

“invalided,” whatever that may mean,

There is no evidence to show what John Crocket's bodily condition was at this time or how he maintained himself, but the cardinal fact is not disputed that he had never applied for or received parochial relief, and accordingly when he had completed his five years of residence in Montrose he acquired a residential settlement in that parish.

I think accordingly that subsequent to Whitsunday 1877 William Crocket had a derivative residential settlement in the parish of Montrose. If that be so, I do not understand it to be disputed that Montrose continues to be the parish of his settlement.

It was further maintained by Montrose, on the authority of the cases of *Beattie v. Arbuckle*, 2 R. 330, and *Young v. Gow*, 4 R. 448, that Brechin could not insist in its present claim of relief, being bound by the admission of liability for the pauper given on 6th March 1877. It appears to me that these cases have no application to the present case. What was decided in these cases was that an admission made as to the liability for a pauper was binding on the parish making it, and could not be withdrawn although made in error as to the true facts of the case. But in this case when the admission was made there was no error as to the facts, because Brechin was liable as the parish of the father's settlement as it then was, and rightly made the admission.

The admission, no doubt, was binding so long as William Crocket was receiving relief in 1876 and 1877, but when that chargeability ceased so also the admission made with regard to it ceased to have any further binding effect. The admission made by Brechin must be taken as true at the time it was made, *i.e.*, that John Crocket, the father, then had a birth settlement in Brechin. But when John Crocket acquired a residential settlement in Montrose the admission had no bearing on the new facts of the case, and did not affect the liability of Montrose to alimnt the pauper son, whose settlement followed that of the father. It is not the law that an admission of liability, rightly made in one set of circumstances, is binding in a totally different set of circumstances. There is no evidence that Brechin knew of or made any admission of liability with reference to the new state of facts which had emerged since their admission of liability in 1877.

These were the only questions argued to us, and I am of opinion that the Lord Ordinary's interlocutor is right and should be adhered to.

The LORD PRESIDENT, LORD M'LAREN, and LORD KINNEAR concurred.

The Court adhered.

Counsel for the Pursuers and Respondents, the Parish Council of Brechin—Salvesen, K.C.—Lamb. Agents—R. Addison Smith & Co., W.S.

Counsel for the Defenders and Reclaimers, the Parish Council of Montrose—Campbell, K.C.—Deas. Agents—W. & J. Burness, W.S.

Counsel for the Defenders and Respondents, the Parish Council of Marykirk—Ure, K.C.—Hunter. Agents—Dove, Lockhart, & Smart, S.S.C.

Tuesday, December 6.

SECOND DIVISION.

[Sheriff-Substitute at Paisley.]

BRYCE & COMPANY v. CONNOR.

Master and Servant—Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), First Schedule (11) and (12)—Review of Weekly Payments—Certificate of Medical Practitioner Appointed under the Act.

On 7th December 1903 a workman, one of whose eyes had been injured, was awarded by the Sheriff the maximum weekly payment permissible under the Workmen's Compensation Act 1897 for total incapacity. On 1st June 1904 the workman submitted himself for examination in terms of section 11 of the First Schedule to one of the medical practitioners appointed for the purposes of the Act, and the latter granted a certificate stating that the workman was unfit for his usual occupation of a mason's labourer, but was “quite fit for any work where he would not have to exercise for the safety of life or limb that nice discrimination as to distances for which the sight of two eyes is necessary.”

In an application by the employers, under section 12 of the First Schedule of the Act for review of the weekly payment, *held (diss. Lord Young)* (1) that the certificate was conclusive evidence of the workman's condition at the time of the examination; and (2) that, in the absence of any offer by the employers to prove that the workman was in fact earning wages or that there was work available to him within his capacity, the arbitrator, in view of the terms of the certificate, was justified in refusing to reduce the weekly payment previously awarded.

The Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), First Schedule (11) provides—“Any workman receiving weekly payments under this Act shall, if so required by his employer . . . from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer . . . but if the workman objects to an examination by that medical practitioner, or is dissatisfied by the certificate of such practitioner upon his condition when communicated to him, he may submit himself for examination to one of the medical practitioners appointed for the purposes of this Act, . . . and the certificate of that medical practitioner as to the condition of the workman at the time of the examination shall be given to the employer and workman, and shall be conclusive evidence of that condition. . . .

(12) Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act."

