enactment. In certain cases where formality is not required authentication by mark has been allowed. I allude to the class of writings known as *in re mercatoria*, but we are not here dealing with a document *in re mercatoria*. It is a deed which is practically testamentary in its nature. It is a revocable deed, and one which the party who signs can set aside. It has been held in England that such a document may be testamentary in its character, and with that I agree. The only remaining question is—Does the mode of authentication fall within any special expression as to the manner of nomination contained in the Act? In some cases, *e.g.*, under section 16 of the Marriage Notice (Scotland) Act 1878, a person who is unable to write is allowed to adhibit his signature by a cross or other mark. But here the words of the statute simply are "by writing under his hand," without specifying the mode of signing. Where a relaxation in the rule as to signing is allowed, it has been specifically done by Act of Parliament. Here we have no such relaxation by the Friendly Societies Act, under which alone we are. We must therefore follow the universal rule of law, to which no exception has been made.

I propose that the first plea-in-law for James French should be upheld.

LORD STORMONTH DARLING, LORD LOW, and LORD ARDWALL concurred.

The Court sustained the first plea-in-law for the respondents.

Counsel for the Appellants—A. M. Anderson. Agent—J. S. Morton, W.S.

Counsel for the Respondents — Spens. Agents—Macpherson & Mackay, S.S.C.

Friday, November 22.

SECOND DIVISION.

[Sheriff Court at Ayr.

GRANT *v.* GLASGOW AND SOUTH-WESTERN RAILWAY COMPANY.

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 1 (1)—*Accident Arising Out of and in Course of Employment—Onus of Proof—Workman Found Killed where Probably Performing Duty.*

While it is true that a person claiming compensation under the Workmen's Compensation Act 1897 must prove that the accident in respect of which compensation is claimed arose out of and in the course of the injured party's employment, still the *onus* of proof may sometimes be shifted on to the employer who disputes the claim, especially when it is preferred by a dependant of a workman who has been killed, and whose evidence is therefore not available. If in such a case facts are proved from which the natural and reasonable inference is that the accident happened while the deceased was engaged in his employment, it falls upon the employer if he disputes the claim to prove that the contrary was the case.

Accordingly where a station policeman was found mortally injured by an engine, on a railway siding where his duties might naturally and reasonably have taken him, the Court *held*, in the absence of any facts indicating the contrary, that he had been injured in "an accident arising out of and in the course of his employment" in the sense of sec. 1, sub-sec. (1), of the Act.

Margaret Grant, widow of Thomas Steele Grant, and Isabella and Jeanie Grant, his daughters, claimed compensation under the Workmen's Compensation Act 1897 from the Glasgow and South-Western Railway Company for the death of Thomas Steele Grant.

The matter was referred to the arbitration of the Sheriff-Substitute (J. C. SHAIRP) at Ayr, who awarded compensation, and at the request of the Railway Company stated a case for appeal.

The facts proved were stated by the Sheriff-Substitute to be, *inter alia*, as follows—"(2) That the said Thomas Steele Grant, who was between sixty and seventy years of age and very deaf, after having been a guard in the employment of the said Railway Company for upwards of forty years, was some years before his death appointed by said company to assist in the guards' room at Ayr passenger station, and, on the death of an old man who acted as Ayr passenger station policeman, the duties of that old man were added to the duties of the said Thomas Steele Grant; . . . (4) that when he was injured as aforesaid he was employed by the said company as door officer and station policeman at Ayr passenger railway station, and was dressed in railway police uniform; (5) that his duties were to go to and from a bank in Ayr with cash boxes, to despatch these cash boxes to different local railway stations of the said Railway Company, to attend in the guards' room, keep stationery for passenger guards, write up these guards' train arrival books, make out returns for them to be sent to the superintendent, and to keep unauthorised persons from being on, in, or about the said passenger railway station premises, and the entrances, exits, and platforms of said passenger railway station; (6) that he was not a railway clerk; (7) that in the execution of his duty of putting unauthorised persons (there is no evidence that such persons were present on the occasion in question) off No. 1 platform at said railway station, who, on being chased by him up the said platform past the end of the station buildings, might cross the sidings at said station where the accident occurred to get away from him, he was entitled to follow these persons and see them off the Railway Company's premises, and himself to cross said sidings, including siding No. 6, or similarly to follow such persons from the loading bank shown

