suspended until such examination takes place.

I am aware that in a recent case which came before the Second Division of the Court opinions were expressed by some of the Judges to the effect that the workman who in that case had submitted himself for examination by the employers' medical referee, but who had not applied to be examined by one of the official medical referees, was disentitled to arbitration. But in that case (*Davidson* v. *The Summerlee Iron and Steel Co.*) the conditions of the question were materially different from those of the present case. The agreement under which the workman was receiving compensation had not been recorded in the statutory register, and the workman was not in a position to enforce payment of the allowance which his employer had been paying. Accordingly, the case came before the Sheriff as an original application for an award of compensation. It is fair to say that as at present advised I do not think I should have agreed with the judgment that the application should be dismissed; but I only say so that I may not be thought to found too strongly on the difference in the conditions of the two cases. What I really found on is that the present case is an application for a review of a subsisting claim of compensation, and the cases are so far different that I think this Division of the Court ought to proceed on its own opinion of the combined effect of the 11th and 12th sections of the schedule.

In applying the results of my opinion to the questions put to us, I think that the first question is not so completely stated as to raise the question whether the Sheriff's award was according to the statute. But under this question we may find that in the circumstances stated the respondent's failure to submit himself for examination by one of the medical practitioners appointed for the purposes of the Act does not disentitle him to a proof in the application to the Sheriff for review. In my opinion the remit made by the Sheriff, and the decision following thereon, was within the powers of the Sheriff as arbitrator under the Act, and the second question should be answered in the affirmative.

It is unnecessary in my opinion to answer the third question, because there was no evidence before the Sheriff contrary to the report of the medical referee, and it is not said that there was any dispute as to the workman's physical incapacity being the result of the accident in question.

LORD KINNEAR—I have had the opportunity of reading the opinion given by Lord M'Laren, and I need only say that I entirely concur in it.

The LORD PRESIDENT concurred.

LORD ADAM was absent.

The Court pronounced this interlocutor:—

"Find in answer to the first question in the case that in the circumstances stated the respondent's failure to submit himself to examination by one of the medical practitioners appointed for the purposes of the Act does not disentitle him to a proof in the application to the Sheriff for review: Answer the second question in the affirmative: Find it unnecessary to answer the third question, and decern," &c.

Counsel for the Appellants — Salvesen, K.C.—Hunter. Agents—W. & J. Burness, W.S.

Counsel for the Respondent—Watt, K.C. —Wilton. Agent — C. Clarke Webster, Solicitor.

Friday, July 10.

FIRST DIVISION.

[Lord Pearson, Ordinary.

SOMERVELL'S TRUSTEE *v.* DAWES.

Husband and Wife — Divorce — Entail — Provisions in Favour of Wife—Effect of Divorce on Aberdeen Act Provision.

Held (1) that the wife of an heir of entail, by divorcing her husband, did not forfeit her right in a bond of annuity granted in her favour under the provisions of the Aberdeen Act, (2) that she was not entitled to payment of her annuity until after the death of her husband, and (3) that, notwithstanding a provision in the bond of annuity to the effect that it should not be placed on the sasine register during the lifetime of the heir of entail without his consent in writing, she was entitled to record the bond immediately on the divorce without such consent.

Entail—Disentail by Trustee in Sequestration—Interest of Next Heir—Entail (Scotland) Act 1882 (45 *and* 46 *Vict. cap.* 53), *sec.* 18.

Section 18 of the Entail (Scotland) Act 1882, providing for disentail by a creditor or trustee in sequestration, enacts, *inter alia*, "The Court shall . . . order intimation to be made to the heirs whose consents would be required or must be dispensed with by the Court in an application for disentail by the heir in possession, and in the event of any of the said heirs . . . refusing to give his consent, the Court shall ascertain the value in money of the expectancy or interest in the entailed estate of such heir, and shall ordain the heir in possession to grant a bond and disposition in security over the estate for the amount so ascertained in favour of such heir."

In an application for disentail at the instance of a trustee in sequestration, under the above section, it appeared that the life interest of the heir in possession was entirely absorbed in meeting charges on bonds which did not affect the fee of the estate. *Held* that the right of the nearest heir was limited to obtaining a bond and dis-

position in security over the estate for the amount of his interest as ascertained by the Court, and that the fact that nothing would be left to meet the interest on the bond during the lifetime of the heir in possession did not entitle the next heirs to have the value of their expectancies paid into bank.

Entail—Disentail—Interest of Nearest Heirs—Effect of Clause Authorising Disentail on a Certain Event.

In a disentail when the consent of the three heirs are required, the fact that under the terms of the entail it would be open to the heir in possession to disentail upon the happening of a certain contingency, does not annul the right of the nearest heirs to the value of their expectancies, but is to be taken into account in arriving at that value.

Entail—Bond over Lands subject to the Entail—Effect of Disentail and New Entail.

An heir of entail in possession granted a bond and disposition in security by which he conveyed the lands subject to the entail, the object of the transaction being to secure the interest of a loan of which the capital was secured by the assignation of policies of insurance. Subsequently the granter of the bond disentailed the estate and executed a new entail. In a question as to the free rental of the estate available to meet a provision in favour of a wife granted under the Aberdeen Act, *held* (*per* Lord Pearson, Ordinary) that the disentail and new entail had not made the bond affect the fee of the estate, or placed it in the position of a bond for entailer's debts, which might be made to affect the fee. *Question reserved* in the Inner House.

This was a petition under the Entail Acts at the instance of the trustee in the sequestration of Mr James Somervell, of Sorn, for the disentail of the lands of Hamilton's Farm, of which Mr Somervell was heir of entail in possession. Mr Somervell was sequestrated in February 1901. At the date when the petition was presented Mr Guy Duke was the trustee in the sequestration, but on his resignation of that office Mr Francis More, C.A., Edinburgh, was appointed trustee, and on 5th July 1902 was sisted as petitioner in the place of Mr Duke.

The prayer of the petition was for authority to disentail in ordinary terms. It set forth that the three nearest heirs entitled to succeed after Mr Somervell were his son James Graham Henry Somervell and his daughters Agnes M. Somervell and Elizabeth J. Somervell, who were all in pupilarity. It also set forth that Mrs Kathleen Maclean or Somervell, who was Mr Somervell's wife until 20th July 1900, when she obtained decree of divorce against him on the ground of adultery, was in right of a bond of annuity granted under the Aberdeen Act, and secured over the lands of Hamilton's Farm.

