compensation, but the Court of Appeal held that, in the absence of evidence that the liability to such recurrence was due to the previous attack, the award of compensation could not be sustained. Cozens Hardy, M.R., observed—"There was no evidence that the workman was rendered by reason of the past nystagmus liable to a recurrence of nystagmus. And unless that can be made out it seems to me that the applicant must fail." Buckley, L.J., said that the County Court Judge "found that the workman was now quite well, although if he resumed occupation underground he would not continue to be quite well. But he does not find—which I think is the critical fact to be found—that if the workman went back underground the recurrence would be attributable to the previous attack of nystagmus. In the absence of any evidence to that effect—and I find none—I think that the claim for compensation in the present case cannot be sustained." It seems to me that this English case was rightly decided, and that it is in no material way distinguishable from that now before us. Still more recently, in *Garnant Anthracite Collieries, Ltd.* v. *Rees* (1912, 1 Gordon W. Comp. Rep. 396) the opinions expressed in *Jones'* case were approved by the Court of Appeal, though their decision went in favour of the workman, because the County Court Judge had found that the effects of the attack of nystagmus had not in fact disappeared, and that the man's subsequent susceptibility to further attack was therefore attributable to the first. I think we are not here at all in the region of cases like *Duris* (1912 S.C. (H.L.) 74), which the appellant's counsel pressed upon our attention. The appellant is not in my judgment entitled to plead that his sphere of employment is restricted by his susceptibility to a recurrence of nystagmus, for the simple reason that he is unable to connect that susceptibility, as effect with cause, with his original attack. On the grounds now stated I agree with the reasoning and the conclusions which are thus expressed by the learned arbiter in the case before us—"I held that the *onus* was on the appellant to prove that his present susceptibility to a recurrence of nystagmus is due to the attack of September 1910, from which he has now recovered. As he had failed to discharge this *onus*, and had completely recovered from the first attack, I ended his compensation." The two questions put to us should, in my opinion, be answered in the affirmative.

I ought perhaps to add a few words in regard to a topic mooted, but not exhaustively argued, during the discussion at our Bar. Miner's nystagmus, though not among the industrial diseases specified in the Third Schedule to the Act of 1906, has been brought within the scope of the Act by the statutory rules and orders of 1907. The point mooted was whether or not such an industrial disease is precisely equivalent to a personal injury by accident, so that the whole statutory consequences must be held to follow as much in the one case as in the other. The question might open a large field. It seems already to have been the subject of divergent judicial opinions (see *Jones, cit.*). It may come up sharply hereafter for decision, and it is unnecessary in the present case to decide it. In these circumstances I desire to reserve my opinion upon the matter.

LORD SALVESEN—I concur.

LORD GUTHRIE was absent.

The Court answered the questions of law in the affirmative and affirmed the dismissal of the claim by the arbitrator.

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

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

Tuesday, December 10.

FIRST DIVISION.

GLASGOW SCHOOL BOARD *v.* ALLAN.

School—Powers of School Board—"Medical Examination and Supervision"—Treatment—Education (Scotland) Act 1908 (8 *Edw. VII, cap.* 63), *secs.* 4, 6, 17 (6).

The Education (Scotland) Act 1908, section 4, confers power on School Boards to provide for the "medical examination and supervision of the pupils." *Held* that they were not thereby empowered to provide and pay out of the school rates for medical or dental treatment.

The Education (Scotland) Act 1908 (8 Edw. VII, cap. 63), section 4, enacts—"A school board may, and where required by the Department shall, provide for the medical examination and supervision of the pupils attending schools within their district to such extent and subject to such requirements as may from time to time be prescribed by any code or minute of the Department, and, for the purposes of this section, the school board may employ medical officers or nurses, or arrange with voluntary agencies for the supply of nurses, and provide appliances or other requisites."

On 5th November 1912 the School Board of Glasgow (*first parties*) and Miss E. S. Allan, 1 Doune Quadrant, Kelvinside, Glasgow, testamentary trustee of the late James Allan, ironfounder, Glasgow, as such trustee and as an individual (*second party*), brought a Special Case to determine whether the first parties were entitled to provide and pay out of the school fund for the medical or dental treatment of pupils attending their schools.

