his client succeeded in the first, it does not follow that he may not be unsuccessful in the second, which raises quite a different question.

The Court adhered.

Counsel for the Pursuer—M'Lennan, K.C.—Lippe. Agent—W. Croft Gray, S.S.C.

Counsel for the Defender, Mrs Eyre—Wilson, K.C.—Trotter. Agent—John Robertson, Solicitor.

Tuesday, March 2.

FIRST DIVISION.

[Sheriff Court at Glasgow.

TAYLOR *v.* BURNHAM & COMPANY.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, c.* 58), *sec.* 8 (1) (*i*)—*Production of Surgeon's Certificate—Necessity for Producing Certificate before Making Claim.*

The Workmen's Compensation Act 1906, section 8, enacts—"(1) When (i) the certifying surgeon . . . certifies that the workman is suffering from a disease mentioned in the third schedule to this Act, and is thereby disabled from earning full wages, . . . and the disease is due to the nature of any employment in which the workman was employed at any time within the twelve months previous to the date of the disablement, . . . he . . . shall be entitled to compensation under this Act as if the disease were a personal injury by accident. . . ."

Held that an arbitration was not rendered incompetent by reason of the certificate required under section 8 of the Act not being obtained, or produced, until after the commencement of arbitration proceedings.

The Workmen's Compensation Act 1906, section 8, so far as material, is quoted in the rubric.

John Taylor, letter fixer, Glasgow, claimed compensation under the Workmen's Compensation Act 1906, from Burnham & Company, Jamaica Street, Glasgow, his employers, and being dissatisfied with the determination of the Sheriff-Substitute of Lanarkshire (DAVIDSON), acting as arbitrator under the Act, took an appeal by way of stated case.

The case stated:—"This is an arbitration under the Workmen's Compensation Act 1906, brought before the Sheriff of Lanarkshire at Glasgow, in which the Sheriff was asked to award the appellant compensation at the rate of £1 per week from and after 2nd April 1908, in terms of said Act, and to find the respondents liable in expenses.

"The averments of the appellant were that he was a workman in the employment of the respondents as a fixer of enamel letters; that his weekly earnings were £2; that on or about 1st March 1908 he first felt symptoms of lead poisoning upon him, owing to working with white lead; that he was, owing to his poisoned condition, dismissed by respondents upon 27th April 1908; and that he was, in consequence of the disease of lead poisoning, disabled from earning full wages at the work at which he was employed, and had thus sustained a personal injury through his hands and arms becoming paralysed by accident arising out of and in the course of his employment with the respondents. The respondents denied that the appellant was a workman in their employment within the meaning of the Workmen's Compensation Act 1906, and averred that he was at the date of the accident, and had been for a number of years, carrying on business on his own account as a fixer of enamel letters, and in particular that prior to said 1st March 1908, and since then, the appellant had been doing business as an independent contractor as a fixer of enamel letters, not only for advertising contractors who had contracts for putting up advertisements by means of enamel letters, but also for private customers of his own, and that having found him defrauding them they (respondents) stopped giving him jobbing.

"The first deliverance on the petition by the appellant was dated 17th July 1908. The case was called in Court on 31st July 1908, and after certain procedure the appellant, on 29th September 1908, obtained from Alexander Scott, M.D., a certifying surgeon appointed under the Factory and Workshop Act 1901 for the district of Central Glasgow, a certificate that he (the appellant) was suffering from chronic lead poisoning, and that the disablement commenced on 30th April 1908, which certificate was lodged in process on 1st October 1908.

"The case was debated before me on 21st October 1908, when I found that the appellant's claim was one made in virtue of section 8 (1) (i) of the Workmen's Compensation Act 1906; that at the date on which it was made no certificate had been obtained from a certifying surgeon appointed under the Factory and Workshop Act 1901, as directed by the Workmen's Compensation Act 1906, and I found that the claim was for that reason incompetent. I therefore dismissed the petition, and found the respondents entitled to expenses."

The *question of law* for the opinion of the Court was—"Whether the obtaining by the appellant of a certificate from the certifying surgeon appointed under the Factory and Workshop Act 1901, and notification thereof by the appellant to the respondents, are conditions-precedent to any claim for compensation in respect of disablement through industrial disease under section 8 (1) (i) of the Workmen's Compensation Act 1906?"