Peter Connor having been injured in the employment of John Bryce & Company, builders, Paisley, was awarded by the Sheriff-Substitute at Paisley (LYELL), compensation under the Workmen's Compensation Act 1897 at the rate of 11s. 9d. weekly from 29th July 1903 during incapacity. John Bryce & Company on 15th June 1904 applied to the Sheriff-Substitute under Schedule I (12) to review and diminish or end the weekly payments. The Sheriff-Substitute having refused to alter his award John Bryce & Company appealed.

The case stated bore—"On 15th July 1903 the respondent was in the employment of the appellants as a workman, and was on that date engaged in the course of his employment at a building over 30 feet in height, in breaking with a hammer bricks to be used in the repair of the said building, which was then in course of repair by means of a scaffolding, when he was accidentally struck in the left eyeball by a chip from the said bricks or hammer. His eye was permanently injured, the sight being almost totally destroyed, and he was wholly incapacitated. Accordingly, on 7th December 1903 the appellants were ordained by me to make payment to the respondent of the sum of 11s. 9d. weekly, being 50 per cent. of his average weekly earnings for the previous twelve months, and that as from the 29th July 1903, during the respondent's incapacity.

"On 2nd April 1904 the respondent was required by the appellants to submit himself for examination by Dr Cluckie, a duly qualified medical practitioner, which he did. Being dissatisfied with Dr Cluckie's certificate, which was communicated to him on 8th April 1904, the respondent elected to submit himself for examination to Dr Fraser of Paisley, one of the medical referees appointed by the Secretary of State, and accordingly on 31st May 1904 the matter was referred to Dr Fraser by a joint letter. . . .

"On 1st June 1904 Dr Fraser granted the following certificate—
3 Orr Square,
Paisley, 1st June 1904.

"I hereby certify that as medical referee under the Workman's Compensation Act I this day examined, at 3 Orr Square, Paisley, Peter Connor, mason's labourer, aged 61 years, as to the conditions of his sight. I find that his right eye is healthy and vision good; that the sight of his left eye is materially interfered with as the result of a white scar on the cornea so situated that it obscures the lower and central part of the pupil, so that sight is only possible through the clear parts of the cornea at the sides of this opacity. The left eye is otherwise a healthy eye with free movement possible in every direction, so that it is in a condition to give material help to the sound eye in

judging of distances, *i.e.*, it is able to give him some of the advantages of binocular vision. His disability is, however, at present great enough to unfit him for his usual occupation of a mason's labourer, though I am of opinion he is quite fit for any work where he would not have to exercise for the safety of life or limb that nice discrimination as to distances for which the sight of two eyes is necessary. This I certify on soul and conscience. DONALD FRASER,
M.D., F.F.P.S. (Glas.).

"Neither party moved for proof, and the respondent having exercised the option given to him by the 11th clause of the first schedule of the statute I considered myself bound by the terms of the said clause as interpreted by the Court in the case of *M'Avan v. The Boase Spinning Co.*, 3 F. 1048, to take Dr Fraser's certificate as conclusive evidence of the respondent's condition and to exclude any other evidence as incompetent.

"On a proper construction of the said certificate I found no reason for holding that the respondent's earning capacity had increased to such an extent as to induce me to diminish or end my previous award.

"The questions of law for the opinion of the Court are—(1) Was the Sheriff-Substitute right in holding that Dr Fraser's report was conclusive evidence of the respondent's condition and in excluding as incompetent all other evidence as to the respondent's present earning capacity? or (2) Should he before deciding the matter have given parties an opportunity of leading evidence *aliunde* as to the present capacity of the respondent for earning wages at the kind of employment in which, according to the opinion of the medical referee, he is now able to engage? (3) Assuming that all other evidence is incompetent, then on a proper construction of Dr Fraser's certificate was the Sheriff-Substitute bound to diminish or end the weekly payments previously awarded?"

Argued for the appellants—The Sheriff should have reduced the amount of his award and the cases should be remitted to him to do so. Under Schedule I (12) he was bound to consider the whole circumstances of the case, and he should have admitted evidence on matters outside the certificate, *e.g.*, the possibility of obtaining employment. Instead he had only considered the certificate which he had construed as one of total, whereas it was one of partial, incapacity—*Dowds v. Bennie & Son*, December 19, 1902, 5 F. 268, 40 S.L.R. 239; *Niddrie and Benhar Coal Co., Limited v. M'Kay*, July 14, 1903, 5 F. 1121, 40 S.L.R. 798; *Ferrier v. Gourlay Brothers*, March 18, 1902, 4 F. 711, 39 S.L.R. 453.