The Case stated—"1. The parties of the first part are the School Board of Glasgow. The party of the second part, as trustee foresaid and also as an individual, is a ratepayer liable to contribute to the

assessed school rate in respect of heritable properties of substantial rentals within the area for which the first parties are the School Board.

"2. By section 4 of the Education (Scotland) Act 1908 it is provided that . . . (*quoted supra*) . . . it shall be a condition of 'grant to the managers of any school within the district of the school board at which there is not provision to the satisfaction of the Department for the medical examination and supervision of the pupils that such managers shall give admission and all necessary facilities for the discharge of his duties to any person so employed or supplied.' By section 6 of the said Act it is provided as follows:—'(1) When as the result of medical inspection or otherwise it is brought to the notice of a school board that a child attending a school within their district is in a filthy or verminous state, or is unable by reason of lack of food or of clothing to take full advantage of the education provided, it shall be the duty of the school board, after due warning, to summon either or both of the parents or the guardian of such child to appear before them to give an explanation of the child's condition, and, if the school board shall find that such explanation is not forthcoming or is insufficient or unsatisfactory, and that the condition of the child is due to neglect, they shall transmit a copy of such finding to the parent or parents or guardian of the child and to the procurator-fiscal, and it shall be the duty of the procurator-fiscal to institute a prosecution under the sub-section immediately following. (2) Without prejudice to the general operation of the Prevention of Cruelty to Children Act 1904 (4 Edw. VII, c. 15), or any Act amending the same, neglect to exercise due care of a child as aforesaid shall be deemed wilful neglect likely to cause the child unnecessary suffering within the meaning of such Act, punishable summarily as an offence of cruelty in terms of such Act, and subject to the provisions thereof as to the committal and custody of the child and otherwise: Provided that if it shall be shown to the satisfaction of the school board, or in the event of a prosecution under such Act of the sheriff, that such parent or parents or guardian are unable by reason of poverty or ill-health to supply sufficient and proper food or clothing for the child, or to give the child the necessary personal attention, the school board, if satisfied that the necessities of the case will not be provided for by voluntary agency, shall make such provision for the child out of the school fund as they deem necessary during such period while the child is under obligation to attend school as they may determine: But it is hereby provided that any aid given in terms of this section shall not deprive such parent or guardian of any franchise, right, or privilege, or subject him to any disability: Provided also that the school board, where they deem it necessary owing to the condition of the child, shall have power to make temporary provision for the child out of the school fund pending the completion of the procedure hereby prescribed; and to recover the cost of such provision from such parent or guardian as an alimentary debt, unless it is shown to the satisfaction of the school board that such parent or guardian was unable by reason of poverty or ill-health to supply sufficient and proper food or clothing for the child, or to give the child the necessary personal attention.'

"By section 17, sub-section (6), of the Act it is provided that 'Where under section 4 of this Act a school board provide for the medical examination and supervision of the pupils attending schools within their district in accordance with a scheme prepared by the committee, or where a school board district is co-extensive with the district of a committee by the school board, and in either case approved by the Department, there shall be paid in each year to the school board a sum equal to one half of the cost incurred by them in making such provision.'

"3. The Scotch Education Department issued a memorandum on 31st March 1909 dealing with the medical examination and supervision of school children, which is to be held as forming part of this case. It was sent to the first parties along with a circular letter, which requested them to prepare a scheme for the approval of the Department, and thereafter the first parties formulated a scheme, which was duly approved. On 18th April 1912 the Scotch Education Department issued a circular which, *inter alia*, stated—'Scotch Education Department, Whitehall, London, S.W., 18*th April* 1912. *Medical Treatment.*—Sir—I am directed to inform you that a sum of £7500 has been assigned for the purpose of medical treatment of school children in Scotland. I am to remind you that the expenditure of school boards on medical inspection under section 4, Education (Scotland) Act 1908, is being aided by grants under section 17 (6). The further grant now available is to be applied mainly for the medical treatment of necessitous children in terms of section 6. The Department have under consideration the question of how this grant can be most equitably and most usefully distributed, and it would materially assist their deliberations if you can let them know at your early convenience, and in any case not later than 10th May, what amount, if any, your board have expended during the year ended 31st ultimo in providing medical treatment for necessitous children under section 6, Education (Scotland) Act 1908, and also what amount, if any, they estimate that they may require to expend in a similar way during the year ending 31st March 1913.' It is admitted that such part of the £7500 referred to in the latter circular as may be allocated to the first parties will be inadequate to meet the whole cost of medical or dental treatment of the nature hereinafter specified,

required by necessitous children attending schools within the district of the first parties.

