In the second action, on a note being presented by the respondent, the Court ordained the pursuers and reclaimers to consign or find security for £100 within ten days as a condition of being allowed to proceed with the reclaiming-note.

In the first action the respondent also presented a note to the Court asking that the reclaimers should be ordained to consign or find security for £100 as a condition of proceeding with the reclaiming-note.

Argued for the respondent in support of his note. The reclaimers, although defenders in the first action, became on reclaiming pursuers within the meaning of section 69 of the Companies Act 1862—*Star Fire and Burglary Insurance Company* v. *Davidson & Sons*, July 16, 1902, 4 F. 997, 39 S.L.R. 768. The finding of the Lord Ordinary in the second action showed that there was evidence that the assets of the company would be insufficient to pay costs in the event of the defenders being unsuccessful in their reclaiming-note.

Without calling upon counsel for the reclaimers, the Court (LORD JUSTICE-CLERK, LORD YOUNG, and LORD TRAYNER) refused the prayer of the note.

Counsel for the Pursuer and Respondent—M'Clure. Agents—Hamilton, Kinnear, & Beatson, W.S.

Counsel for the Defenders and Reclaimers—Chree—J. A. Christie. Agents—M'Neill & Sime, S.S.C.

Tuesday, June 7.

FIRST DIVISION.

[Sheriff Court of Ayrshire at Ayr.

STRANNIGAN *v.* WILLIAM BAIRD & COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 1, *sub-sec.* (3)—*First Schedule, secs.* 3 *and* 11—*Medical Examination of Workman—Discontinuance of Payment under Unrecorded Agreement—Competency of Arbitration.*

A workman in receipt of a weekly payment under an agreement not recorded in terms of the Workmen's Compensation Act 1897 was examined by a medical practitioner provided by the employers, who granted a medical certificate as to his condition. This medical certificate was communicated to the workman, who was dissatisfied therewith, but declined to submit himself to examination by one of the medical practitioners appointed for the purposes of the Act. Thereupon the employers stopped the weekly payments. Subsequently the workman instituted an arbitration under section 1 (3) of the Act, claiming compensation. The Sheriff-Substitute found that the workman was precluded from having his claim for compensation dealt with in the arbitration in respect that he had failed to submit himself for examination to one of the medical practitioners appointed for the purposes of the Act. The workman appealed. *Held* that the workman, having submitted to an examination by a medical practitioner provided by his employers, was not precluded by his failure to submit himself for examination by one of the medical practitioners appointed for the purposes of the Act from having his claim for compensation dealt with in the arbitration instituted by him.

Niddrie and Benhar Coal Company, Limited v. *M'Kay*, July 14, 1903, 5 F. 1121, 40 S.L.R. 798, *followed; Davidson* v. *Summerlee and Mossend Iron and Steel Company, Limited*, June 10, 1903, 5 F. 991, 40 S.L.R. 764, *disapproved.*

The Workmen's Compensation Act 1897 (60 and 61 Vict. c. 37), enacts—sec. 1, subsection (3)—"If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act, or as to the amount or duration of compensation under this Act, the question if not settled by agreement shall, subject to the provisions of the First Schedule to this Act, be settled by arbitration in accordance with the Second Schedule of this Act."

First Schedule (3)—"Where a workman has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and if he refuses to submit himself to such examination or in any way obstructs the same, his right to compensation, and any proceeding under this Act in relation to compensation, shall be suspended until such examination takes place—(11) Any workman receiving weekly payments under this Act shall, if so required by the employer, . . . from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, but if the workman objects to an examination by that medical practitioner, or is dissatisfied by the certificate of such practitioner upon his condition when communicated to him, he may submit himself for examination to one of the medical practitioners appointed for the purposes of this Act, . . . and the certificate of that medical practitioner as to the condition of the workman at the time of the examination shall be given to the employer and workman, and shall be conclusive evidence of that condition. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place."