on the plan across siding No. 6, in the direction of No. 1 platform; (8) that the following are among the rules and regulations for the guidance of the officers and men in the service of the said railway company, viz.—'24. (*a*) The servants of the company, more especially those engaged in the working of trains and in shunting and other similar operations, must not expose themselves to danger, and all are requested to prevent as far as they possibly can such exposure on the part of their fellow-servants, and to spare no opportunity of warning those who neglect to take proper care; (*b*) reckless exposure of himself or others to danger on the part of any servant of the company will be treated as an offence against the company's regulations and punished accordingly. 25 (*a*) No person, other than a servant of the company in the execution of his duty, must be allowed to be or walk upon the railway unless provided with written or printed permission to do so, signed by a properly authorised officer of the company. (*b*) Unless instructions are issued to the contrary, any person trespassing must be requested to leave the company's premises, and on complying must be warned not to go or pass thereon again. If such person refuse to quit, he must be requested to give his name and address, which must be handed to the nearest stationmaster or other superior officer with a report of the circumstances. In the event of the offender refusing his name and address, he must be detained and given in charge of the police. 26. The company's servants must not walk upon the line, except when it is necessary for them to do so in the execution of their duty';—(9) that about ten minutes before ten o'clock on the morning of the said third day of July 1906, Stanley Capstick, a railway vanman in the employment of the said Railway Company drove the said Thomas Steele Grant and a number of cash boxes from said railway station to the Ayr branch of the National Bank of Scotland, Limited, which is situated in Sandgate Street, and there delivered the contents of the cash boxes, and the said Stanley Capstick thereafter drove his van down High Street, while the deceased Thomas Steele Grant went up that street towards Ayr passenger railway station, and about fifteen or twenty minutes past ten o'clock in the morning of said last-mentioned day was seen, shortly before he was injured, proceeding on foot in the direction of said passenger railway station along Kyle Street, which joins Smith Street, and that in Smith Street, near its junction with Kyle Street, there is a gate leading to a loading bank for horses and cattle, and said sidings, as shown on the plan, which gate should be locked except when something is being admitted or moved to or from said loading bank, but which gate was open at the time the said Thomas Steele Grant was injured; (10) that nobody saw the said Thomas Steele Grant pass through said gate on said morning, and there is no evidence to show how or why he came to be at the spot on siding No. 6 where he was injured; and (11) that about 10·40 in the morning of the said third day of July 1906 Andrew Watt, one of the said Railway Company's engine-drivers, felt that the tender of his engine, which was taking carriages from siding No. 6 to make up a train, had passed over something and stopped his engine, when he discovered that the tender, which was in front of the engine, had passed over the said Thomas Steele Grant, whom he had not previously seen, and that the said Thomas Steele Grant, who was forthwith removed to Ayr County Hospital, was found to have sustained compound comminuted fracture of both arms and both legs, and compound fracture of both thigh bones, and died in said hospital on the same day from the injuries he had received."

The Sheriff-Substitute further stated—"Upon these admitted or proved facts I found that the said Thomas Steele Grant might, in the course of his duties as station policeman, have legitimately been at the spot at which he was accidentally injured, and that it had not been proved that he was there for any other purpose than the discharge of his said duties as station policeman (although it was suggested at the proof by two of the railway company's witnesses—but this was merely a suggestion, and not proved, and not even averred in the defences—that he might possibly have been at an old stable to get some unused corn gathered from horses' boxes which the railway officials used good-naturedly to keep for him, and that from said stable, for his own convenience, he might have been crossing siding No. 6 to reach platform No. 1); that, accordingly, the said personal injuries which the said Thomas Steele Grant received, and which resulted in his death, were caused by an accident arising out of and in the course of his employment as a station policeman under the said Railway Company, and that his said employment was one to which the Workmen's Compensation Act 1897 applied."

The questions of law for the opinion of the Court were the following:—"(1) Was the employment of the said Thomas Steele Grant as doorkeeper and station policeman at the time when he was accidentally injured as aforesaid an employment to which the Workmen's Compensation Act 1897 applies? and (2) Seeing that the spot where the said Thomas Steele Grant met with his injuries was one where he might legitimately and necessarily have been for the discharge of his duties as station policeman, but that it was not proved why he came to be at that spot at the time of the accident, or for what purpose he had gone there, was the arbiter entitled to presume and hold that the deceased was at that spot for the discharge of his duties as station policeman, and that, accordingly, the said personal injuries were caused to him by accident arising out of and in the course of his said employment as station policeman by the said Glasgow and South-Western Railway Company?"

