the same in the said High Court of Justice —Probate, Divorce, and Admiralty Division—at the said trial," &c.

No appearance was made for the Registrar-General.

Counsel in moving that the prayer of the petition be granted referred to *Mackenzie, Petitioner*, February 8, 1902, 4 F. 559, 39 S.L.R. 390; *Earl of Euston, Petitioner*, December 5, 1883, 11 R. 235, 21 S.L.R. 170. [LORD LOW—Are there not in this case the same safeguards as in an application at the instance of the Crown?—(A) Yes.]

The Court (the Lord Justice-Clerk, Lord Stormonth Darling, and Lord Low, absent Lord Kyllachy) granted the prayer of the petition.

Counsel for the Petitioner — Horne. Agents — Webster, Will, & Company, S.S.C.

Tuesday, May 22.

SECOND DIVISION.

[Lord Ardwall, Ordinary.

MUIR & SON, LIMITED *v.* EDINBURGH AND LEITH CORPORATIONS GAS COMMISSIONERS.

Process—Proof in Outer House—Reclaiming Note—Further Proof Allowed by Inner House—Remit to Lord Ordinary—Court of Session Act 1868 (31 *and* 32 *Vict. cap.* 100), *sec.* 62.

Section 62 of the Court of Session Act 1868 is as follows:—"The third section of the Act 29 and 30 Vict. cap. 112 [Evidence (Scotland) Act 1866] is hereby amended to the effect of providing that, notwithstanding the terms of said section, 'where proof shall be ordered by one of the Divisions of Court,' it shall no longer be competent to remit to one of the Lords Ordinary to take such proof, but it shall be taken before any one of the Judges of the said Division, whose place may for the time be supplied by one of the Lords Ordinary called in for that occasion."

During the debate on a reclaiming note presented by the defenders against an interlocutor of the Lord Ordinary in favour of the pursuers pronounced after proof, the pursuers obtained leave to amend their record and the defenders to answer the amendment. Thereafter, the defenders having moved to be allowed to lead additional proof, the pursuers contended that under the section set forth above it could only be taken by one of the Judges of the Division, a remit to the Lord Ordinary being incompetent.

The Court *remitted* to the Lord Ordinary to take further proof and to report.

Muir & Son, Limited, having brought an action of damages against the Edinburgh and Leith Gas Commissioners, the Lord Ordinary (ARDWALL) after proof gave judgment in their favour.

The defenders reclaimed.

In the course of the hearing the pursuers obtained leave to amend their record and the defenders to answer the amendments. The defenders then moved the Court to allow them to lead additional proof. The Court indicated their opinion that the proof should be allowed, and proposed to remit the case to the Lord Ordinary.

Pursuer's counsel drew their Lordships' attention to section 62 of the Court of Session Act 1868, and to the case of *Rowatt, &c.* v. *Brown*, February 18, 1886, 13 R. 576, 23 S.L.R. 397, and contended that the additional proof could only be competently taken by a Judge of the Division, a remit to the Lord Ordinary being made expressly incompetent by section 62 of the Court of Session Act 1868, and being further inconvenient, as it might lead to a multiplication of processes, for if the Lord Ordinary revised his judgment after hearing further proof a new reclaiming note would be necessary.

The Court pronounced this interlocutor—

"The Lords allow the answers for the defenders to be received: Open up the record: Allow the minute of amendment and the answers to be added to the record and of new close it: On the motion of the defenders remit to the Lord Ordinary to allow them a further proof in respect of the said minute and answers, and the pursuers a conjunct probation, and to report—the proof to be taken by the said Lord Ordinary not earlier than 16th October next."

Counsel for the Pursuers—Guthrie, K.C. —Constable. Agents—Finlay & Wilson, S.S.C.

Counsel for the Defenders—Lord Advocate (Shaw, K.C.)—J. D. Millar. Agent—James M'G. Jack, S.S.C.

Tuesday, May 22.

FIRST DIVISION.

[Sheriff Court at Dumbarton.

M'GROARTY *v.* JOHN BROWN & COMPANY, LIMITED.

Master and Servant — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 1, *sub-sec.* (2) (*c*)—*Serious and Wilful Misconduct—Drunk and Unfit to Work.*

"Being drunk and unfit to work" is serious and wilful misconduct within the meaning of section 1 (2) (*c*) of the Workmen's Compensation Act 1897.

The Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), sec. 1 (2) (*c*), enacts—"If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall be disallowed."