Argued for the claimant and respondent—The Sheriff was right. The certificate was conclusive as to the workman's condition—*M'Avan v. Boase Spinning Co., Limited*, July 11, 1901, 3 F. 1048, 38 S.L.R. 772, and upon it he was justified in refusing to reduce the amount of his award. The certificate was in fact the only evidence before him, neither party having asked for proof.

LORD JUSTICE-CLERK—The Sheriff-Substitute had in this case a certificate presented to him which had been issued by the statutory medical officer as to the workman's condition. In my opinion he was bound to accept that as conclusive evidence of the workman's condition as at that time. The matter has been considered on more than one occasion before, and that view of the case is in accordance with the decisions already pronounced by us in former cases. I am therefore of opinion that the first question should be answered in the affirmative, and the second in the negative. As regards the third question, I am of opinion that the Sheriff was entitled if he thought fit upon the certificate laid before him, which bore that the workman's disability was sufficient to "unfit him for his usual occupation," to decline to alter the scale of compensation then being paid to the workman, and that therefore the third question should be answered in the negative. It will of course be open to the employers to apply again to the Sheriff at any future time, if circumstances should change, either by the condition of the workman changing so as to enable them to obtain a different certificate or by the workman actually obtaining employment and receiving pay, or not entering on employment for which he is able.

LORD YOUNG—The questions of law stated in the case for the opinion of the Court are very distinctly stated. The first is—was the Sheriff-Substitute right in holding that Dr Fraser's report was conclusive evidence of the respondent's condition, and in excluding as incompetent all other evidence as to the respondent's present earning capacity. The question depends upon what the Sheriff had to decide. What he had to decide was what amount of compensation should be given to the workman. The case had been before him previously, and he had determined as arbitrator that the applicant's wage-earning capacity had been injured in a manner which entitled him to compensation. He awarded him compensation accordingly by a weekly payment fixing the amount. But it is distinctly provided by the statute that any weekly payment may on the application of either party to the arbitrator be ended, diminished or increased and the application before the Sheriff on this occasion was an application by the employer who was paying the weekly amount ordered by the Sheriff to end it or diminish it. Now, what was the question before the Sheriff upon that application by the employer to end the weekly payment, or if not to end it, then to diminish it? The weekly payment which was in course of being made at the time of the application was upon the footing of total incapacity, and gave the maximum amount of weekly payment which the statute allowed in the case of total incapacity. But on the application to end it or diminish it the Sheriff had again to consider the question arising out of the section 1, sub-section 3, which provides that the amount of compensation if not settled by agreement

should, subject to the provisions of the first schedule, be settled by arbitration in accordance with the second schedule. Now the first schedule provides that any weekly payment may on the application of either party be ended, diminished, or increased, and it is distinctly provided that, in determining the amount regard should be had to the average earnings of the injured workman before the accident and the average earnings which he was making or was able to make after the accident. The statute says in distinct terms regard is to be had to the average earnings of the injured workman before the accident and the average earnings after it, and the latter necessarily means, in the event of an application to end, diminish or increase the weekly payment, the average earnings which he is making or able to make at the date of the application. It necessarily means that, regard is to be had to these two things in determining the amount.

Now, the question which I venture to put is, can either of these two questions be determined by a medical inspection. The medical inspection with which we are concerned was made under section 11 of the first schedule. By that schedule a workman receiving compensation is required to submit himself to the inspection of a medical man selected by his employer, and if dissatisfied with the report of the inspection by that medical man, he may—that is the language of the section—he may submit himself to examination by a medical man appointed by the Secretary of State under clause 13 of the second schedule. I may observe that an erroneous expression has been introduced into the stated case here, because the medical man appointed by the Secretary of State is called a medical "referee." The word "referee" is not used in the statute at all and would be quite inapplicable. The Secretary of State has authority to appoint a qualified medical man to give his aid under the Act, and the use or object of the whole of this is to provide medical men who shall give their aid, not at the expense of the parties before the arbitrator, or either of them, but at the expense of the Treasury, to be paid out of money voted by Parliament. But there is no such word used in the statute, and no such man intended as is expressed by the word "referee." Now under this section 11 of the first schedule a workman may if he pleases submit himself—that is to say his body—to examination by one of these medical men; but I again put the question—Could one of these medical men determine or give their aid in determining either of the two matters to which the arbitrator is required by the statute to have regard? viz., the average wages really earned before the accident and the average wages which he is earning or is capable of earning when the application is made to the Sheriff. I venture to say that these are not questions upon which a report by a medical man under section 11 of the first schedule can give satisfactorily a conclusive opinion. We happen to know in this case, not from the medical report

