appellant, I doubt its soundness. I cannot appreciate the distinction avowedly drawn and necessarily accepted as the ground of judgment between the falling of a mandate by the death of the mandant and its recall by him during his life.

I think therefore that the Sheriff-Substitute has reached a sound conclusion.

LORD KINNEAR stated that the LORD PRESIDENT, who was absent at the advising, concurred.

LORD GUTHRIE gave no opinion, not having heard the case.

LORD M'LAREN was absent.

The Court affirmed the Sheriff-Substitute's interlocutor.

Counsel for Pursuer (Appellant)—Mair. Agents—Macpherson & Mackay, S.S.C.

Counsel for Defenders (Respondents)—Chree. Agents—Bruce, Kerr, & Burns, W.S.

Friday, March 18.

SECOND DIVISION.

[Lord Cullen, Ordinary.

LAWRENCE AND ANOTHER *v.* COMPTROLLER-GENERAL OF PATENTS AND OTHERS.

Patent—Petition for Extension—Reclaiming-Note against Refusal by Lord Ordinary—Competency—Patents and Designs Act 1907 (7 *Edw. VII, cap.* 29), *secs.* 18, 92 (1) *and* (2), 94 (4) *and* (5).

L. and K. having presented a petition to the Court for extension of letters-patent under the provisions of the Patents and Designs Act 1907, the Lord Ordinary (Cullen) refused the prayer of the petition. The petitioners reclaimed.

Held that the decision of the Lord Ordinary was final, and that a reclaiming-note was incompetent.

The Patents and Designs Act 1907 (7 Edw. VII, cap. 29) enacts—Section 18 (1)—"A patentee may . . . present a petition to the Court praying that his patent may be extended for a further term. . . ." Section 92 (1)—"In this Act, unless the context otherwise requires, 'the Court' means, subject to the provisions as to Scotland, England, and the Isle of Man, the High Court in England. (2) Where by virtue of this Act a decision of the Comptroller is subject to an appeal to the Court, or a petition may be referred or presented to the Court, the appeal shall . . . be made and the petition referred or presented to such judge of the High Court as the Lord Chancellor may select for the purpose, and the decision of that judge shall be final. . . ." Section 94—"In the application of this Act to Scotland . . . (4) The provisions of this Act conferring a special jurisdiction on the Court as defined by this Act, shall not, except so far as the jurisdiction extends, affect the jurisdiction of any Court in Scotland in any proceedings relating to patents or designs; and with reference to any such proceedings, the term 'the Court' shall mean any Lord Ordinary of the Court of Session, and the term 'Court of Appeal' shall mean either Division of that Court. (5) Notwithstanding anything in this Act, the expression 'the Court' shall, as respects petitions for compulsory licences on revocation, which are referred by the Board of Trade to the Court in Scotland, mean any Lord Ordinary of the Court of Session, and shall, in reference to proceedings in Scotland for the extension of the time of a patent, mean such Lord Ordinary."

William Henry Lawrence, residing at 35 Melville Street, Pollokshields, Glasgow, and Robert Kennedy, residing at 3 Springhill Avenue, grantees of letters-patent 6129 of 1896, presented a petition to the Court under the Patents and Designs Act 1907 (7 Edw. VII, cap. 29) for extension of the said letters-patent. Answers were lodged for the Comptroller-General of Patents, Designs, and Trade-Marks, and for the Board of Trade.

On 8th February 1910 the Lord Ordinary (CULLEN) refused the prayer of the petition.

The petitioners having reclaimed, the respondents maintained that the reclaiming-note was incompetent.

Argued for the respondents—The right to come to the Court of Session for the extension of letters-patent was conferred for the first time by section 18 of the Patents Act 1907 (7 Edw. VII, cap. 29) (*sup. cit.*). Prior to that statute such applications went to the Privy Council—Patents Act 1883 (46 and 47 Vict. cap. 57), sec. 25. Accordingly there was no encroachment on the existing jurisdiction of the Court of Session. On the contrary, a new jurisdiction had been given to the Lord Ordinary by the said Patents Act 1907. The right to reclaim to the Inner House, and finally to appeal to the House of Lords, was not implied. When a new and special jurisdiction was given to any Court, the exercise of it fell to be regulated entirely by the conditions of the statute under which it was conferred—*Magistrates of Portobello* v. *Magistrates of Edinburgh*, November 9, 1882, 10 R. 130 (*per* Lord Justice-Clerk Moncreiff at 137), 20 S.L.R. 92. Furthermore, the judge of first instance was final in England—Sec. 19 (2) of the 1907 Act (*sup. cit.*). It would be anomalous to have different arrangements in Scotland.