The petition was duly intimated and served. Answers were lodged for Mr Somervell but were withdrawn.

On 9th July 1902 Mrs Kathleen Maclean or Somervell was married to Captain E. S. Dawes. The petition was of new served upon Captain and Mrs Dawes. They did not lodge answers, but counsel appeared on behalf of Mrs Dawes in the subsequent stages of the proceedings.

On 28th January 1902 the Lord Ordinary (PEARSON) appointed Mr Donald Mackenzie, W.S., Mr William Harvey, advocate, and Mr G. S. Spens, advocate, to be curators *ad litem* to the three nearest heirs. The curators *ad litem* having refused their consent to the disentail, a remit was made to Mr S. M. Low, actuary, to value the expectancies of their wards.

On 13th May 1902 the Lord Ordinary remitted to Mr L. D. Corson, S.S.C., to inquire into the circumstances set forth in the petition. From Mr Corson's report it appeared that questions had arisen both as to the rights of Mrs Dawes in respect of her provision under the bond of annuity and as to the interests of the three nearest heirs.

With regard to Mrs Dawes' interest the material facts were as follows:—Mr and Mrs Somervell were married in 1892. The antenuptial contract between the parties, dated 20th January 1892, bore that in contemplation of the marriage, "and in implement *pro tanto* of his part of the arrangements in the treaty for the said intended marriage," Mr Somervell had granted of even date with the marriage-contract a bond of annuity in favour of his promised wife over certain lands of which he was heir of entail in possession, "for securing to her a free liferent annuity or jointure of £800 in case she shall survive him, and which bond of annuity it is agreed shall not, without the said James Somervell's consent in writing, be placed on the Sasine Register during his lifetime." In further implement of the said arrangements Mr Somervell bound himself and his heirs, executors, and representatives whomsoever to pay to his wife within three months after the day of his death, in case she should survive him, a sum of £1000 for furniture, mourning, and interim aliment from the day of his death to the first term thereafter, when the said annuity or jointure should commence and become payable. These provisions were accepted by her in full satisfaction of all legal rights competent to her by and through the death of her husband.

The bond of annuity granted by Mr Somervell of even date with the marriage-contract bore that it was part of the arrangements in the treaty for the marriage that he should provide and secure an annuity of £800 to his wife in case she should survive him out of the entailed lands and estates. It then recited section 1 of the Aberdeen Act, and proceeded—"Therefore and in implement *pro tanto* of my part of the arrangements in the treaty for the said marriage, and in virtue of the power conferred upon me by the foresaid statute and subsequent entail statutes, I do hereby provide and dispone to the said Kathleen

Emilie Maclaine in liferent during all the days of her life after my decease in case she shall survive me, all and whole a free liferent annuity of £800 sterling, exempted from all burdens and deductions whatsoever other than income-tax, to be uplifted and taken at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof at the first of these terms which shall happen after my decease, for the half-year immediately following that term," furth of the lands of Hamilton's Farm, and Sorn, or furth of any part or portion thereof, and rents, profits, and duties of the same. The bond declared that the annuity of £800 was provided to, and should be accepted by, Mrs Somervell under all the conditions and limitations applicable to such annuities contained in the Aberdeen Act, so far as applicable thereto, and Mr Somervell bound and obliged the heirs of entail succeeding to him to make payment of the said annuity to the said Kathleen Emilie Maclaine at the foresaid terms, and with interest and penalty therein mentioned, but always with and under the conditions and limitations before referred to. There was excepted from the warrandice clause a bond of annuity for £800 in favour of Mr Somervell's mother, as well as two bonds and dispositions in security, and a feu-disposition granted by Mr Somervell, and it was declared that in case it should happen, through his predeceasing his mother survived by his wife, or from any other cause, that the free rental available under the provisions of the Aberdeen Act should be at any time insufficient to meet in full the annuity thereby granted, his wife should have no claim for the deficiency upon his separate estate or upon his representatives.

This bond of annuity, with warrant thereon on behalf of Mrs Somervell, was recorded in the Register of Sasines on 21st July 1900, the day after she had obtained decree of divorce against her husband, without obtaining Mr Somervell's consent in writing.

In 1899 Mr Somervell was authorised to execute the disposition and deed of entail under which he was now infeft, he having first undertaken to grant a bond of corroboration of the said annuity in favour of his wife, and he accordingly granted a bond of corroboration dated 20th December 1899 and recorded in the Register of Sasines 6th August 1900.

The net rental of Hamilton's Farm was £439. The free rental of the other estates upon which Mrs Somervell's annuity was secured was all absorbed by prior charges.

The Aberdeen Act (6 Geo. IV. cap. 87) enacts (section 1)—that it shall be lawful to every heir of entail in possession of an entailed estate, "under the limitations and conditions after mentioned, to provide and infeft his wife in a liferent provision out of his entailed lands and estates by way of annuity, provided always that such annuity shall not exceed one-third part of the free yearly rent of the said lands and estates where the same shall be let, or of the free yearly value thereof where the same shall not be let, after deducting the public burdens, liferent provisions, the yearly interest of debts and provisions, including the interest of provisions to children hereinafter specified, and the yearly amount of other burdens of what nature soever affecting and burdening the said lands and estates, or the yearly rents or proceeds thereof, and diminishing the clear yearly rent or value thereof to such heir of entail in possession, all as the same may happen to be at the death of the granter."

The questions arising as to Mrs Dawes' interest were stated by the reporter as follows—"(1) Mrs Dawes claims that the annuity has become payable to her, at least in a question between her and the said James Somervell, in the same manner as if he had died at the date of the decree of divorce, namely, 20th July 1900. The reporter is, however, informed that she does not propose to maintain that the rights of creditors holding securities affecting the estate have been prejudiced by the fact that Mr Somervell has been divorced. (2) On the other hand, the agents of the petitioner maintain not only that the annuity did not become payable from the date of the divorce, but also, that owing to the divorce having taken place Mrs Dawes has forfeited all claim to the annuity. Their contention is that the Aberdeen Act, in virtue of which the annuity was granted, only authorises an heir of entail to grant an annuity in favour of his widow commencing at the date of his death, that in interpreting the statute divorce cannot be regarded as equivalent to death, and that as Mrs Dawes has ceased to be the wife of the heir of entail she cannot either now or at any future time claim the annuity. The agents of the petitioner also found upon a stipulation contained in the marriage-contract to the effect that the bond of annuity 'shall not without the said James Somervell's consent in writing be placed on the Sasine Register during his lifetime,' and they maintain that the said bond of corroboration was granted subject to a similar stipulation, and in both cases with the object of leaving Mr Somervell free to place charges on the entailed estates such as the bonds of Hamilton's Farm."