This was an appeal, on a case stated by the Sheriff-Substitute (SHAIRP) at Ayr, under the Workmen's Compensation Act 1897, between Matthew Strannigan, miner, Kilwinning, claimant and appellant, and

William Baird & Company, Limited, Eglinton Ironworks, Kilwinning, respondents.

The case set forth—"This is an arbitration under 'The Workmen's Compensation Act 1897,' in which the said Matthew Strannigan claims from the said William Baird & Company, Limited, compensation at the rate of 13s. 3d. per week as from the 4th day of March 1903 for the week immediately preceding that date, and continuing said payments weekly thereafter until further orders of Court, with interest at the rate of £5 per centum per annum on each of the said weekly payments from the date it fell or should become due till payment, with the expenses of the arbitration, in respect of bodily injury, viz., injury to his right eye, caused to the said Matthew Strannigan on or about the 4th day of March 1902 by accident arising out of and in the course of his employment as a miner in the service of the said William Baird & Company, Limited, in one of their pits at Kilwinning, which pit is a mine within the meaning of the seventh section of the said Act, and of 'The Coal Mines Regulation Act, 1887.'

"I found after hearing medical and other evidence the following facts admitted or proved:—That the said Matthew Strannigan on the 4th day of March 1902 sustained such a serious injury to his right eye as to render it blind, or at least practically useless, while he was in the employment of the said William Baird & Company, Limited, as a miner in their Lady Sophia Eglinton Pit, Kilwinning, and that such injury was caused by an accident arising out of and in the course of the said Matthew Strannigan's employment as aforesaid. That on the 13th day of November 1903, the date of the proof in this arbitration, the said Matthew Strannigan's left eye could at most only be described as a fairly good one, or as I should prefer to describe it as but a very moderate eye; that his right eye might be described as blind; and that there is no reasonable prospect of there ever being any material alteration in the condition of either of his eyes. That it would be decidedly dangerous for the said Matthew Strannigan in the present state of his eyes to resume his occupation as a miner, but that he is fit for light work above ground, though it would not be reasonable to place the average wages which he might be expected to earn at such occupation at a higher figure than 10s. per week. That after the said Matthew Strannigan made a claim upon them, the said William Baird & Company, Limited, admitted their liability to compensate him under the said 'Workmen's Compensation Act 1897,' for his said injury, and verbally agreed to pay, and paid him, and he received from them after he was injured, compensation at the rate of 13s. 3d. per week, being the maximum payment exigible under the Act, till 25th February 1903; but no memorandum of the agreement between the parties was recorded in terms of section 7 (*a*) of the Act of Sederunt dated 3rd June 1898. That in terms of the 11th section of the first schedule annexed to the said 'Workmen's Compensation Act 1897,' the said Matthew Strannigan, on the requisition of the said William Baird & Company, Limited, submitted himself on the 21st day of February 1903 to examination by A. Gordon Cluckie, M.B., L.F.P.S.G., Royal Victoria Eye Infirmary, Paisley, a duly qualified medical practitioner, provided and paid by the said William Baird & Company, Limited, and Dr Cluckie on said last-mentioned date granted a certificate that the said Matthew Strannigan's left eye was 'perfect for working as a miner,' and that his right eye 'might be regarded as permanently useless for any kind of work where normal vision is necessary.' That the said certificate upon his condition was duly communicated to the said Matthew Strannigan, who was dissatisfied therewith, but that he did not thereafter submit himself for examination to one of the medical practitioners appointed for the purposes of the said last-mentioned Act, as mentioned in the second schedule thereto. That the said William Baird & Company, Limited, in consequence of Dr Cluckie's report of 25th February 1903, ceased to pay the said Matthew Strannigan the said weekly sum of 13s. 3d. of compensation, or any sum of compensation whatever.