In an appeal from the Sheriff Court at Dumbarton in an arbitration under the Workmen's Compensation Act 1897 between James M'Groarty, holder-on, 3 Burnbank Place, Yoker, appellant, and John Brown & Company, Limited, engineers and shipbuilders, Clydebank, respondents, the stated case gave the following facts as proved:—"1. That the appellant entered the employment of respondents on Monday, 18th September 1905, and wrought on the night-shift till Friday, 22nd September 1905.

"2. That the appellant is a holder-on, and during that time was engaged on the ss. 'Carmania,' then in course of construction.

"3. That on the night of 22nd September 1905 the appellant worked on the night-shift from 6 o'clock till 9·30 p.m., when he left the yard. He returned to the yard shortly before 10 p.m. the worse of drink.

"4. That his condition was observed as he passed through the check office by the respondents' foreman Shields, part of whose duty it was to watch the men coming in.

"5. That Shields immediately reported appellant's condition to his under foreman Davis, and directed him to follow the appellant.

"6. That the foreman Davis immediately followed the appellant and came up with him on board the ss. 'Carmania' at the place where he had been working, and just as he was about to resume work.

"7. That the foreman Davis thereupon ordered the appellant to leave his work, and told him to go home in consequence of his drunken condition.

"8. That the appellant was drunk and unfit to work.

"9. That the foreman Davis acted rightly in ordering the appellant to leave.

"10. That the appellant thereupon left the place where he had been working previously, and proceeded to go home.

"11. That a few minutes later the appellant was found injured at the bottom of a ladder on board the ss. 'Carmania.'

"12. That such injury took place after the appellant had been ordered to discontinue his work.

"13. That the ladder in question was quite safe and suitable for the ordinary use of sober workmen.

"14. That the accident to appellant happened solely through appellant being drunk and unfit to work, and was not attributable to the negligence of the respondents."

The Sheriff-Substitute (BLAIR) held on these facts that the appellant having been injured in consequence of his being drunk and unfit to work, that was serious and wilful misconduct on his part within the meaning of the Act, and assoilzied the respondents with expenses.

The following question in law was submitted for the opinion of the Court:—"Whether the fact of the appellant being drunk and unfit to work, and the accident having happened in consequence thereof, constitutes serious and wilful misconduct within the meaning of the Act."

Argued for the appellant—The appellant had worked from 6 p.m. to 9·30 p.m., and during that time he was perfectly sober. The arbiter had made no findings as to what had happened to the appellant during his absence. Facts might have been proved which would have excused him. There were various degrees of intoxication, and such facts might have shown that the appellant's conduct was excusable and did not constitute serious and wilful misconduct in the sense of the Act.

Counsel for respondents were not called on.

LORD PRESIDENT—I have no doubt in this case. It has been found by the Sheriff-Substitute that the appellant came to his work the worse of drink, and that the accident happened solely from his being drunk and unfit for work. It was argued that the Sheriff ought to have inquired as to what happened between the time the appellant left his work at 9·30 and his return at 10 o'clock. But I think the Sheriff was right in not doing so. The main fact that the man was drunk and unfit for work and that the accident happened solely owing to his condition, was enough to disentitle him to compensation under the Act.

LORD M'LAREN—I am of the same opinion. It is only necessary in this case to consider whether drunkenness is "serious and wilful misconduct." Of course there are degrees of intoxication, but in this case the appellant was dismissed for being drunk and unfit for work. I cannot doubt that drunkenness to the extent of unfitting a man for his work is "serious and wilful misconduct," and disentitles the applicant to compensation under the Act of Parliament.

LORD KINNEAR and LORD PEARSON concurred.

The Court answered the question in the affirmative.

Counsel for the Appellant—Hunter, K.C.—Wark. Agents—J. & J. Galletly, S.S.C.

Counsel for the Respondents—M'Clure, K.C.—Macmillan. Agents—Cuthbert & Marchbank, S.S.C.

Wednesday, May 23.

FIRST DIVISION.

[Sheriff Court at Dunfermline.

ALLAN *v.* THOMAS SPOWART & COMPANY, LIMITED.

Master and Servant — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *Schedule* 1, *sec.* 12—*Application for Review—Power of Arbiter to Declare that the Compensation Payable to the Workman shall Cease at a Future Date.*

In an application to have the compensation payable to an injured miner ended or diminished, the arbiter, on a