A question was raised whether certain bonds granted by Mr Somervell to the University of Glasgow affected the fee of Hamilton's Farm. The facts on this point are fully stated in the opinion of the Lord Ordinary, *infra*.

The following are the material facts with regard to the questions raised as to the rights of the three nearest heirs:—Until 1899 Hamilton's Farm was held under an entail dated in 1856. In 1899 Mr Somervell disentailed it and executed a new deed of entail. The dispositive clause of this latter deed was in the following terms:—"I do hereby, with and under the conditions, provisions, restrictions, limitations, clauses prohibitory, irritant, and resolutive, declarations and reservations after written, give, grant, and dispone to myself, whom failing to the said James Graham Henry Somervell and the heirs-male of his body

whom failing the heirs-female of his body, and in the event of his predeceasing me without issue then to the heirs-male of my body, whom failing to the heirs-female of my body, whom all failing to my own nearest heirs whomsoever and their assignees: . . . But reserving always full power and liberty to me, in the event of the said James Graham Henry Somervell predeceasing me without issue, by any deed to be executed by me at any time or even upon deathbed, to discharge the several conditions, limitations, irritant and resolutive clauses, herein contained or any part thereof, or to add such other conditions or limitations to the same as I shall think fit, or to sell, alienate, and dispone gratuitously or otherwise, or to charge and affect with debts the said entailed estate or any part thereof in such manner and as freely in all respects as if these presents had never been made or granted." . . .

The questions relating to the interests of the three nearest heirs under this entail are narrated in the opinion of the Lord Ordinary, *infra*.

On 19th March 1903 the Lord Ordinary (PEARSON) pronounced the following interlocutor:— "Finds (1) that in consequence of the decree of divorce obtained by the respondent Mrs Dawes on 20th July 1900, her marriage-contract provision, including the annuity of £800 per annum provided to her by the bond of annuity and bond of corroboration became prestable, as between the said respondent and her husband James Somervell, as if he had then died, and that the said respondent notwithstanding the terms of her marriage-contract was entitled by reason of the said decree of divorce to record the said bonds in the Register of Sasines; (2) that the said respondent is entitled, in terms of section 18 of the Entail Act 1882, to have provision made for her interest as creditor in the said bond of annuity and bond of corroboration before the petitioner, as trustee in the sequestration, is entitled to affect the said estate for payment of the debts of the bankrupt; (3) that in order to make such provision the said respondent is entitled to have a bond of corroboration in her favour granted by the said James Somervell and the petitioner providing and securing to her an annuity equal to one-third of the net rental of the estate of Hamilton's Farm mentioned in the petition, to be uplifted and taken by her furth of the said estate, and the readiest rents, profits, and duties of the same during her life from and after the date of the said decree of divorce; (4) that in calculating the amount of the annuity to be secured by the bond of corroboration to be so granted to her by the said James Somervell and the petitioner, no deduction falls to be made in respect of the interest of the bonds amounting to £10,160 mentioned in the petition, and that the amount to be so secured is one-third of the net rental of the said estate of Hamilton's Farm as set forth in Mr Corson's report, subject to such adjustment of the rental with the trustee as may be necessary; and (5) Finds, with respect to the valuation of the expectancies of the son and two daughters of the said James Somervell, that the said expectancies are to be calculated on the footing that the daughters are not called in the destination except in the event of the son predeceasing the father without issue: And that in the same event the father has a reserved power to bring the entail to an end without compensation to the daughters."

Opinion.—"In this petition the trustee in the sequestration of Mr James Somervell of Sorn asks authority to disentail the lands and estate of Hamilton's Farm, of which the bankrupt is institute of entail in possession under an entail dated in 1899.

"The petition is presented under the powers of the 18th section of the Entail Act of 1882, which contains special provisions to protect the interests of the heirs whose consents would be required or dispensed with by the Court in an application for disentail by the heir in possession, and also the interests of any other creditors whose debts are secured on the estate.

"Mr Somervell was married in January 1892, and a decree of divorce was obtained against him at the instance of his wife on 20th July 1900. The first group of questions argued before me have regard to the position of that lady (now Mrs Dawes) in the disentail proceedings as a creditor for her marriage-contract provisions—[*His Lordship then narrated the provisions in favour of Mrs Dawes ut supra*].

"In these circumstances the first question is, What is the legal position of Mrs Dawes' annuity, and to what extent, if any, is she entitled to have provision made for it in the disentail? A question might have been raised whether in respect of the annuity she is 'a creditor whose debt is secured on the estate' within the meaning of section 18. But this argument was not pressed, and the case was taken on the footing that the clause includes all debts secured on the estate, whether they affect the fee or only the heirs of entail.

"Mrs Dawes' claim rests upon this, that according to the ordinary law of husband and wife the effect of divorce is to accelerate all provisions made *intuitu matrimonii* in favour of the innocent spouse, and to make them prestable as if the defender in the divorce had died on the date of the decree. Mrs Dawes claims that as the result of the divorce, and from its date, she is entitled to have a full annuity of £800 secured to her during her life over the estates of Sorn and Hamilton's Farm regarded as one estate, and that as the rental of Sorn is not available to her owing to prior annual charges she is entitled to have her claim made good against Hamilton's Farm.

"The petitioner, on the other hand, maintains that by her own act in obtaining the divorce Mrs Dawes has disentitled herself from claiming the annuity at all. It being an Aberdeen Act annuity, payable to her as soon as she became his widow, she has now rendered it impossible that she can ever be his widow, and in the interpre-

tation of the statute there is no warrant for holding divorce to be equivalent to death. Further, it is urged that Mrs Dawes' contention has only become possible through her own breach of her marriage-contract undertaking, she having recorded her bond of annuity in the Register of Sasines contrary to her undertaking not to do so during Mr Somervell's lifetime without his consent in writing.

"As to this last contention, it must, in my opinion, stand or fall with the petitioner's main argument, for if the annuity is in any sense to draw back to the date of divorce on the footing that this *inter sponsas* is equivalent to his death, it appears to me that this must apply to all the relative stipulations in the contract, and in particular to the clause as to securing the annuity by infeftment, so long always as the rights of third parties are not prejudiced.