"On the 4th day of June 1903 the said Matthew Strannigan instituted this arbitration, under section 1 (3) of the said 'Workmen's Compensation Act 1897,' and the first schedule thereto, craving the Court to find that compensation is due to him by the said William Baird & Company, Limited, and to ordain them to pay him compensation, as mentioned in the first paragraph of this stated case.

"On the foregoing admitted or proved facts, and on the authority of the decision in *Davidson* v. *Summerlee and Mossend Iron and Steel Company, Limited*, June 10, 1903, 40 S.L.R. 764 (which I considered a binding authority on me in this Sheriff Court), I found that the said Matthew Strannigan was not entitled to have his claim for compensation against the said William Baird & Company, Limited, disposed of in the said arbitration, and I accordingly dismissed the petition, although (as stated in the note to my interlocutor in the arbitration proceeding, dated 18th November 1903), I would, but for the said decision in *Davidson's* case, have awarded the appellant full compensation at the rate of 13s. 3d. per week as craved in his petition."

The question of law was—"Whether in the circumstances above set forth, the appellant the said Matthew Strannigan is precluded from having his said claim for compensation dealt with in the arbitration proceedings instituted by him in terms of section 1 (3) of 'the Workmen's Compensation Act 1897,' and the first schedule thereto, in respect that he failed to submit himself for examination to one of the medical practitioners appointed for the purposes of the said Act, as mentioned in the second schedule thereto."

Argued for the appellant—The Sheriff-Substitute stated in the case that but for the decision in *Davidson* v. *Summerlee and*

Mossend Iron and Steel Company, Limited, June 10, 1903, 5 F. 991, 40 S.L.R. 764, he, on the medical and other evidence before him, would have awarded the appellant compensation as craved in his petition. The case of *Davidson* had since been questioned and indeed disapproved in *Niddrie and Benhar Coal Company, Limited* v. *M'Kay*, July 14, 1903, 5 F. 1121, 40 S.L.R. 798. Further the decision in *Niddrie and Benhar Coal Company, Limited* v. *M'Kay* had been approved and followed by the Court of Appeal in England in *Neagle* v. *Nixon's Navigation Company, Limited* [1904], 1 K.B. 339. The latter case arose in circumstances exactly similar to the present case, except that it did not appear from the record here that the appellant had ever been required by the respondents to submit to medical examination by an official referee. In these circumstances the Sheriff-Substitute was in error in regarding the case of *Davidson* as an authority precluding him from giving effect to his view of the evidence on the ground that the claimant had failed to submit himself for examination to the official medical referee. By the respondents' refusal to continue the payments the agreement for compensation had been brought to an end, and accordingly it was competent for the appellant to present this application to have the compensation fixed by arbitration—*Jamieson* v. *Fife Coal Company, Limited*, June 20, 1903, 5 F. 958, 40 S.L.R. 704.

Argued for the respondents—The present case resembled *Davidson* v. *Summerlee and Mossend Iron and Steel Company, Limited* (*supra*) in that it came before the Sheriff as an original application for compensation. In that respect it differed from *Niddrie and Benhar Coal Company, Limited* v. *M'Kay* (*supra*), which was an application for the review of a weekly payment. Accordingly the Sheriff-Substitute was right in regarding the case as ruled by the authority of *Davidson*. If these two decisions were to be regarded as inconsistent and incapable of standing together, it was proper that this case should be considered by a full bench of judges. In the present case there was a subsisting, though unrecorded, agreement determining the compensation, and, standing that agreement, it was incompetent, under sec. 1, sub-sec. 3 of the Act, to bring this application for arbitration. Arbitration was only competent if, as provided by sub-sec. 3, the compensation was "not settled by agreement." If the appellant was dissatisfied with the discontinuance of the payments by the respondents the correct course was for him to take steps, under sec. 12 of the first schedule of the Act, to have the weekly payment reviewed.