"4. The first parties have had to deal, *inter alia*, with the cases of two children who on examination were found to be in urgent need of the treatment after mentioned. The particulars of one of the cases are as follows:—Teresa M'Veigh, aged 7⅔ years, daughter of and residing with James M'Veigh, boot finisher, 79 Ladywell Street, Glasgow, a pupil in St Mungo's Roman Catholic School, Glasgow, was found when examined medically to require the extraction of several temporary and permanent teeth. The condition of the child's teeth was such as to cause injury to her health, and to necessitate immediate treatment by a skilled dentist, and to render the child incapable of taking full advantage of the education provided by the first parties. In this case the parent of the child was in such financial circumstances as to be able to provide the child with the dental treatment required.

"5. The particulars of the other case are as follows:—Mary Norman Ferguson, aged six and a-half years, daughter of and residing with John Young Ferguson, white lead worker, 96 Oran Street, Maryhill, Glasgow, a pupil in Eastpark Public School, was found when examined medically to require the extraction of several temporary teeth and the filling of four permanent teeth. In addition it was found that two of her permanent teeth were misplaced. In this case also the condition of the child's teeth was such as to cause injury to her health and to necessitate immediate treatment by a skilled dentist. Further, the chief medical officer of the first parties reported that it rendered her incapable of taking full advantage of the education provided by the first parties. These facts having been brought to the knowledge of the first parties, they made inquiry and satisfied themselves—and it is the fact—that the parent of the child was unable on account of poverty to provide the child with the dental treatment required, and that the necessities of the case would not be provided for by voluntary agency.

"6. The first parties, considering that they were entitled to provide and pay out of the school fund under their administration for the dental treatment required by the children, proceeded to arrange for the children receiving the same at places outside the school and from persons not on the ordinary school medical staff, when they were threatened with an action of declarator and interdict at the instance of the second party, who contended that the first parties had no power to do what they proposed. The effect of such provision and payment would be to throw the cost of the treatment, in whole or in part, upon the school rate, for which the second party is assessed.

"7. The cases of Teresa M'Veigh and Mary Norman Ferguson before mentioned are typical of many cases which are discovered in the course of the medical examination of children conducted by the first parties. In such cases children are discovered to be in a condition requiring individual medical or dental treatment, and in many of these cases the parents are unwilling or unable, by reason of poverty or ill-health, to provide the necessary medical or dental treatment."

The first parties *maintained* that they were entitled to provide and to pay out of the school fund under their administration for the appropriate medical or dental treatment required in such cases, either (*a*) by providing the necessary apparatus and medical staff at one or more schools or other places, or (*b*) by sending the children to be treated by competent private practitioners or at hospitals or infirmaries, and that at all events they were entitled to do so in cases where the parent was unable on account of poverty or ill-health to provide the necessary medical or dental treatment. With reference to the cases of Teresa M'Veigh and Mary Norman Ferguson, the first parties maintained that they were entitled to provide and pay for the dental treatment required by them as aforesaid.

The second party, on the other hand, maintained that the first parties were only entitled to provide for the medical examination and supervision of pupils attending schools within their district. She maintained that the first parties were not entitled to expend the school fund under their control or any part thereof in providing for individual remedial medical or dental treatment which, consequent on said medical examination or supervision, might be found to be required by pupils attending such schools, either generally or even in cases where the parent was unable on account of poverty or ill-health to provide same, so as to throw the cost of any part thereof upon the ratepayers assessed for school rates; and in particular that the first parties were not entitled to provide medical or dental treatment in the manner stated in their contention. With reference to the particular cases of Teresa M'Veigh and Mary Norman Ferguson, the second party maintained that the first parties were not entitled to provide the dental treatment indicated at the expense of the school fund.