"The main contentions of the parties, however, seem to me to raise questions of some difficulty, turning upon the precise place which is to be assigned in the argument to the matrimonial law on the one hand, and to the law of entail and the provisions of the Aberdeen Act on the other. I leave over for the moment the question how far the bankruptcy law may affect the position.

"It seems clear that Mrs Dawes' contention cannot be stated in the terms of the Aberdeen Act taken by itself, and further that if we were not here in a question of disentail various difficulties might be suggested, as they were suggested in argument, as likely to arise under the statute in the event of Mr Somervell marrying again and providing his second wife in an Aberdeen annuity. But, on the other hand, there being a disentail impending, and the question being upon what conditions it is to be sanctioned, it is clear that if the rights of secured creditors are safeguarded and the values of the expectancies of the heirs of entail are secured according to the statute, all existing interests outside those of the husband and wife are legally satisfied, and there is nothing further to prevent the operation of the matrimonial law. As between the spouses I see no reason why, when that stage of the argument is reached, the husband's obligations should not be read against himself as if the annuity were stipulated to run from the date of divorce. If there were no disentail in contemplation he would continue during his life in receipt of the rents of the very estate which was to have produced the annuity for his wife after his death, and while I acknowledge the difficulty of the question, I am disposed to think that the law would lay upon the granter of such an annuity an obligation to make it good to the stipulated amount out of those rents during his own lifetime. It is true that the husband undertakes no personal obligation for it in the marriage-contract or in the bond of annuity. On the contrary, the bond bears that if the free rental is at any time insufficient to meet the annuity in full, Mrs Somervell shall have no claim for the deficiency upon his separate estate or his representatives. But according to the form of her claim she is not claiming upon his separate estate nor against his representatives. These expressions were used in the bond as excluding claims which are not here made, namely, claims arising after his natural death against his general personal estate. The subject of the security, or rather of the provision itself, is the annual rents of the estate subject to certain deductions; and though in form it is the rents after his natural death, she is entitled to hold the divorce as equivalent to his death so as to make the annuity now prestable out of the rents accruing during his natural life, all other interests being first fully satisfied. Nor does the bankruptcy law interfere with this result, provided the annuity in which she is to be secured is no more than the amount provided in the bond (namely, one-third of the rental of the lands to be disentailed), after making the statutory deductions calculated as at the date of the divorce. To that extent the husband must be regarded as having warranted the provision and the security for it. Beyond that I do not think she can claim now and in this form, though for anything I now decide she may claim for the difference in the sequestration as an ordinary creditor if she can instruct that the arrangements in the treaty for the marriage amounted to an unsecured personal obligation for the full annuity of £800. The only difference which the sequestration makes is that it enables the trustee to obtain a disentail, and thus makes it necessary to obtain a fresh security in corroboration of the existing bond as proposed by the reporter.

"The next question which was argued has regard to certain debts, amounting to £10,160, secured over Hamilton's Farm in favour of the University of Glasgow. These debts are constituted, as to £6000, by a bond and assignation and disposition in security, dated 15th, and recorded in the Register of Sasines 16th May 1882; and as to £4160 by a similar bond, dated 12th, and recorded 13th November 1894. The petitioner contends that in any view the interest on this debt should be deducted from the rental in ascertaining the amount of the annuity to which Mrs Dawes is entitled from Hamilton's Farm.

"At the dates of these bonds Mr Somervell held Hamilton's Farm under a deed of entail recorded in 1856. The security for them consisted of an assignation of certain policies of insurance on Mr Somervell's life, and a conveyance by him of Hamilton's Farm, subject to the prohibitions and restrictions contained in the deed of entail. This conveyance was in the usual form of a disposition of the lands in security of the debt, but under the express declaration that as he held them under an entail the creditors agreed that neither the security nor any diligence thereon should affect the lands or any part or portion thereof, or the rents, maills, and duties thereof, in any way or to any extent inconsistent with the deed of entail. If matters had so remained, the security, so far as regards Hamilton's

Farm, would have ended with Mr Somervell's life, as it did not affect the fee of the estate or the interests protected by the entail. But in 1899 Mr Somervell, in an application under section 4 of the Rutherfurd Act, executed a new entail altering the succession to the estate: and the petitioner maintains that this transaction had the effect of imposing the debts now in question on the fee, or at least of putting them in the position of entailer's debts which might be made to affect the fee. I think this is (as the reporter says) a question of some difficulty, but I have come to be of opinion that the reporter's view is sound, namely, that the entail of 1899 carried the estate as vested in Mr Somervell under the former entail; that the transaction embodied in the agreement No. 19 of process between Mr Somervell and the curator *ad litem* of the next heir did not have the effect, and was not intended to have the effect, of charging the debts in question on the fee of the estate; and that while the debts still affect Mr Somervell's interest in the estate, they do not affect the fee or the heirs of entail. There is this peculiarity in the situation, that the creditors in the bonds appear to be indifferent in the matter, their debt being (I suppose) amply secured otherwise. The argument is stated by Mr Somervell himself and the trustee in his sequestration; and while, if they are right, it would have the wider effect of enlarging the security of the creditor, they only used it for the minor purpose of restricting Mrs Dawes' annuity by deducting the interest of the bonds from the rental in a question with her. It was argued with considerable force on her behalf that whatever might be the rights of the creditors if they were here to support them, and granting that she cannot compete with them on the rents, it is not open to Mr Somervell or his trustee to state the argument as restricting the amount of her annuity, seeing that it is founded on a breach of his warrandice in the bond of annuity of 1892 and the bond of corroboration of 1899. It might however be a good answer to say that Mrs Dawes' remedy in that event would be a claim of damages to be made good in the sequestration. But the question now in hand is whether, on the assumption that it is open to the trustee to state the argument, the interest on the bonds is deductable in calculating the amount of Mrs Dawes' annuity, and I answer that question in the negative.

"The amount of the annuity on this basis I understand to be £146, 11s. 1d., subject to the present trustee being satisfied as to the accuracy of the statements of rental Nos. 29 and 30 of process in other respects, which he has not yet admitted. Subject to this adjustment, I adopt the reporter's suggestion that as a condition of granting the authority to disentail, Mr Somervell, with consent of the petitioner, should execute a bond of annuity and disposition in security over Hamilton's farm in corroboration to that extent of the original bond, the annuity to be payable from the date of the divorce.