which can give us no aid in the matter, but from the previous judgment of the Sheriff—and he knew—what were the average wages which the applicant was making before the accident, for he fixed the amount of the weekly payment having regard to that. There was no average earnings or earning capacity at the time the Sheriff so fixed, because he determined then upon the evidence, probably upon the admission of parties, that there was total incapacity to work. But when the application was made to end or diminish the weekly payment he had to consider the average wages the applicant was then earning or capable of earning. I venture to say that is not a matter for medical opinion. We have the report here of the medical man who examined the workman's body, and he had no authority to do anything else under section 11 of the first schedule. It is to this effect, that his left eye was injured, but it had greatly improved. An injured eye which presents the appearance of having been worse and having greatly improved may very well be recorded by the medical man who makes the examination, and he does record that the left eye which was injured by the accident, a splinter having gone into it, had greatly improved. But what were the average earnings or wage-earning capacity of the man at the time? Was that a matter to be determined by the inspection of his eye, and are you to exclude evidence of the fact as to the wages he was earning—it might be to exclude evidence that he was earning just as much as his average earnings before the accident? But according to the view taken by the Sheriff such evidence was incompetent, and the Sheriff could not look at anything but the medical report. It was suggested that the Sheriff, looking at the medical report, might be satisfied that there was a wage-earning capacity to some extent, but not to such an extent as to induce him to end or reduce the amount of the weekly payment; and it was said that we had determined in this Court that the maximum amount specified in the statute for total incapacity for work was not confined in its application to the case of total incapacity, but that in the case of partial incapacity the Sheriff might well, in the exercise of his judgment, give the full amount. That was said to be the true reading of the statute, and if the Sheriff here, upon proper evidence, had been satisfied in point of fact that the average actual earnings or the earning capacity were only one-half of what he had been earning before he was injured, he was entitled, according to our decision—which I agree in thinking was entirely in accordance with the statute—to give the full amount. But that has no bearing really upon the question whether he could determine the question what was the applicant's capacity for earning wages solely on the report of the medical man.

Now, upon these grounds I am of opinion—and I must say clearly of opinion—that the finding of the Sheriff excluding evidence which was required to enable him to determine whether the weekly payment should

be ended or diminished is erroneous. I think he was entitled and bound to admit evidence to show whether the man was earning wages, and if so what was the average amount, and if he was not earning wages, what was his capacity to earn them. A medical man could not know that at all except by inquiring, or upon evidence laid before him, or upon an investigation made by him, and he does not profess to know it. I am therefore very clearly of opinion that the question of law submitted for our consideration was erroneously regarded and dealt with by the Sheriff, and therefore that he was not right in holding that Dr Fraser's report was conclusive evidence of the respondent's condition. It may have been conclusive evidence of his condition at that time, namely, that his left eye was not so bad as it had been, and was greatly improved. In the case of *M'Avan* (3 F. 1048) my opinion was that it could not be conclusive even as to the actual condition at the time—that is to say, that it might be affected by evidence that the actual condition at the time was not occasioned by the accident at all but by some prior or subsequent event, and that might be proved by the medical man himself examined as a witness, and also by the workman examined as a witness. But we have no occasion to consider that here because it was not a matter of contest or question between the parties that by the accident the left eye was injured, the only question for the Sheriff being, as I have said, what wages he was actually earning or was capable of earning at the time. I have already said that the term medical "referee" is erroneously used in the statement or case. There is only one other statement in it on which I have a word to say—"Neither party moved for proof." I think that was a superfluous statement. We were told that the employer did so—that he desired to lead evidence but did not make any further motion on the matter, the Sheriff having indicated an opinion which he expresses that any evidence in addition to the report was altogether excluded. The question he put was—"Should he before deciding the matter have given parties an opportunity of leading evidence *aliunde* as to the present capacity of the respondent for earning wages at the kind of employment in which according to the opinion of the medical referee he is now able to engage." I think his decision on that point was clearly wrong, and we ought accordingly to state our opinion to the effect which I have indicated and expressed.

