his contemplation, and therefore he could not have formed an intention at all. I have therefore come to the same conclusion as your Lordships, and content myself with expressing my entire concurrence in the opinion of Lord Dundas, which I have had an opportunity of studying.

LORD GUTHRIE, who was present at the advising, gave no opinion, not having heard the case.

The Court recalled the interlocutor of the Lord Ordinary and found in the terms suggested by Lord Dundas.

Counsel for the Claimant Alexander Grant M'Conochie (Reclaimer) — Sandeman, K.C. — Jameson. Agents — Boyd, Jameson, & Young, W.S.

Counsel for the Claimants Donald James Robert M'Conochie and Others (Respondents) — Murray, K.C. — W. T. Watson. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Counsel for the Trustees — Dunbar. Agents — Morton, Smart, Macdonald, & Prosser, W.S.

Friday, March 8.

FIRST DIVISION.

[Sheriff Court at Hamilton.

M'GINN *v.* UDSTON COAL COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 8 (1), (2), *and* (5), *and Third Schedule as Extended by Schedule to Statutory Rules, dated May* 22, 1907 — *Review — Medical Referee — Finality — Industrial Disease—Statement that Disease not due to Employment.*

Where a workman is employed in a process mentioned in the second column of the Third Schedule to the Act, and obtains from the certifying surgeon (or on appeal from the medical referee) a certificate that he is suffering from a disease mentioned in the first column of that schedule set opposite the description of the process, but the certifying surgeon (or medical referee) certifies that in his opinion the disease is not due to the nature of the employment, then, while the statutory presumption of section 8, sub-section 2, that the disease is due to the nature of the employment, is thereby excluded, yet on the other hand the workman is not foreclosed from proving in terms of section 8 (1) that the disease was due to the nature of the employment.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) enacts—Section 8—"(1) Where—(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 at the work at which he was employed, . . . 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 or his dependants shall be entitled to compensation under this Act as if the disease . . . were a personal injury by accident arising out of and in the course of that employment, subject to the following modifications:— . . . (*f*) If an employer or a workman is aggrieved by the action of a certifying or other surgeon in giving or refusing to give a certificate of disablement, . . . the matter shall in accordance with regulations made by the Secretary of State be referred to a medical referee whose decision shall be final. (2) If the workman at or immediately before the date of the disablement . . . was employed in any process mentioned in the second column of the third schedule to this Act, and the disease contracted is the disease in the first column of that schedule set opposite the description of the process, the disease, except where the certifying surgeon certifies that in his opinion the disease was not due to the nature of the employment, shall be deemed to have been due to the nature of that employment unless the employer proves the contrary. (6) The Secretary of State may make Orders for extending the provisions of this section to other diseases and other processes, and to injuries due to the nature of any employment specified in the Order, not being injuries by accident. . . ."

By Order in Council, dated 22nd May 1907, the list of processes and diseases contained in the third schedule to the Act was extended to include, *inter alia*, the following:—

Description of Disease or Injury.	Description of Process.
12. Nystagmus	Mining.

John M'Ginn, miner, Burnbank, Hamilton, *appellant*, claimed compensation under the Workmen's Compensation Act 1906 from his employers the Udston Coal Company, Limited, Hamilton, *respondents*, on the ground that he was suffering from nystagmus, an industrial disease due to the nature of his employment as a miner, and that he had been thereby disabled from earning full wages since 7th February 1911. Being dissatisfied with the determination of the Sheriff-Substitute (HAY SHENNAN) acting as arbitrator under the Act, M'Ginn appealed by Stated Case.

The case stated, *inter alia*—"It was admitted that the appellant had been employed as a miner by the respondents for some time prior to 7th February 1911.

"The appellant produced along with his application (1) certificate of disablement granted by Doctor Christopher Crawford, Hamilton, the certifying surgeon under the Factory and Workshop Act 1901 for the district of Hamilton, dated 20th February 1911, which certified that the appellant then suffered from nystagmus, and had been disabled thereby since 7th Feb-

ruary 1911; (2) application by the respondents for reference to a medical referee in the matter of said certificate pursuant to section 8, sub-section 1 (*f*) of the Workmen's Compensation Act 1906, dated 28th February 1911; and (3) decision of the medical referee, Doctor Freeland Fergus, dated 9th March 1911, allowing the appeal of the respondents for the reasons given in the note accompanying the decision. The note was to the effect that while the appellant was undoubtedly suffering from nystagmus this was not miner's nystagmus but one of the other forms of that disease"