LORD ADAM—I cannot say that this stated case is a model of clearness in bringing before us the question to be decided; but still I think there is sufficient in it to enable us to find the points and to decide them. It appears from the statement that this man Strannigan met with an injury upon 4th March 1902 arising in the course of his employment in the service of the respondents. The nature of that injury is set forth by the Sheriff. It was an injury to his right eye so as to render it blind. Then he goes on to tell us that on 13th November 1903 he took a proof in this case, and that Strannigan's left eye could at most only be described as a fairly good one, or but a very moderate one; that his right eye—the one that was injured—might be described as blind; and "that there is no reasonable prospect of there ever being any material alteration in the condition of either of his eyes." Then he goes on to tell us that it would be decidely dangerous for Strannigan in the present state of his eyes to resume his occupation as a miner; but "that he is fit for light work above ground, though it would not be reasonable to place the average wages which he might be expected to earn at such occupation at a higher figure than 10s. per week." That is the position in which that man is described by the Sheriff. The result of his injury was still in the Sheriff's opinion lasting, and that he was not in a position to earn anything but light wages. But in the meantime this procedure had taken place which gives rise to the present question. It seems that Strannigan at the time of his injury had agreed to accept from Baird & Company, and Baird & Company had agreed to pay him, compensation at the rate of 13s. 3d., the maximum payment exigible under the Act, till 25th February 1903. What led to the stoppage of this weekly payment was this, that Strannigan had been required in terms of the 11th section of the 1st schedule annexed to the Act, on the requisition of Baird & Company, to submit himself, which he did on 21st February, to the examination to which he was required to submit himself. He submitted himself to the doctor appointed and paid by Baird & Company, and the doctor granted a certificate stating that Strannigan's left eye was "perfect for working as a miner," and that his right eye "might be regarded as permanently useless for any kind of work where normal vision is necessary." What appears to have followed was this, that upon getting that certificate Strannigan had been asked but declined to submit himself to the medical man appointed by the Secretary of State for such purposes. It is not said in this case that he was ever asked, but it is said that he failed to submit himself, and we must assume that he was required by Baird & Company to submit himself under the 11th section to the medical practitioner appointed by the Secretary of State for such purposes. He declined to do it, and Baird & Company at their own hand stopped the 13s. 3d. a-week which he had been getting up to that date. And that brought on the present question. It appears to me as clear as daylight that there was a question between them and what that question was. The question was whether the compensation which the parties had agreed should be paid at the time of the accident was to be