LORD TRAYNER—The respondent in this case having received injuries arising out of and in the course of his employment with the appellants, was duly awarded compensation in December 1903. In April 1904 he was required by the appellants to submit himself to examination by a medical man nominated by them, and he did so. Being dissatisfied with the report or certificate granted as the result of that examination, the respondent submitted himself to examination by a medical man nominated by

the Secretary of State, and on his report the appellants maintain that they are entitled to have the compensation awarded to the respondent either reduced or ended. The Sheriff has refused to do this, and I think his judgment should not be interfered with. It will be observed that the proceedings which have taken place are in strict conformity with those prescribed by the 11th section of the first schedule of the Act. That being so, I hold the certificate of the medical practitioner nominated by the Secretary of State to be conclusive evidence of the respondent's condition at the time the examination was made. The statute says in express terms that it shall be so, and we have decided that it is so in the case of *M'Avan*. I see no occasion for going back on the question so decided. It may be that the certificate of such a medical man, to whom a remit is made under section 13 of the second schedule, is not conclusive. On that question I offer no opinion; it is not the case before us.

It has been observed that the statute does not call the medical man to be nominated by the Secretary of State a "referee." That is so, but the title is not inappropriate—the language of the statute makes the medical man a referee whose opinion is conclusive on the matter referred to him. I think, therefore, the title of referee is not inappropriate, and it is certainly convenient. I therefore use it.

In the certificate before us the medical referee says that the respondent is at present "unfit for his usual occupation of a masons' labourer," and if the certificate had ended there it seems to me no question could have arisen. But the certificate goes on to say that the respondent is fit for any work in which he would not require to exercise for the safety of life or limb that nice discrimination as to distances for which the sight of two eyes is necessary. The certificate is as conclusive on this as it is on the fact that the respondent is not fit for his usual employment. It is plain that the employment for which the respondent is fitted is of a very limited character. But if the petitioners had stated that there was work within that limit which they could offer to the respondent, or that such work was obtainable by him if he sought it elsewhere, proof of such a statement of fact would not be excluded by the referee's certificate, because such a statement would be the statement of one of the parties and not a statement of the injured man's condition by the medical referee. Of any such statement the Sheriff might, and probably should, take cognisance, and order such inquiry regarding it as he thought proper. But the respondent here made no such averment, and asked no proof. In these circumstances I think the Sheriff was quite entitled to hold as he did, that there was no sufficient ground for reducing the respondent's allowance.

I am prepared to answer the first question in the affirmative. The second question, I think, should be negatived because no such proof as is there referred to was asked, and

it was no part of the Sheriff's duty to propose allowing such proof. The third question is not, in my opinion, one for us to answer. The Sheriff, as arbiter, is alone entitled to consider what allowance should, in the circumstances, be made, and on that question (so long as he keeps within the statutory limit) his judgment is not subject to our review.

LORD MONCREIFF—I am of opinion that this appeal should be dismissed, but the case is exceptional, and I wish to state distinctly my reasons for taking this course.

I think we must consider the case as it was presented to the Sheriff and decided by him, and if this is done it will be seen that the questions which are now put to us are after-thoughts, and do not properly arise out of anything that took place before the Sheriff.

An employer of labour who desires to have a weekly payment ended or diminished is bound in my opinion to state to the arbitrator definite grounds for his demand. Now, in the present case the only ground upon which the appellants asked that the weekly payment of 11s. 9d. previously awarded should be diminished was that this demand was justified by the terms of the certificate of the medical referee. The Sheriff had no further evidence or statement before him, and it is expressly stated in the case that neither party moved for proof. Therefore the Sheriff's decision proceeded entirely upon the terms of the certificate.

As the Sheriff refers to the case of *M'Avan v. Boase Spinning Co., Limited*, 3 F. 1048, I should like to point out what precisely was decided in that case. It decided no more than this, that the certificate of the medical referee obtained under subsection 11 of Schedule I is final and conclusive evidence of the workman's condition at the time—that is, his condition from a medical point of view—in regard to his earning capacity either in his previous occupation or in some other way. The reason why the majority of the Court thought that the Sheriff-Substitute's judgment should be reversed was that at his own hand (and even without other proof, which I think would have been incompetent) he decided in the teeth of the certificate that the workman had not entirely recovered from the injuries sustained. We could not refuse to give effect to the explicit words of the statute.

The present case is not precisely the same, because while the medical referee certifies that in consequence of the injury to the sight of one eye the respondent, who is sixty-six years of age, is no longer fit for his usual occupation as mason's labourer, he is fit for any work which can be found for him in which for the safety of life or limb he would not require the unimpaired sight of both eyes.