"It is contended for Mrs Dawes that her right cannot be so restricted, and that in a question with the petitioner she is entitled to have an annuity of £800 from the two estates of Sorn and Hamilton's Farm taken together. Her interest in the matter is, that as Sorn has been charged with a large sum of debt since the date of the marriage and before her infeftment, she has to look to Hamilton's Farm as the main source of her provision. She maintains that she is entitled to have it secured over Hamilton's Farm, subject only, to providing for the Glasgow University bonds and for the compensation due to the next heirs of entail; and further, that in the calculation the proceeds of the other securities held by the bondholders should first be imputed to the debt of £10,160, and only the balance charged against Hamilton's Farm. I am unable to give effect to either of these contentions. It appears to me that in this application for power to disentail certain lands I can do no more than secure Mrs Dawes in such an annuity as she could have drawn from those lands if her husband had died without disentailing them. This will be in corroboration of her rights under the original bond. If beyond that she has any claim against her husband's estate for the balance of her £800 provision she must make it good in the sequestration.

"There remain certain questions affecting the rights of the next heirs. These are Mr Somervell's son and two daughters, who are all in pupillarity. The tutors *ad litem* of these children having refused to consent to the disentail, their consents, assuming them to be heirs of entail, will have to be dispensed with upon the value of their expectancy being secured. By the 18th section of the Act of 1882, which regulates the procedure, the heir in possession is to be ordained to grant a bond and disposition in security over the estate for the amount so ascertained in favour of such heir, and if he refuses the Clerk of Court is to execute the bond.

"In the ordinary case such a bond would give a good heritable security, but in the present case, as it happens, the value of such bonds is very seriously diminished by the circumstance that Mr Somervell has burdened his interest as heir of entail in possession with the £10,160 of debt above mentioned. Though this debt does not, it is thought, affect the fee, the interest of the debt and the relative charges for premiums of insurance on Mr Somervell's life exhaust the free income of the estate, leaving none available during Mr Somervell's life to meet the interest on the bonds in favour of the next heirs. The reporter expresses a doubt whether this meets the requirements of section 18, and suggests that the creditors in the debts of £10,160 should be arranged with to postpone their security, or alternatively that the values of the expectancies should be paid into bank. As regards the former alternative, all that can be done is to provide as far as possible that the security for the compensation-money shall be preferable as regards the fee to the £10,160 of debt. As to the latter alternative I do not think it is admissible under the provisions of section 18. There is no alter-

native mode provided in that section for securing the value of the expectancies. The section is in marked contrast in this respect to section 13 of the same statute, and to section 5 of the Entail Act of 1875, which enact that on the value being ascertained the Court shall direct the sum to be paid into bank, or that 'proper security' shall be given for it over the estate. In these cases, if the security is not such as a prudent lender would accept (*Farquharson*, 14 R. 231), the alternative of payment must be resorted to. But, as I read section 18 it provides no alternative to the bond and disposition in security over the estate to be disentailed; and I am afraid the next heirs must accept such a bond as all they are entitled to. There is in a very real sense a double hardship laid upon them in this case, for they point out that the actuary in valuing their expectancies has fixed the value as at their father's death discounted for a present payment, while it will turn out that there is no free income to meet the interest on the bond which they get in lieu of present payment. But if the actuary is right, as I think he is, in so discounting the value, the heirs must submit to having the compensation calculated on that footing; and this being done, the statute, as I read it, lays upon them the risk of the bond being good or bad.

"I have assumed that all the three children are heirs of entail, whose interests fall to be compensated as a condition of disentail. But a question is raised as to whether the two daughters hold this position; and in any case whether the actuary's calculation has taken account of all the contingencies affecting their expectancies. The question, as I understand it, is put alternatively, whether the daughters are heirs of entail at all, and whether, if they are, their expectancies are not so remote as to have no value capable of estimation.

"Acording to the destination the daughters, regarded as heirs of entail succeeding next after their brother, have their chances of succession further postponed (first) in the event of their father marrying and leaving other male issue, and (second) in the event of their brother predeceasing their father leaving issue. But in addition there are two contingencies which seriously affect the value of their interests. If the son should predecease the father without issue, the father has a reserved power to cut off the entail, while if the son should survive the father, whether with or without issue, it would seem that the destination does not in that event carry the estate to the daughters at all. It is said that the actuary did not take this last consideration into account; that this being so the daughters have no interests which are capable of valuation, even if in a sense and in one contingency they are heirs of entail; and that the sums fixed as the values of their expectancies must be re-allocated between the heir in possession and the son. I understand that the position of the daughters, according as the son predeceases or survives the father, was not fully before the actuary, and I therefore renew the remit to him that he may, if necessary, readjust his valuation in concert with the reporter."

The petitioner reclaimed, and argued—(1) The Aberdeen Act provisions in favour of a wife were forfeited by a divorce, whether she was pursuer or defender. She could only take her provisions as Mr Somervell's widow, which now she could never be. Divorce was not equivalent to death except in cases where the parties alone were interested, as in *Johnstone Beattie* v. *Johnstone*, February 5, 1867, 5 Macph. 340. For other purposes, as for instance the vesting of children's provisions, divorce had not the effect of death—*Mason* v. *Beattie's Trustees*, October 17, 1878, 6 R. 37, 16 S.L.R. 6; *Harvey's Judicial Factor* v. *Spittal's Curator ad litem*, July 19, 1893, 20 R. 1016; *Taylor's Trustees* v. *Barnett*, July 19, 1893, 20 R. 1032; *Gavin's Trustees* v. *Johnston's Trustees*, December 6, 1901, 4 F. 278, 39 S.L.R. 173. When a statute declared that something was to happen on the death of a spouse, it was inadmissible to read into it that the event in question should happen on divorce—*Eddington* v. *Robertson*, March 9, 1895, 22 R. 430, 32 S.L.R. 312. That case related to section 6 of the Married Women's Property Act 1881, but the reasoning applied also to the Aberdeen Act. By that Act it was made possible for an heir in possession to burden succeeding heirs, but only in one case, *i.e.*, when his widow survived him. Supposing Mr Somervell married again and granted a provision in favour of his second wife, which would be his widow? (2) In any event the provisions in favour of Mrs Dawes could only take effect on Mr Somervell's death—Ersk. i. 6, 46; Fraser, Husband and Wife, ii. 1220, and cases cited *supra*. An Aberdeen Act provision was a burden on succeeding heirs, not a personal obligation of the heir in possession. Counsel for the reclaimer also submitted an argument to the effect that the bonds held by the University of Glasgow affected the fee of the estate, and therefore left no free rental, which, in the view taken by the Court, it is unnecessary to report. They supported the reasoning of the Lord Ordinary with regard to the interest of the next heir, and argued that the interest of the two daughters was, under the terms of the entail, a mere *jus successionis*, and incapable of valuation.