Argued for the appellant—There was nothing in section 8 (1) (i) of the Act, or any other section, which expressly or by implication required a certificate to be produced before a claim for compensation could be made.

Argued for the respondents—A certificate must be produced *ante omnia* in order that the employer's right of appeal to the medical referee should not be prejudiced.

LORD PRESIDENT—I am bound to say that this seems to me a very clear case. Under the recent Workmen's Compensation Act there is introduced what I may call a new kind of accident known as an industrial disease. The industrial disease becomes an accident and entitles the workman to compensation if certain things can be predicated by him. One is that the disease is due to the nature of the employment in which the workman was employed at any time within twelve months previous to the date of the disablement; and another is that one of three things must have happened, first, that a certifying surgeon must have certified that the workman is suffering from a disease mentioned in the third schedule, or secondly, that the workman must have been suspended on account of having contracted such a disease, or third, that he must have died from such a disease. In one sense it is quite true to say that, where it is not alleged that the workman has been suspended, and where it is not alleged that he is dead, it is a condition-precedent to his being able to say that he comes under the Act, and is entitled to compensation in respect of this industrial disease, that he has had a certificate from a certifying surgeon; and therefore no one supposes that the workman in this case can recover unless he produces such a certificate.

But he has produced such a certificate in process, and the only point that is put against it is that he did not produce it before the process began. That seems to me perfectly immaterial. It might have been made material if the Act had chosen to say so, but it did not choose to say so. Therefore I do not see that there is any more difficulty in this than there is in the illustration I gave, namely, where a man in an ordinary process sues as an assignee of a certain person and does not along with the summons produce the assignation. If the other party demands to see the assignation he must produce it, and the action cannot go on until he does so. Here, of course, it would be quite improper for the proceeding to go on unless a certificate could be got, and it has been got.

It was endeavoured to be argued to us that in some way or other the employer would be prejudiced by the certificate not being produced *ante omnia*, because it would affect his appeal to the medical referee. I do not think that contention was made out for one moment. Further, I think the conclusion come to by the Sheriff is a useless one, because it would only mean that this process would have to be abandoned and a new one brought which would be subsequent to the certificate being granted. When I say that, I am not considering the six months' limit of proceedings; that is another matter standing upon its own basis, and having nothing to do with this question of the certificate at all.

I do not propose to answer the question in the negative, because I think the question is wrongly put. It is not a case of a "condition-precedent"; but the question as meant to be put is whether it is an absolute necessity as matter of procedure. I think, therefore, the question as put ought not to be answered, but that, with this opinion, the case should go back to the Sheriff-Substitute in order that he may take it up and go into the question of fact which is raised by the respondents, and which, of course, is a perfectly good and relevant defence if made out.

LORD M'LAREN—I concur in your Lordship's opinion, and I think that it is an additional reason for holding that the claim is not invalidated, that this is an arbitration under an Act every line of which shows that the proceedings were intended to be of an informal character. I should not be disposed to sustain any objection on the ground of informality to an arbitration under the Workmen's Compensation Act, unless it could be shown that the other party had suffered, or might suffer, prejudice through the irregularity complained of.

LORD KINNEAR—I agree with both your Lordships, and have nothing to add.

LORD PEARSON—I also agree.

The Court, without answering the question, remitted to the Sheriff-Substitute to proceed.

Counsel for the Appellant—Johnston, K.C.—Cochran Patrick. Agents—Oliphant & Murray, W.S.

Counsel for the Respondents—Constable, K.C.—Orr Deas. Agents—Simpson & Marwick, W.S.

Thursday, March 4.

FIRST DIVISION.

[Sheriff Court at Glasgow.

GREENHILL *v.* THE DAILY RECORD, GLASGOW, LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *secs.* 8 (1) (*iii*) *and* 8 (4) (*b*)—*Industrial Disease—Claim for Compensation by Dependant of a Workman who had, Prior to Commencement of Act, Ceased to be in Employment—Date of Death Subsequent to Commencement of Act.*

The Workmen's Compensation Act 1906, enacts, section 8 (1)—"Where . . . (iii) the death of a workman is caused by," *inter alia*, lead poisoning, "and the disease is due to the nature of any employment in which the workman was employed at any time within the twelve months previous to the date of