Now, I do not understand that either of the parties dispute that this certificate is final and conclusive as to the workman's condition. It is conclusive against the appellants in so far as it finds that the respondent is unfit for his usual occupation,

and it is conclusive against the respondent in so far as it finds that he is fit for any work which does not require unimpaired vision of both eyes. But then the appellants did not state to the Sheriff, and offer to prove, what work could be found for the respondent under these conditions, or that the workman was in point of fact earning wages in some other employment. The Sheriff was therefore driven to decide the case upon the certificate alone, and rightly or wrongly he held that on the only information before him he had not materials for reducing the weekly allowance.

Coming now to the questions put to us—the first question is ruled by the case of *M'Avan*. No evidence is competent to contradict the certificate as regards the respondent's present condition.

The second question does not properly arise out of what took place before the Sheriff. I indicate no opinion that proof as to matters which are collateral to and do not contradict a certificate may not be admitted. Certainly the decision in the case of *M'Avan* does not exclude it. But as no statement or offer of proof of that kind was made to the Sheriff I do not think we are called upon to answer that question.

As to the third question, I think it was for the Sheriff, and not for us, to decide whether on the terms of the certificate he should or should not diminish or end the weekly payments.

I have only to add that I do not think that it would be proper in this case to remit the case to the Sheriff to allow a proof. We do not even now know precisely what proof the appellants desire.

It is always competent to the appellants to apply again to the Sheriff for a revision of the weekly payments if they are in a position to state facts which they desire to prove, which will not go to contradict the certificate, and which will instruct that there is work which the respondent either has got, or might get, for which he is fit in his present condition.

The Court pronounced this interlocutor—

“Answer the first question of law therein stated in the affirmative, and the second question of law therein stated in the negative: Find and declare accordingly: Therefore affirm the award of the arbitrator and decern.” . . .

Counsel for the Claimant and Respondent—*M'Lennan*—*Welsh*. Agent—*John Baird*, Solicitor.

Counsel for the Appellants—*Campbell*, *K.C.*—*D. Anderson*. Agents—*Macpherson & Mackay*, *S.S.C.*

Tuesday, December 6.

SECOND DIVISION.

[Sheriff Court at Glasgow.]

MANN, MACNEAL, & COMPANY
(OWNERS OF THE “GLASSFORD”) v.
ELLERMANN LINES, LIMITED
(OWNERS OF THE “CITY OF EDINBURGH.”)

Ship—Collision—Collision between Moving and Stationary Vessels—Presumption of Fault—Liability of Owners—Inevitable Accident—Compulsory Pilotage—Responsibility of Pilot—Lack of Equipment.

The owners of a vessel which causes a collision are not exonerated from liability by the fact that the vessel was at the time under the charge of a licensed pilot in waters where pilotage is compulsory, unless they can prove that the collision occurred through the fault of the pilot; and if the collision is due to the vessel not being in navigable condition through lack of proper equipment the owners are liable, even although the pilot may have been in fault in attempting to navigate her in the knowledge of her lack of equipment.

The s.s. “City of Edinburgh,” in charge of a licensed pilot within the compulsory pilotage district of the river Clyde, while being moved by two tugs out of Queen's Dock, Glasgow, and following the usual and proper course, was struck by a gust of wind, and in consequence collided with the s.s. “Glassford,” which was moored to the quay. The weather was gusty, but the gusts were not in character or intensity unusual or such as could not and should not have been contemplated and provided against. The collision might have been avoided had she let go her anchors, but owing to the windlass being under repair they were not available. The pilot had noticed this fact before he started the vessel, but the matter was not mentioned to him, nor was he consulted by the officer in command.

In an action at the instance of the owners of the “Glassford” against the owners of the “City of Edinburgh,” held that the latter were liable in damages, as they had failed to rebut the presumption of fault against them arising from their vessel being in motion and the other stationary, by showing either that the collision was due to inevitable accident or to the fault of the pilot.

The “Assyria,” July 10, 1903, 5 F. 1089, 40 S.L.R. 753, distinguished.

Messrs Mann, Macneal, & Company, Glasgow, owners of the s.s. “Glassford,” raised this action against The Ellerman Lines, Limited, Liverpool, owners of the s.s. “City of Edinburgh,” in the Sheriff Court at Glasgow, in which they sued for £1587, 14s. 6d., as damages caused by a collision be-