Argued for the respondent Mrs Dawes—The respondent was entitled to the benefit of her provision as from the date of the divorce. The general rule was well-established with regard to provisions made by spouses for each other, that on divorce the aggrieved party was entitled to his or her provision as if the other party were dead—*Lady Manderston* v. *Rentoun*, March 21, 1637, M. 1741; *Fairlie* v. *Fairlie*, June 15, 1819, F.C.; *Johnstone Beattie* v. *Johnstone*, Feb. 5, 1867, 5 Macph. 340; *Harvey* v. *Farquhar*, July 12, 1870, 8 Macph. 971, *affd.* February 22, 1872, 10 Macph. (H.L.) 26. A provision under the Aberdeen Act was a provision by one spouse in favour of another, and fell under the above general rule. The Act did not confer anything on

the wife; it only conferred power on the husband to make a provision for her—*Earl of Kinnoul's Trustees* v. *Drummond*, February 26, 1869, 7 Macph. 576, *per* Lord Justice-Clerk (Patton) at p. 581. When such a bond was granted it was just to be considered, in a question like the present, as if it was a bond in similar terms granted by the owner of an estate in fee-simple. In that case, on the authority of the cases above cited, the wife's provisions would take effect on her divorcing her husband. The bond was, it was true, contingent on Mr Somervell's death, but divorce was equivalent to death, and therefore the contingency was purified. To maintain that a wife forfeited her provisions under the Aberdeen Act by divorcing her husband was to read into the Act and the bond a condition which was not expressed in either. The bond as authorised by the Act provided for the wife on one condition —that she should survive her husband; there was no authority for the contention that that meant that she should survive him undivorced.

Counsel for the *curator ad litem* to J. G. H. Somervell argued that he was entitled to have the value of his expectancy paid. On a sound construction of section 18 of the Entail Act 1882 (quoted in rubric) the value of the heir's right should be provided for in a disentail at the instance of a trustee in sequestration in the same manner as if it had been a voluntary disentail. Alternatively, as the method proposed by the Lord Ordinary would deprive the heir of the interest during the life of the heir in possession, this fact should be taken into consideration in valuing his interest.

Counsel for the *curatores ad litem* to the two daughters argued that they were heirs of entail with interests which must be valued and provided for. It was true that in certain events their interests were liable to be defeated by a disentail by Mr Somervell or his son, but that was a resolutive and not a suspensive condition analogous to the possibility of a devolution of the entailed estate on the succession to a peerage. Such a condition did not preclude the next heir from having a valuable right—*Forbes* v. *Burness*, June 29, 1888, 15 R. 797, 25 S.L.R. 592.

At advising—

LORD KINNEAR—The questions for consideration arise on a petition for disentail presented by the trustee on the sequestrated estates of the heir of entail in possession of certain lands called Hamilton's Farm. The statute requires that provision shall be made for the interests of any "creditors whose debts are secured on the estate," and the first question is, what provision should be made for the interests of the bankrupt's wife under a bond of annuity granted by him in her favour in terms of the Aberdeen Act. It appears that in 1892 the bankrupt was married to the respondent, now Mrs Dawes; that he was divorced on the ground of adultery in 1900, and that in 1901 his estates were sequestrated under the Bankruptcy Act 1856. The bond of annuity, in conformity with the provisions of the Aberdeen Act, provides and dispones to the respondent during all the days of her life after her husband's decease a free liferent annuity of £800 sterling, to be uplifted and taken at two terms in the year, Whitsunday and Martinmas, furth of the entailed lands described, and readiest rents, profits, and duties of the same. The bond contains a declaration that if the free rental available under the Act is insufficient to meet the annuity in full the respondent shall have no claim for the deficiency upon her husband's separate estate or upon his representative. The respondent's right therefore does not rest to any extent upon personal obligation. It is a real right secured upon the entailed estates, and since the bond has been recorded in the Register of Sasines, it has been perfected by infeftment.

I cannot see any reason to doubt, with all respect for the suggestion of the Lord Ordinary that an argument might have been stated to the contrary, that this is a perfectly valid and effectual charge upon the entailed estate. It does not under the statute affect the fee, but it does affect the rents and proceeds of the land so long as the grantee shall live after the death of the grantor. The respondent is therefore infeft in a liferent by way of annuity, and I take it to be clear that she is thus a creditor whose debt is secured upon the estate. If therefore the disentail, which will open the estate to her former husband's creditors, should be found to make further provision necessary for the security of her interest, she is in my judgment entitled to require that such provision shall be made. It is maintained against her that the condition on which the annuity becomes payable cannot now be purified, because it was intended as a provision for a widow on the dissolution of the marriage by the death of the husband, and it is said that as the respondent has herself dissolved the marriage by obtaining a decree of divorce, the contingency on which her right is conditioned is necessarily excluded by her own act, that the marriage cannot be dissolved by the death of the husband, that she can never become his widow, and therefore that her conditional right is extinguished. But the answer is obvious, and in my opinion perfectly sufficient, that the annuity is not made contingent on the dissolution of the marriage by the husband's death, but solely and simply upon the decease of the husband in case she shall survive him. These words have only one meaning. They signify the natural death of the husband, and in that event they provide the wife in an annuity in case she shall survive him. That appears to me to be the only event contemplated by the bond, or by the Aberdeen Act on which the bond is founded. The notion that although it is not expressed there is an implied condition either in the bond or in the statute that the wife is to forfeit her annuity if the husband is

divorced for adultery, seems to me to be entirely without foundation.