further continued, or whether or not it should be stopped in respect of Strannigan's failure to submit himself for examination. That was the question which arose between them. It was argued to us by Mr Moncreiff that that was not a question falling under section 1 (3) of the Act, which says that if any question arises as to the liability for compensation or as to the amount or duration of the compensation under the Act, the question shall be settled by arbitration. It seems to me to be perfectly clear that the question here was, whether this compensation was to last any longer or not, and that the parties having failed to agree it therefore was a question which either of the parties was entitled to take to arbitration. Accordingly what Strannigan did was to raise on 4th June 1903 an arbitration under the Act asking the Court to find that compensation was due to him by Baird & Company, and to ordain them to pay that compensation. That was the question before the Sheriff as arbiter; it seems to me a most competent question. We are left in a little doubt as to the proceedings in the case. If the Sheriff without inquiry had dismissed the case at once on the preliminary plea that having failed to submit himself for examination the appellant was not entitled to proceed in the case, we, according to our present view, would just have sent the case back for inquiry. But instead of taking that course the Sheriff seems to have taken proof to satisfy himself, and having done so he tells us in this case what his opinion is, not merely on the procedure but on the merits too. His finding is this—"On the foregoing admitted or approved facts, and on the authority of the decision in *Davidson* v. *Summerlee and Mossend Iron and Steel Company, Limited*, June 10, 1903 (which I consider a binding authority on me in this Sheriff Court), I found that the said Matthew Strannigan was not entitled to have his claim for compensation against the said William Baird & Company disposed of in the said arbitration, and I accordingly dismissed the petition." That is quite clear, but then he tells us what his opinion on the merits is. He says—"As stated in the note to my interlocutor in the arbitration proceedings dated 18th November 1903, I would, but for the said decision in *Davidson's* case, have awarded the appellant full compensation at the rate of 13s. 3d. per week as craved in his petition." The Sheriff's opinion therefore upon the proof and upon the merits was that this man was entitled to 13s. 3d. per week of compensation in respect of his injuries, but in respect of his failure to submit himself to a second examination he held, on the authority of the case of *Davidson*, that he was not entitled to receive compensation. The question is whether that decision was right or wrong. I agree with the Sheriff-Substitute that if the case of *Davidson* is to be followed then his judgment is right, but if the case of *Davidson* is not to be followed, and the case decided subsequently in this Court—the case of the *Niddrie and Benhar Company*—is to be followed, then the judgment of the Sheriff-Substitute is wrong and the appeal must be sustained. I was not present in Court when the case of the *Niddrie and Benhar Company* was decided, but I wish to say that I agree with every word of Lord M'Laren's judgment in that case upon the construction of the 11th section, and it is a satisfaction to know that in a case precisely of the same kind before the Court of Appeal in London, which is a court of great authority although not binding upon us, the judges took precisely the same view, and appear to have gone further in that direction than we did in this Court. That being the state of the authority, when we are asked for a decision I have not any doubt that we ought to follow our own former judgment in this matter. When we have an arbitration upon this question the right to compensation is not suspended because the injured workman does not choose to exercise his option in a particular way. The only answer we can give to the question submitted is that Strannigan is not precluded from having his claim for compensation dealt with in the arbitration proceedings.

LORD M'LAREN—This case raises a question of construction under the Workmen's Compensation Act which has been already considered under slightly varying circumstances by the two Divisions of this Court. In both the cases there were agreements to pay compensation. In the Second Division case of *Davidson* v. *The Summerlee Company* there was an agreement, but no memorandum had been recorded, while in the *Niddrie* v. *Benhar Coal Company* case, which was before this Division, there was a memorandum recorded.

So far as I can gather from the reports this was the only material difference between the two cases—the only difference that effects the present question. Now, the Workmen's Compensation Act provides that when compensation has been fixed—I don't think it matters whether that has been done by agreement or by the award of an arbiter—the employer, if he thinks there has been a change in the workman's condition, may insist on him subjecting himself to a medical examination, and it is a condition of the workman continuing to receive compensation that he must submit himself to such an examination.

I think the question of law submitted for the opinion of the Court should be answered in the negative, and a remit made to the Sheriff to award compensation. I think that all the Judges who have considered this point are agreed that the duty of submitting is in the first case obligatory, and that the employer would be within his rights in discontinuing payment if the workman refused to submit to or obstructed an examination. But then that examination appears to me to be more in the nature of a precognition than evidence, because it is an examination by an expert not selected

by neutral authority or by the parties jointly but selected by one of the parties apparently for his own guidance as to whether he should continue to pay the allowance or take proceedings for its diminution or discontinuance. That view of the nature of the examination is entirely borne out by what follows—that the workman may in the first place decline to submit himself at all; at least he may, instead of submitting himself to the person nominated, elect to be examined by one of the official medical referees, and secondly, if dissatisfied, he may go before one of these referees.

Now in the case of the *Niddrie & Benhar Company* this Division of the Court were of opinion that the provision as to going before the official referee (in case of dissatisfaction with the report of the employee's medical referee) was not obligatory but permissive, that no penalty was incurred by not taking that proceeding, and that it would be open in the event of a difference of view between employer and employed to resort to arbitration for the purpose of determining whether there was such a change in the workman's ability to work as would justify a review of the payment. Though different views may possibly be taken of the exact grounds of decision in *Davidson* v. *The Summerlee Company*, I think we must take it that in the opinion of their Lordships the failure on the part of the workman who had been already examined by the employers' medical referee to submit himself to further examination by an official referee was an obstacle to the continuance of payment of compensation—that the duty to submit himself to further examination was so far imperative that it was a condition of the workman's right to receive further payments. That must be so, because the Court was charged with the whole subject of compensation, and refused to award compensation because this which they considered a condition had not been fulfilled.