The *questions of law* were—"1. Where any pupil in a school within the district of the first parties requires individual medical or dental treatment, are the first parties entitled to provide and pay out of the school fund under their administration for such medical or dental treatment, either (*a*) by providing the necessary apparatus and medical staff at their own schools or other places, or (*b*) by sending the children to private practitioners or to hospitals or infirmaries? 2. If the first question be answered in the negative, are the first parties entitled to make provision and payment as aforesaid in cases where the parent is, by reason of poverty or ill-health, unable to provide the necessary medical or dental treatment? 3. In the case of the child Teresa M'Veigh above referred to, are the first parties entitled

so to provide and pay for the dental treatment required by her? 4. In the case of the child Mary Norman Ferguson above referred to, are the first parties entitled so to provide and pay for the dental treatment required by her?"

Argued for the first parties—On a sound construction of the Education (Scotland) Act 1908 (8 Edw. VII, cap. 63) the first parties were entitled to provide out of the school rate appropriate medical treatment for pupils attending their schools. The terms of section 4 and also of section 6 pointed to treatment and not merely to supervision. Similar powers were conferred on local authorities in England, for under the Education (Administrative Provisions) Act 1907 (7 Edw. VII, cap. 43), sec. 13 (*b*), such authorities were empowered "to provide for the medical inspection of children" attending public elementary schools, and to make such arrangements as the Board of Education might sanction "for attending to the health and physical condition of the children." Reference was also made to the terms of the circular issued by the Scotch Education Department on 18th April 1912 and to the use therein of the expression "medical treatment."

Argued for second parties—It was clear from the terms of the Act that "supervision" and not "treatment" was contemplated by the Legislature. Had "treatment" been intended the framers of the Act would have said so.

At advising—

LORD PRESIDENT—This Special Case has been brought to determine the powers of the School Board of Glasgow as to expending the money raised by rates in providing for the dental and medical treatment of children attending the Board schools. Two concrete cases are put before us, viz., those of two little girls whose teeth are in a bad condition, and who, if treated by a skilled dentist, would in both cases be in need of teeth extraction and teeth stopping, and in one case also in need of a plate in the mouth. The only difference between the two cases is that in one case the parents are able to employ a dentist if they choose, while in the other case they are unable owing to poverty to do so. The questions, however, as put to us are general, and, in view of the widespread operations of the School Board, important.

The powers of the School Board in such matters are admittedly contained in the Education (Scotland) Act of 1908. The sections to which the School Board particularly appeal are sections 4 and 6. Section 4 reads thus—"A school board may, and where required by the Department shall, provide for the medical examination and supervision of the pupils attending schools within their district to such extent and subject to such requirements as may from time to time be prescribed by any code or minute of the Department, and for the purposes of this section the school board may employ medical officers or nurses, or arrange with voluntary agencies for the supply of nurses, and provide appliances or other requisites." I need not read the rest of the section.

Now it is certain that what the School Board is thereby empowered, and bound if required by the Department, to provide is medical examination and supervision of children. Accordingly it is somewhat instructive to find that in the questions put to us those framing the case have really found it impossible to express—and I do not blame them—what the School Board really contend for without substituting for the words "examination and supervision" the word "treatment." And a very short answer at once suggests itself, viz., that "examination and supervision" are one thing and "treatment" is another, and that if Parliament had meant "treatment" it could easily have said so. This view is, I think, enforced by two considerations, one, so to speak, intrinsic, and the other extrinsic, of the phraseology of the Act. The first will be understood by looking at section 3, which is a comprehensive section, detailing what may be called the general powers of the School Board. The first sub-section deals with education in general, the other sub-sections deal with things which are not educational in themselves, but are each in their own way helpful to education.

Now look at sub-section (2), which deals with the supply of meals. If it had been intended to authorise the School Board to incur expenditure, and to defray the same out of the school fund, in providing for the medical and surgical treatment of children —for dentistry is just a branch of surgery— I cannot help thinking there would have been a section corresponding to sub-section (2).

The other consideration is found in reflecting upon the enormous expense which might be incurred if the contention of the School Board were correct. There is no half-way house in this matter so far as power is concerned. It means the whole expense of the medical and surgical treatment of all children of school age. It is no answer to say that the School Board may be trusted not to act foolishly and extravagantly in such a matter. The point is—Did Parliament entrust to an educational body the power of incurring enormous expense and charging it against the ratepayers, leaving it to the educational authorities to determine whether an obligation which has hitherto been regarded as lying on the parent should be placed upon the public generally? It is, to say the least, unlikely that this would be done by words which need, so to speak, sedulous construction to bear that meaning, when plain and appropriate words would suggest themselves to the veriest tyro in draughtmanship.

