance Company on 2nd January 1907. The company maintained that the claim had not been made "within 12 months of the registration of the holder's name," and consequently was not timeous.

Held that the claim was timeous, *per* the Lord Chancellor, on the ground that registration took place at the time when the application was bundled alphabetically, which the Company (on whom the *onus* was) had failed to prove to have been earlier than the 3rd January 1906; *per* Lord Shaw, on the ground that the date when the acknowledgment was made and in due course dispatched to the insurer, was the date when registration must be taken to have been accomplished.

This case is reported *ante ut supra.*

The defenders (reclaimers in the Inner House) appealed to the House of Lords.

The clause in the insurance policy which was in question is quoted *supra in rubric.*

At delivering judgment—

LORD CHANCELLOR—I think this appeal fails, though the reasons which have led me to this conclusion are somewhat different from those which are relied upon by the Scottish Courts.

The late Mr Hunter was killed in a railway accident on 28th December 1906. He had insured with the appellant company, the defenders in this action. And the questions were whether the risk under the contract with the defenders was a subsisting risk on 28th December 1906, and whether claim was made under the insurance contract within 12 months of the registration of Mr Hunter's name by the defenders, whatever "registration" may mean.

In view of these controversies it is necessary first to ascertain what the insurance was. The defenders inserted in Letts' Diary what they called a coupon insurance policy, announcing that they would pay £1000 to any person killed in a railway accident (or under other circumstances immaterial to this case) on certain conditions, one of which was as follows:—. . . (*quotes, supra in rubric*). . .

Nothing beyond this appears in the document which fixes either the commencement of the insurance or the duration of it, or the date of its expiry.

This singular document has been regarded by all the Judges who have heard this case as an offer by the defenders which can be accepted, and a contract so made, by any person who complies with the conditions. I entirely agree with this view. It is admitted that Hunter did comply with all the conditions necessary to create a contract. He sent on 25th December 1905 the form of application for registration, called the coupon slip, with the necessary remittance. This was an acceptance on his part, and the contract of insurance, in my opinion, commenced, if not on the 25th December 1905, when the letter was posted, then at all events on the 26th December, when it was delivered, or on 27th December, when it was actually received by a person in defenders' employment. I will not enter upon the nice point when a contract is con-