Now although there were some circumstantial differences (which are alluded to in the opinion that I gave in the *Niddrie & Benhar* case), yet on a fair review of both cases I have come to the conclusion that these decisions cannot stand together. We have not held ourselves so strongly bound by the authority of the decisions of the other Division of the Court in workmen's compensation cases as we are with respect to ordinary actions; and for this reason, that there is no appeal to the House of Lords, and no expectation of an eventual decision between divergent views. At all events we did, rightly or wrongly, take a different view of this question, and made it our ground of judgment. In the opinion which I delivered, and which was adopted by the Court as the ground of judgment, while pointing out the circumstantial differences between the case of *Davidson* and the case then under consideration I took care to state that even if those differences had not existed I could not have assented to the judgment of the Second Division, I mean to their Lordships' construction of the statute.

The question then is, there being nothing but circumstantial differences in the cases, whether we are to follow the principle of our own decision or to follow that of *Davidson* v. *Summerlee Company*. Perhaps in the indeterminate state of judicial opinion on this question it was fair that we should be asked to reconsider the question upon its merits. I have followed the argument to see whether any new view of the construction of the statute could be put forward that might displace what I still think to be the sound view of the construction of the statute to which we formerly gave effect. But so far from finding anything to displace our decision, I find that our judgment is reinforced by the very weighty opinions separately given by the Judges of the English Appeal Court in *Neagle* v. *The Nixon Navigation Company*—a case the circumstances of which were admitted to be indistinguishable from the present case. Their Lordships concurred in our decision, and that not only as to its conclusions but also upon the reasoning upon which the judgment proceeded, because the Judges said that they agreed with the dissentient opinion of Lord Young in the case of *Davidson*, and with the opinions of this Court in the case of the *Niddrie and Benhar Company*.

In these circumstances, I am of opinion that the Sheriff was in error in holding that the circumstance that Strannigan did not submit himself for examination to one of the medical practitioners appointed for the purposes of the Act was an obstacle to the consideration of his claim. That I take to be the Sheriff's ground for refusing the claim, because he does not hold that Strannigan is disentitled to compensation; on the contrary, he says that but for the decision in the case of *Davidson* he would have awarded the appellant full compensation at the rate of 13s. 3d. per week. It is quite plain that the ground of the Sheriff's decision is that, following the case of *Davidson*, he holds that all procedure is stopped until the applicant shall submit himself to examination by one of the medical practitioners appointed for the purposes of the Act.

In this case the Sheriff did not take what I think was the very sensible course taken by the Sheriff who considered the case of *Niddrie and Benhar Company*, that he himself for his own guidance called in the assistance of one of the official medical referees. That, however, is not absolutely necessary. The Sheriff here heard the medical and other evidence; we must assume that the medical evidence was sufficient to enable him to dispose of the case, and upon that he is of opinion that but for this barrier, which he thinks is in the way, he would have awarded full compensation.

I think the question of law submitted for the opinion of the Court should be answered in the negative, and the case remitted to the Sheriff to award compensation.

LORD KINNEAR—The only question which we can properly determine in this case is the question-of-law stated by the Sheriff.