It is said, however, that if we examine section 4 more closely, then, notwithstanding such general considerations, we shall be driven to the conclusion that "examination and supervision" include "treatment." In the first place it is urged that this is the natural inference to be drawn from the

words "may employ medical officers or nurses, or arrange with voluntary agencies for the supply of nurses, and provide appliances or other requisites." This seems to me to go a very short way. These phrases are just as consistent with the ordinary meaning of "examination and supervision" as with the extended interpretation which is now sought to be put upon them. The School Board cannot examine and supervise the children themselves; they must have others to do it. A medical "officer" is the appropriate term for an official who is to examine and supervise. It is not an appropriate term for a doctor who is to treat. It is evident that for examination at home, of a certain sort, a nurse may be much less expensive and just as efficient as a doctor, and it is quite unnecessary to draw from the term "nurse" the idea that there is to be attendance during sickness. And lastly, the word "appliances" may easily and naturally be taken to refer to the provision of laryngoscope, auriscopes, &c., for the examination of children in a room at school.

Next, it is pointed out that the provision for medical examination and supervision is to be to such extent and subject to such requirements as may from time to time be prescribed by any code or minute of the Department, and it is said that the Department has authorised the kind of expenditure here contended for. Now it must be obvious that whatever be the true construction of the words "medical examination and supervision," it is only as to that that the Department can prescribe the "extent" and the "requirements," so that if a minute or code of the Department did enlarge the meaning of the words "medical examination and supervision" it would be *ultra vires*. A minute or code of the Department with an accompanying memorandum was issued on 31st March 1909 and has been printed as an appendix to this case. As I have already said, nothing therein contained could really affect the question to be decided, but as it has been mentioned and commented on, I think it is only fair to the Department to say that I cannot find in it the slightest justification for the wider contention pleaded. It is possible, by taking single phrases away from the context, to pick out expressions which might seem to contemplate treatment of school children in the home by the school authorities; but, taking the document as a whole, it seems to me to be carefully worded, and not to go a whit beyond recommendations in connection with proper inspection and supervision. I would refer particularly to the passage dealing with the provision of spectacles as necessarily inconsistent with the idea that the School Board should itself provide them. I would refer also to the way in which other Acts of Parliament are prayed in aid, which would not be necessary if the School Board had the powers contended for; and there are many other passages which point in the same direction.

We were also referred to a circular of 18th April 1912, dealing with a sum of £7500 which, the letter bears, "has been assigned for the purpose of medical treatment of school children in Scotland." The letter asks—". . . What amount (if any) your Board have expended during the year . . . in providing medical treatment for necessitous children under section 6" of the Act of 1908. I think the phrase is an unfortunate one, for it is absolutely clear that section 6 deals exclusively with the case of children who are (first) in a filthy or verminous state, or (second) who are underfed or underclothed, and does not deal with medical treatment at all except to the limited extent that medical treatment may be necessary for a verminous child.

But, as I have already indicated, this letter cannot affect the meaning of the statute. It must also be remembered that if the House of Commons choose to put a sum in the estimates, commit that sum to the Department and allow them to spend it, it would need no statutory authority to allow a school board to spend the money for the purpose for which it was given them. It is a different thing when they propose to raise more money and charge it on the rates. No department and no resolution of the House of Commons can authorise them to do that. They must find that power in an Act of Parliament.

Accordingly in my opinion section 6 does not extend the scope of section 4, or give in any way independently of that section the power that is here contended for.

The only other section alluded to in the argument was section 17 (6), but that merely repeats the words of section 4. I am, therefore, of opinion that we should answer all the questions in the negative.

LORD KINNEAR—I agree with your Lordship for the reasons you have stated.

LORD MACKENZIE—I also agree.

LORD PRESIDENT—LORD JOHNSTON also concurs.

The Court answered all the questions of law in the negative.

Counsel for First Parties—Constable, K.C.—D. P. Fleming. Agents—Simpson & Marwick, W.S.

Counsel for Second Party—Murray, K.C.—J. R. Christie. Agent—Duncan Maclennan, Solicitor.