I am of opinion therefore that, if necessary, the wife is entitled to have her right secured to her according to its terms. But I think at the same time that her right is to be measured by the terms of the bond, and therefore that she has no other or higher interest in the entailed estate than a liferent annuity contingent on her surviving her former husband, and which will begin to run upon his death. It is maintained, however, on her behalf, that she is entitled to immediate payment, because it is said to be a rule of law that for the purpose of enforcing all provisions in favour of a wife, legal or conventional, the divorced husband is to be held as dead—or, as it was put in other words, the law transfers to the case of divorce the provision made in words for the case of death. I know of no authority for giving so wide an extension to a familiar doctrine which, so far as it really goes, is perfectly well settled. There can be no doubt that the rights provided to a wife by her husband generally speaking become due to her in the event of the marriage being dissolved by the divorce of the husband, in the same way as if it had been dissolved by his death, and in so far as regards the husband's personal obligations it may be perfectly correct to say that the law transfers to the case of divorce those which were made in words for the case of death. But I think the true force and extent of the doctrine is very clearly brought out in the authorities which have been cited. Erskine (i. 6, 46) states it thus—"The offending husband is bound to make good to his wife all the provisions in her favour, as well legal as conventional, so that she hath immediate access to them upon the decree of divorce." The important point to observe upon his statement, for the present purpose, is that it is the husband who is to make good to the wife the provision to which the doctrine applies. What he can make good to her he must make good, and if there is nothing to prevent her having immediate access to her provisions except some antecedent right in him, he is not entitled to interpose any impediment, and she is therefore to have the benefit of them immediately upon the decree of divorce. Two more recent authorities which were cited seem to me to bring out very clearly two different aspects of the rule, and to be entirely in accordance with Erskine. The first is the statement of Lord Westbury, who says—(*Harvey* v. *Farquhar*, 10 Macph. H.L., 26) "The rule is that the interest provided by a marriage-contract for the benefit of either of the spouses is, by the adultery of the delinquent, lost for the benefit of the other spouse." The second is Lord Fraser's statement (Husband and Wife, ii. 1210), that "the delinquent husband is on divorce obliged immediately to settle or pay over the provisions granted by the marriage-contract to the wife, although they are in terms payable only on death." The rule therefore operates in two ways, it forfeits for the benefit of the offended spouse provisions which were intended during the subsistence of the marriage primarily for the benefit of the offender, and it compels the offender to make good on divorce provisions which he had undertaken to make good only on death. But then the rule of law as so stated operates only through the forfeiture or through the obligation of the delinquent spouse. It is said to have been carried further in *Johnstone Beattie* (1867, 5 Macph. 340), because in that case it was applied to an obligation undertaken not by the delinquent spouse but by a third person. But that decision is in reality an excellent illustration of the rule stated by Lord Westbury. A father had bound himself in his son's marriage-contract to pay £200 a-year in the first place to the intended husband, and on his death to the intended wife. It was held that the wife became entitled to the annuity on divorcing her husband. But the Lord President points out that the circumstance of her annuity being provided by the husband's father was of very little importance, and it is obvious that the father's liability was in no way enlarged. The really material consideration was the nature of the obligation and the purpose it was intended to serve. It was an obligation undertaken solely with reference to the intended marriage, and with a view to the comfortable sustenance of the spouses while they were living together, and of the wife after she should be deprived of her husband. It was entirely in accordance with Lord Westbury's doctrine to hold that the delinquent husband had forfeited for the benefit of the wife the interest which during his lifetime was primarily intended for him; and, on the other hand, the wife's interest fell directly within the class of rights which are held to emerge to her at once upon being separated from a delinquent husband by his divorce. But I see no ground in principle, and none has been found in authority, for extending the doctrine so explained to a bond of annuity under the Aberdeen Act. That does not depend upon the husband's obligation, nor does it provide or reserve for him any benefit which he can forfeit or retain. It is a real security constituted by infeftment which does not affect him personally at all, but affects the rents of an entailed estate which belong to the heirs who will come after him. There is no right or obligation of any kind upon which the rule in question can operate. The wife's right does not stand upon contract—it stands upon a completed infeftment. It is true that there is a stipulation in the marriage-contract which may be affected by the divorce, and that is the stipulation in favour of the husband that the bond of annuity shall not be recorded till after his death. I agree with the Lord Ordinary that the husband's right to enforce that obligation is forfeited, because he can interpose no obstacle to prevent the wife making her provision effectual so far as it can be made effectual in law during his lifetime, and because he is bound to settle at once the provision he had undertaken to settle at death. The provision he had undertaken to settle was an

annuity under the Aberdeen Act, and he is bound to give the respondent every facility for making that annuity effectual by infeftment. But his personal obligation in so far as regards the bond of annuity is exhausted when the bond has been duly executed and recorded in the Register of Sasines. The annuitant's right then rests upon the infeftment, and must be measured by the terms of the infeftment. It is quite in accordance with principle, if the rule of law be so, that a personal obligation may be accelerated by the conduct of the obligant. But a real security cannot be enlarged or extended in that way. It is a fundamental and elementary rule of the law affecting rights in land that a real burden must be fixed and definite. And even if it were possible so to affect land held in fee-simple, it would not be a valid charge upon an entailed estate under the Aberdeen Act. It must be kept in view that the entail prohibits all contraction of debt. The Aberdeen Act gives a power, notwithstanding the entail, to grant provisions which will affect the rents. But to give a particular provision the benefit of the enactment the power must be exercised in the exact terms in which it is conferred.

The answer of the respondent's counsel to this last point seems to me to put in a very clear light the fallacy which underlies the whole argument for the respondent. Mr Campbell said he relied upon the Aberdeen Act only for the benefit which it gave him, or in other words for the right which it gave him to charge the rents of the entailed estate after the death of the bankrupt, but for the right to charge the rents during his life the Aberdeen Act was not necessary, and for that he relied upon the bankrupt's own obligation. But there is no personal obligation on the bond of annuity, and if there were, we should have nothing to do with it in this process. The only question is whether the respondent is in right of a debt secured upon the estate; and for the purposes of that question it is of no consequence whether the bankrupt is under any personal liability to make a provision for his former wife which is not already charged upon the estate. If the respondent has any personal claim against the bankrupt founded either on his voluntary obligation, or on a liability created or inferred by law in consequence of his divorce, nothing that can be decided in this process will prevent her making good such a claim by an action at law or by a claim in the sequestration. It is unnecessary to consider whether she has such a claim or not, because it is certain that if she has it will not constitute a real burden upon the entailed estate.