At the hearing, counsel for the appellants

intimated that they did not propose to argue question number 1.

Argued for the appellants—The *onus* of proving that the accident, in respect of which compensation was claimed, arose out of and in the course of the injured man's employment, always lay upon the person or persons claiming compensation. It was not enough to show that it *might* so have arisen, it was necessary to prove that it *had*. The respondents had entirely failed to discharge this *onus*. At most the facts showed that the deceased *might* have been on the siding in the course of his duties—*Haley* v. *United Collieries, Limited*, 1907, S.C. 214, 44 S.L.R. 193, Lord Kyllachy's opinion; *cf.* also *M'Nicholas* v. *Dawson & Son*, [1907] A.C. 773, Collins, L.J., at 778.

Argued for the respondents—The facts warranted the inference drawn by the Sheriff-Substitute, the only natural and reasonable inference, viz., that the deceased was on the siding in the discharge of his duty, and that the accident accordingly arose out of and in the course of his employment. A similar inference had been drawn in *Mitchell* v. *The Glamorgan Coal Company, Limited*, June 7, 1907, 23 T.L.R. 588.

LORD JUSTICE-CLERK—The way in which this case is stated by the Sheriff as arbiter is rather embarrassing. The facts as disclosed in the statement of the Sheriff are that this man, in accordance with his duty, went out of the station to do a certain thing for his employers—to take, as I understand, money boxes to the bank—and that he was returning undoubtedly to go back to his duty. In order to go back to his duty he had to go into the station, as it was there his duty was to be done. He might go back by the road round by the entrance to the hotel, or he might go back by the sidings. He might find the way by the sidings the more convenient of the two ways. He might also very well think that as it was part of his duty to prevent loiterers hanging about any part of the station premises, he would go over by the sidings and would take a look round as he came back. All these things are conjectural. All we have found in the case is that he chose to go back to the station by these sidings. There is no case made against him that he was guilty of wilful misconduct. I do not think that could be maintained. Of course there was more risk in crossing the sidings while there may have been shunting operations going on than there was in going by the ordinary entrance to the station. But he was a railway servant and able to look after himself, although sometimes through inadvertence a railway servant meets with an accident, and sometimes a railway servant does not take sufficient care and is killed. But the question really is, was the deceased, when he was on that spot and killed, in such a position that the accident which happened arose out of and in the course of his employment as a servant of the Railway Company? I should be prepared to affirm that statement, and would be prepared to make that really our answer to the question which is put to us by the Sheriff in a somewhat unfortunate form.

LORD LOW—I have felt the question at issue to be attended with much difficulty, chiefly by reason of the way in which the case has been stated by the Sheriff-Substitute, but in the end I have come to the same conclusion as your Lordship.

No doubt a person claiming compensation under the Act must prove that the injury arose out of and was sustained in the course of the injured party's employment. But I agree with Mr Menzies that the *onus* may be shifted, especially when the claim is by a dependant of a workman who has been killed, and whose evidence is therefore not available. If in such a case facts are proved, the natural and reasonable inference from which is that the accident happened while the deceased was engaged in his employment, I think that it falls upon the employer, if he disputes the claim, to prove that the contrary was the case.

Here the workman was station policeman at the railway station at Ayr. He had been in the town lodging certain money boxes at a bank in the performance of his duty, and when last seen alive he was walking along Smith Street—which is near the station—towards the station. The inference is irresistible that, having fulfilled a special duty, he was returning to the station to resume his general duties. The next thing which is known is that he was found mortally injured upon a siding close to the station, having evidently been knocked down by a train which was being shunted. It cannot be said that the place where he was found negatived the idea that he would have been in the course of his employment when the accident happened. On the contrary, I do not think that it can be disputed that the station siding was, so to speak, within his jurisdiction as station policeman.

Therefore, although the way in which the case is stated, and especially the form of the second question—which is the only one we have to dispose of—is very embarrassing, the main facts are plain enough, and therefore I think that the difficulty may be overcome by answering the question as proposed by your Lordship.