A copy of these three documents formed an appendix to the case. The certificate of disablement by the certifying surgeon, and the decision of the medical referee, were—

"*Certifying Surgeon's Certificate of Disablement.*

"I, as certifying surgeon appointed under the Factory and Workshop Act 1901, for the district of Hamilton (or as a medical practitioner appointed by the Secretary of State to have the powers and duties of a certifying surgeon for the purpose of section 8 of the Act), hereby certify that having personally examined John M'Ginn on the 20th day of February 1911, I am satisfied that he is suffering from nystagmus, being one of the diseases to which the Workmen's Compensation Act applies, and is thereby disabled from earning full wages at the work at which he has been employed; and I certify that the disablement commenced on the 7th day of February 1911.

"Dated this 20th day of February 1911.

"C. CRAWFORD, M.D."

"*Decision of Medical Referee.*

"I hereby give you notice that having duly inquired into the above mentioned matter in accordance with the regulations of the Secretary of State, I decide as follows—I allow the appeal of the Udston Coal Company against the certificate given to John M'Ginn by Dr Crawford on the 20th day of February 1911, and that for reasons given in the note which accompanies this.

"Dated this 9th day of March 1911.

"FREELAND FERGUS,
"*Medical Referee.*

"The facts of this case are briefly these—M'Ginn unquestionably has nystagmus, particularly on fixation in the upper part of the field of vision, and the question which occurs to my mind is as to the nystagmus being that form of it known as miner's nystagmus. The probability in this case is that it is not miner's nystagmus. There are other signs of nerve degeneration. For example, the optic nerves are markedly affected as shown by their appearance, by marked contraction of the field of vision and by loss of visual acuteness. The knee jerks are absent, and altogether I think that the case is rather one of sclerosis or nerve degeneration than of ordinary miner's nystagmus. This view of the case is confirmed by the following facts—He says that he was idle for a period of five months, namely, from August 8th, 1910, to January 11th, 1911; that he resumed work below ground on January 11th, and that shortly thereafter the nystagmus developed so that he was incapacitated for work by the 6th of February. He avers that during the time of his being off work that his sight was perfectly good and that he had no nystagmus, but that shortly after he resumed work on January the 11th the symptoms appeared. If we take his own statement as correct that there was nothing wrong with his sight on January the 11th, it seems to me that the period was too short to have caused ordinary miner's nystagmus to appear, and that fact, taken with the other symptoms of nerve degeneration which I have found, have caused me to form the opinion that this is not in the ordinary acceptation of the term a case of miner's nystagmus, but is one of the other forms of the disease.

"FREELAND FERGUS."

The case further stated—"The appellant claimed compensation from the respondents on the ground that the aforesaid certificate, decision, and note certify that he was suffering from nystagmus, being an industrial disease to which the Workmen's Compensation Act applies, and that the *onus* lay on the respondents to prove that this was not miner's nystagmus. The respondents disputed the claim on the ground that it is barred by the foresaid decision of the medical referee, allowing the appeal against the certificate of the certifying surgeon.

"Parties were heard on 2nd October 1911, and the award was issued on 10th October 1911.

"The Sheriff-Substitute was of opinion that the decision of the medical referee and the note which accompanied it were not contradictory, that the decision and note read together amounted to a finding that while the appellant was suffering from nystagmus, this nystagmus was not due to the nature of his employment as a miner, and that it was competent for the medical referee to allow the appeal on that ground. Accordingly the Sheriff-Substitute dismissed the claim as incompetent, on the ground that the appellant had not obtained a certificate as required by section 8 of the Workmen's Compensation Act 1906."

The *questions of law* for the opinion of the Court were:—"1. Was the Sheriff-Substitute right in dismissing the appellant's claim as incompetent? Or 2, Ought the Sheriff-Substitute to have allowed parties a proof? 3. Was the medical referee entitled to allow the appeal at the instance of the respondents and to recal the certificate of the certifying surgeon on the ground that the nystagmus from which the appellant suffered was not due to the nature of his employment as a miner?"

Argued for the appellant—The medical referee was entitled to amend the certificate of the certifying surgeon by adding that the disease was in his opinion not due to the employment. But provided there

was a disease mentioned in the first column of the Schedule, *e.g.*, nystagmus—as undoubtedly there was here—he was not entitled to refuse a certificate. To so refuse was to usurp the position of arbiter. The case would have been different had the entry in the first column of the amended Schedule been "miner's nystagmus" instead of simply "nystagmus." The medical referee was not final as to whether the disease was due to the employment. The expression of his opinion that it was not so due merely avoided the presumption which would otherwise have arisen in virtue of sub-section 2. As to the effect of incompetent and contradictory addenda to certificates, reference was made to *Garrett* v. *Waddell & Son*, 1911, S.C. 1168, 48 S.L.R. 937, and *Winters* v. *Addie & Sons' Collieries, Limited*, 1911 S.C. 1174, 48 S.L.R. 940.