I think that question is decided by the judgment of this Court in the case of *Niddrie and Benhar Coal Company*, and also by the judgment of the Court of Appeal in England (which although not binding we are generally ready to follow) in the case of *Neagle*. I entirely agree with the opinions in both of these cases and also with what has been said by Lord M'Laren and Lord Adam, and I see no necessity for saying more except that on the grounds of these decisions we must answer this question in the negative. A separate point was raised which I do not think was properly before us; and I do not know that the argument urged in support of it was brought to any legitimate or intelligent conclusion. The point was that this proceeding before the Sheriff was irregular because no recourse could be had to arbitration proceedings if there be an agreement determining the point which it is proposed to submit to the arbiter. It is true that it is only in default of an agreement that the parties can go to arbitration at all. But there is no averment in this case of any agreement which could possibly prevent them going to arbitration.

The averment is that the employers had agreed to pay and had paid the workman weekly compensation till 25th February 1903, and on the 25th February they stopped the payment, and both parties must be held as admitting that there was no binding agreement compelling the employer to pay or the workman to accept compensation after the 25th February 1903. It was said that the only remedy open to the workman in consequence of the employers' discontinuance of the payment is a formal proceeding for review under the 12th section of the first schedule, and not an application for arbitration. But that section does not prescribe any particular form of procedure as a necessary preliminary of a new arbitration, or a new agreement for fixing the amount of compensation when a former arrangement is brought to an end. The employer took the matter of review into his own hands by stopping the payments he had been making, and by so doing he opened the way for a new agreement or failing agreement for arbitration. The parties had made no agreement upon the discontinuance of the payments, and therefore they were quite within their rights when they went before the Sheriff as arbiter, and asked him to consider the question of compensation upon the facts which they brought before him in evidence. When he came to consider these facts he found only one difficulty which is stated in the question of law before us, and upon that question, as I have stated, I agree with what has been said by your Lordships.

The LORD PRESIDENT concurred.

The Court answered the question of law in the negative.

Counsel for the Appellant—Wilson, K.C. D. Anderson. Agents — Macpherson & Mackay, S.S.C.

Counsel for the Respondents—G. Watt, K.C.—A. Moncreiff. Agents—Simpson & Marwick, W.S.

Tuesday, June 7.

FIRST DIVISION.

[Lord Low, Ordinary.

TRAILL & SONS *v.* ACTIESELSKABAT DALBEATTIE LIMITED.

Reparation—Personal Injuries—Assignation of Claim—Title to Sue.

An employer, A, paid compensation to the widow and children of one of his employees who had been killed through an accident, and took from them an assignation of all claims competent to them against a third party, B, through whose fault the accident was said to have occurred. *Held* that the assignation was valid and effectual, and that A had a good title in his own name to sue B.

Reparation—Negligence—Liability of Shipowners for Injury Caused to Employee of Stevedores through Defect in Tackle Supplied by them to Stevedores for Unloading—Relevancy.

A workman employed by a firm of stevedores, in unloading a vessel was injured through the breaking of a sling-rope supplied to the stevedores by the shipowners. In an action for compensation paid to the widow and children of the injured man, based upon alleged fault, it was averred that the sling-rope was knowingly supplied for the purpose for which it was being used; that it was insufficient through defect, and that the insufficiency, while not apparent in any ordinary examination, would have been discovered by a proper test which the shipowners ought to have applied to plant upon the fitness of which the workmen were entitled to rely. The shipowners pleaded that the case was irrelevant. *Held* that the facts averred, if established, might disclose a case arising within the rule of *Heaven* v. *Pender*, 11 Q.B.D. 503, and case remitted to the Lord Ordinary to allow a proof.

In July 1902 David Traill & Sons, stevedores, Grangemouth, were employed at Grangemouth Harbour in discharging the cargo of the s.s. "Dalbeattie," belonging to Actieselskabat Dalbeattie Limited. John Gemmell, a labourer in their employment, was injured through a load of timber falling upon him, and died shortly afterwards from his injuries. His widow and children raised an action against Traill & Sons, in which it was sought to make them responsible for his death. Traill & Sons maintained that they at anyrate were not liable, but after sundry procedure paid the widow and children the sum of £247, 18s. 10d. In respect of that payment the