LORD ARDWALL — I agree with your Lordship in the chair. I consider that the second question as put is unfortunately stated, and that the course to be taken ought to be as your Lordship suggests. The facts here are apparently quite simple, and I have some difficulty in seeing how the Sheriff-Substitute could have any doubt as to certain portions of the case. This unfortunate man, now deceased, was what is known as a railway policeman. But then he had some other duties, and one of them, as stated very distinctly in the case, was to go to a bank in Ayr from the station with cash boxes and deposits. It is also stated that on the morning on which he was killed he had been attending a vanman to the bank, and after the cash boxes were deposited the vanman went away to the stables with his horse, and this

policeman, in the discharge of his duties, having discharged one of them, went back to discharge another of them, namely, the duty of acting as policeman at Ayr station. In doing so he was seen last in Kyle Street about 10·20, and at 10·30, unfortunately, he was run over at a siding. I think it is perfectly evident from these facts—so much so that I may say it is proved—that in returning from his duty of depositing the cash-boxes and going back to his duty as a policeman at the station he took a route which led him across the said siding, and in doing so was run over in the way narrated in the case. Now he had a right to be on the siding; and, furthermore, we can readily imagine, as has been said by your Lordship in the chair, that one reason why he may very reasonably be supposed to have taken this route was that he could take a look round the sidings at the end of the passenger platform to see that no evil-disposed persons or mischievous boys were loitering about. That would be essentially in the discharge of his duty as a policeman; and, accordingly, I think it is proved, or if not directly proved it is a clear inference from the facts which have been held to be proved, that when this accident happened he was in the course of his employment as a station policeman. Now, the Sheriff-Substitute has put in a clause in the second question which I do not think it was necessary or proper to put in when he says "that it was not proved why he came to be at that spot at the time of the accident, or for what purpose he had gone there." In addition to what Lord Low has said in regard to the *onus* shifting, I think a very proper observation was made by Mr Menzies that while in the general case it would be incumbent upon the claimant in an arbitration of this sort to prove why a deceased person was at a particular place, and to prove that the purpose he had gone there for was a purpose necessarily in the course of his employment, yet that in the case of a policeman the matter is really very different. Of course, every case must be taken upon its own facts. A railway policeman's duties are to go anywhere about a station for the purpose of seeing whether there are evil-disposed or mischievous persons loitering about, ready either to pilfer articles from carriages or trucks, or damage the company's property; and it might be absolutely impossible in many cases for those claiming on the death of a railway policeman to tell what was in his mind in being at a particular place. He would keep that to himself. He might have been drawn anywhere about the station premises in the discharge of his duty, but nobody could tell after his death what was the particular purpose that took him there. I therefore think this case, which is the case of a policeman, cannot be decided on the same footing as an ordinary case would be, and that the same kind and amount of proof is therefore not required, provided the deceased was in a place where he had a right to be, and where it may be reasonably supposed that he would not have gone except in the discharge of his duties as a policeman. I therefore agree with the judgment proposed by your Lordship.

LORD STORMONTH DARLING was absent.

The Court pronounced this interlocutor—

"Answer the two questions of law therein stated by declaring that the accident arose out of and in the course of the deceased's employment with the appellants; therefore affirm the award of the arbitrator."

Counsel for the Appellants—Macmillan—Garson. Agents—J. C. Brodie & Sons, W.S.

Counsel for the Respondents—G. Watt, K.C.—T. A. Menzies. Agents—Hutton & Jack, Solicitors.

Wednesday, November 20.

SECOND DIVISION.

[Lord Ardwall, Ordinary.

DOUGALL *v.* DUNFERMLINE TOWN COUNCIL.

Lease—Warrandice—Landlord and Tenant—Eviction—Breach of Warrandice—Damages—Expenses of Tenant in an Unsuccessful Action to Vindicate his Right to Full Possession of Subjects Let—Liability of Granter of Warrandice.

A town council let to a tenant a farm, part of the common good, bounded by a burn and by a loch into which the burn flowed, reserving the right of sporting and fishing by themselves or others having written authority from them. They bound themselves and their successors in office to warrant the lease from fact and deed, and the burgh and community at all hands. The tenant on challenging certain persons for coming on the subjects let without written permission, was met by the answer that they as inhabitants of the burgh had a right to fish in the loch and burn, and to have access to the banks thereof for that purpose. The tenant complained of his partial eviction to the town council, who would neither admit nor deny the right claimed. He thereupon raised an action against the alleged trespassers, in which he called the town council for their interest, in order to vindicate his right to full and peaceable possession of the subjects let, but it was held that the inhabitants of the burgh were entitled to the right claimed by them.

Held, in an action by the tenant against the town council, that the defenders were liable to pay to the pursuer the expenses incurred by him and those for which he had been found liable in the former action.

On 1st May 1906 William Dougall, farmer,