The Lord Ordinary, holding that the annuity had become immediately prestable, found it necessary to decide that in calculating the amount to be secured no deduction should be made for the interest of bonds for £10,160 mentioned in the petition. That depends on whether the bonds affect the estate. Except in so far as regards the rents accruing during the bankrupt's life, I am far from suggesting that his Lordship has decided that question wrongly, but, in my view, it does not arise for decision at present, and it is manifest that we cannot decide it effectively in a process to which the bondholders are not parties. For these reasons I think the Lord Ordinary's finding on this point must be recalled, but I desire to express no opinion on the merits of the question if it should arise hereafter In the meantime it is enough to say that if the respondent is to have a new security on the estate it must be for the largest amount which can become due to her under her bond. But the annuity is restrictable in terms of the Aberdeen Act and this must be kept in view in adjusting the terms of a new security. I must add, however, that I am not satisfied that she requires any further security than her infeftment upon her bond of annuity. I express no definite opinion upon this question, since it has not been argued. In the view taken by the Lord Ordinary it was necessary that a bond of corroboration should be granted, because his Lordship thought the respondent was entitled to security over the estate for an annuity immediately payable. Whether anything of the kind is necessary to secure a right which must be measured by the terms of the existing bond is a different question. But I think it better to leave this matter open for adjustment by the Lord Ordinary when the parties have had an opportunity for considering it with reference to the judgment of this Court. Two remaining points have been decided by the Lord Ordinary as to which I agree with his Lordship. In the first place, I think the Act does not confer upon the next heirs a right to insist upon immediate consignment of the value of their expectancies. Their right is to obtain from the heir in possession a bond and disposition in security over the estate. In the second place, I agree with the Lord Ordinary that all the three children must be considered as heirs of entail. It is true that the right of the daughters may in a certain contingency be defeated; but that is a resolutive condition, and in the meantime they are heirs-substitute in terms of the existing destination. We must take matters as they stand at the date of the proceeding for disentail; and the daughters must be treated as heirs having an interest to be compensated. But I agree with the Lord Ordinary that the conditions under which they are called in the destination must be taken into account in calculating the value of their expectancies.

The Lord President, Lord Adam, and Lord M'Laren concurred.

The Court pronounced this interlocutor:—

"The Lords having considered the reclaiming-note for Francis More, the trustee on the sequestrated estates of James Somervell of Sorn, against the interlocutor of Lord Pearson dated 19th March 1903, and heard counsel for the parties, Recal the said interlocutor except in so far as regards the fifth finding thereof: Find (1) That in consequence of the decree of divorce ob-

tained by the respondent Mrs Dawes on 20th July 1900 the said respondent was entitled notwithstanding the terms of her marriage-contract to record the bond of annuity and bond of corroboration, Nos. 25 and 27 of process, in the Register of Sasines; (2) that under and in virtue of the bonds so recorded in said Register of Sasines the respondent is duly infeft in a free liferent annuity of £800, restrictable in terms of the Aberdeen Act, during all the days of her life after the decease of the said James Somervell, to be uplifted and taken furth of the entailed lands and estates of Hamilton Farm, Sorn, Dalgairn, and Daldorch; (3) that said respondent is entitled in terms of section 18 of the Entail (Scotland) Amendment Act 1882 to have such further provision, if any, made for her said interest as creditor in the said bonds as may be rendered necessary by the proposed disentail; but (4) that she is not entitled to affect the rents of the said entailed estates or to have such provisions as aforesaid made for payment of an annuity prestable during the lifetime of the said James Somervell; (5) adhere to the fifth finding of the said interlocutor; and decern: Remit to the Lord Ordinary to proceed and find no expenses due to or by either party in the Inner House: Find the tutors *at litem* entitled to their expenses as against the sequestrated estate, and remit the accounts thereof to the Auditor to tax and to report, with power to the Lord Ordinary to decern for the expenses now found due."

Counsel for the Petitioner and Reclaimer—Dundas, K.C.—Blackburn. Agents—Dundas & Wilson, C.S.

Counsel for the Respondent Mrs Dawes — Campbell, K.C. — Macphail. Agents — Tods, Murray, & Jamieson, W.S.

Counsel for the Curator *ad litem* to J. S. H. Somervell—Dove Wilson. Agent—Donald Mackenzie, W.S.

Counsel for the Curators *ad litem* to the Daughters—A. J. Alison. Agent—Donald Mackenzie, W.S.

Tuesday, July 14.

FIRST DIVISION.

[Sheriff Court at Glasgow.

KAVANAGH *v.* CALEDONIAN RAILWAY COMPANY.

Master and Servant — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 7—*Factory—Bottle-Washing Work—Cellars in Hotel—Factory and Workshop Act* 1901 (1 *Edw. VII. c.* 22), *sec.* 149, *and Sched.* 6, *Part II.*

A workman, engaged in corking a bottle in the cellar of an hotel, met with an accident, and claimed compensation under the Workmen's Compensation Act 1897. In a case stated for appeal it was set forth that the cellars were used as an adjunct to the hotel, that the process of bottling was there carried on by hand, but that for the purpose of bottle-washing there was a machine worked by water.

Held that the hotel cellar was not a "bottle-washing work" within the meaning of Sched. 6, Part II. No. 28, of the Factory and Workshop Act 1901, and was not a factory within the meaning of the Workmen's Compensation Act 1897.

This was a case stated for appeal by the Sheriff-Substitute at Glasgow (STRACHAN), in an arbitration under the Workmen's Compensation Act 1897 between Bartholomew Kavanagh, bottler, 37 Eglinton Street, Glasgow (appellant), and the Caledonian Railway Company (respondents).

The case set forth the following facts as admitted or proved:—"1. That the appellant was for some time employed by the respondents as a storeman in the wine cellars in the basement of the Central Station Hotel, Glasgow, and was on 27th October 1902 engaged in one of said cellars in corking a bottle of whisky. 2. That there is a corking machine in the cellar in which he was corking the bottle, but as there was only one bottle to be dealt with the appellant put the cork in with his hand, and that when about to strike the cork with the palm of his hand in order to force it in, the neck of the bottle suddenly broke, with the result that his hand came violently in contact with the broken glass and was severely cut. 3. That the wine and spirit stores connected with the hotel are of a very extensive character, and consist of ten or eleven cellars or compartments entering by one door and connecting with each other by a series of passages. 4. That in one of these cellars there are corking and capsuling machines all worked by hand, and in another a wooden tank in which bottles are washed. 5. That there are two small machines for washing the interiors of the bottles used in connection with this tank. These machines are placed at opposite corners of the tank, and have each a small brush attached, and on a tap being turned and the water thereby let into the machines, the machines are put into operation and the brushes revolve and clean the interiors of the bottles which are placed over them. 6. That storage is the primary object and purpose of these cellars and the various processes carried on therein—bottling, bottle-washing, corking, labelling, and where necessary capsuling—are all ancillary to that object. 7. That all these processes are part of means by which respondents' business of hotel-keeping is carried on, and are none of them of a manufacturing character."

On these facts the Sheriff-Substitute held in law "that the said appellant was not at the time his hand was injured employed in or near a factory in the sense of the Workmen's Compensation Act 1897, and was not therefore entitled to compensation under said Act."