Argued for reclaimers—The reclaiming-note was competent. The difficulty would not have arisen but for the clause of finality in the provision applying to England. So far as the sections applying to Scotland were concerned there was no express clause of finality. Where a well-known jurisdiction was invoked by the Legislature for a new purpose the presumption was that the ordinary form of procedure was applicable, and that the usual appeal was competent except when

excluded by a clause of finality—Erskine, i, 2, 7; *Magistrates of Edinburgh* v. *Magistrates of Portobello* (*cit. sup.*); Valuation of Lands (Scotland) Amendment Act 1857 (20 and 21 Vict. cap. 58), sec. 2; Valuation of Lands (Scotland) Amendment Act 1867 (30 and 31 Vict. cap. 80), sec. 8. It was no doubt anomalous that an appeal should be competent in Scotland and not in England. It was, however, to be observed that by section 14 (*c*) of the second schedule of the Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37) the Court of Session was final as regards Scotch cases arising under that Act, while, there being no clause of finality as regards England, appeal was competent from the Court of Appeal to the House of Lords—*M'Kinnon* v. *Barclay, Curle, & Company*, March 20, 1901, 3 F. (H.L.) 1, 38 S.L.R. 611. It must be admitted in the present instance that, apart from the finality clause, an appeal would have been competent in England. If it were not so, the finality clause was superfluous.

At advising—

LORD DUNDAS—This is a reclaiming-note against an interlocutor of Lord Cullen refusing the prayer of a petition for extension of the term of certain letters-patent. Objection to the competency of the reclaiming-note was stated to us by counsel for the Comptroller-General rather as *amicus curiæ* than as a party litigant. The objection is in my opinion well founded and ought to be sustained. It appears that prior to the passing of the Patents and Designs Act 1907 (7 Edw. VII, cap. 29) applications for extending the term of letters-patent lay to the Privy Council; but by section 18 of that Act a patentee was for the first time authorised to present a petition to "the Court" praying that his patent may be extended for a further term. It is unnecessary to quote, or even to enumerate, the various sections by which "the Court" is defined in England, Scotland, and Ireland respectively. It is sufficient to say that, in my judgment, the decision of "the Court" in Scotland —which means "any Lord Ordinary of the Court of Session"—was intended to be, and must be held to be, final in a petition of this kind, though the statute contains no express words to that effect, as it does in regard to the "judge of the High Court" in England, selected by the Lord Chancellor for the purpose. Where a well-known and recognised Court is empowered by the Legislature to perform some new and additional statutory duty, the general presumption is that its ordinary procedure is intended to be applicable, and may be followed, in cases occurring under its extended powers. But where a new jurisdiction is created by statute and a particular person or persons are selected for and charged with its execution, this I think really amounts to the creation of a new Court, and no such presumption exists. The present case falls, in my judgment, under the latter of these two categories. It does not follow as matter of course that a reclaiming-note may be taken against the Lord Ordinary's decision. On the contrary, it is for the petitioners to show that they have such a right, and this I think they are unable to do. I am therefore of opinion that the reclaiming-note should be refused as incompetent.

LORD ARDWALL concurred.

LORD JUSTICE-CLERK—I concur. I may say that I took the opportunity of consulting the Lord President, and he is of the same opinion.

LORD LOW was absent.

The Court refused the reclaiming-note as incompetent.

Counsel for the Petitioners (Reclaimers) — Sandeman, K.C. — Wark. Agents — Erskine Dods & Rhind, S.S.C.

Counsel for the Respondents—Macfarlane, K.C.—Pitman. Agent—Henry Smith, W.S.

Friday, March 18.

FIRST DIVISION.

[Sheriff Court at Glasgow.

WOLFSON *v.* FORRESTER'S TRUSTEES.

Lease — Reparation—Flooding—Obligation to Keep Premises Wind and Water Tight —Negligence—Averments—Relevancy.

The tenant of urban subjects, part of which he used as a workshop, obtained a new lease of the premises as from Whitsunday 1908 "all as presently occupied" by him. Nothing was said as to their condition or as to their upkeep. An iron pipe or conductor for carrying off the rain water passed down the outer wall of the shop and connected with a branch drain pipe about one foot below the surface of the ground. *Ex adverso* of their junction a gas pipe passed through a hole in the wall and entered the shop just above the floor.

In 1909 the tenant brought an action of damages against his landlord in which he averred, *inter alia*, that in 1907 the branch drain pipe had become choked causing the shop to be flooded; that notice was given to the defenders, who repaired it; that the plumber employed to execute the repair had opened the pipe but failed to efficiently close it; that this defect was patent and could easily have been discovered by the defenders had they examined it; that in December 1908 the pursuer found his shop flooded owing to the drain pipe having again become choked, thus causing the water to regurgitate and pass through the hole in the wall into the shop, causing damage; and that responsibility for this damage lay on the defenders, in respect that they