Argued for the respondents—Under section 8 the workman had not merely to obtain a certificate that he was suffering from a scheduled disease, but also that that disease was due to the nature of the employment. The second requisite was presumed under sub-section 2 if nothing were said. But if the contrary were inserted on appeal by the medical referee his decision was final under section 8 (1) (*f*). "Unless the employer proves the contrary" in section 8 (2) meant unless the employer satisfied the medical referee that the contrary was the case. Reference was also made to Regulations, dated 25th June 1907, made by the Secretary of State, Rule 5, and Form 4.

At advising—

LORD PRESIDENT—In this case a miner applied to the certifying surgeon of the district and got from him a certificate which used these words—"I am satisfied that he"—that is the miner—"is suffering from nystagmus, being one of the diseases to which the Workmen's Compensation Act applies, and is thereby disabled from earning full wages at the work at which he has been employed; and I certify that the disablement commenced on the 7th day of February 1911." Armed with that certificate, the appellant presented an application in ordinary form for compensation. Appeal was taken, as is provided by the statute, by the employers against the certificate, and in accordance with section 8, sub-section (1) (*f*), the matter was referred to a medical referee.

The medical referee pronounced a finding or judgment in which he said as follows: "I allow the appeal of the Udston Coal Company against the certificate given to John M'Ginn by Dr Crawford on the 20th day of February 1911, and that for reasons given in the note which accompanies this." Then, in the note, he says—"The facts of the case are briefly these—M'Ginn unquestionably has nystagmus, particularly on fixation in the upper part of the field of vision, and the question which occurs to my mind is as to the nystagmus being that form of it known as miner's nystagmus." Then he goes into particulars which I need not read. I need only read the conclusion to which he comes, which is, "That the case is rather one of sclerosis or nerve degeneration than of ordinary miner's nystagmus." Then he finishes up his note by saying that, in his opinion, "this is not in the ordinary acceptation of the term a case of miner's nystagmus, but is one of the other forms of the disease." Upon that the Sheriff-Substitute dismissed the claim as incompetent, and the stated case is presented against that determination.

Your Lordships are well aware that this matter of industrial diseases was first introduced by the Act of 1906. The earlier Workmen's Compensation Act gave compensation for accidents alone, and as a rule disease is spoken of as in antithesis to accident. But the Workmen's Compensation Act of 1906 applied the Act to certain industrial diseases. The scheme of the Act is this. By section 8, sub-section 1, "Where 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 or his dependants shall be entitled to compensation under this Act as if the disease . . . were a personal injury by accident . . ." And then there are certain other provisions. The effect of that is, that if you have an industrial disease, and if that industrial disease is due to the nature of your employment and prevents you working, then there shall be, so to speak, a fictional accident, and the case shall go on in the ordinary way to the ascertainment of compensation. This particular disease is not in the schedule originally annexed to the Act, but that does not matter, because there is a power upon the Home Secretary to amplify the schedule by an Order in Council. That has been done, and there is no question that nystagmus is one of the diseases in the amplified schedule.

The first step is obviously the procuring of a certificate from a certifying surgeon that the workman is suffering from a disease mentioned in the third schedule of the Act. There is the provision which I have already mentioned, under section 8 (1) (*f*), providing for an appeal to the medical referee, and the medical referee can review the certificate given by the certifying surgeon and either say that it was rightly given or that it ought not to have been given.

There is another provision to which I should call attention. Sub-section 2 of the same section enacts that "if the workman, at or immediately before the date of the disablement . . . . was employed in any process mentioned in the second column of the third schedule to this Act and the disease contracted is the disease in the first column of that schedule set opposite the description of the process, the disease,

except where the certifying surgeon certifies that in his opinion the disease was not due to the nature of the employment, shall be deemed to have been due to the nature of that employment unless the employer proves the contrary." Now I think the effect of that section is not doubtful. It means this—First of all, you must get the certificate of the certifying surgeon that the man is suffering from a disease which is in the schedule. Then, if he says nothing more, and if as a matter of fact the workman has been working at the occupation which in the second column is set opposite that disease, there is a presumption that the disease was due to the employment. That is to say, so far as he is concerned he has fulfilled not only the first requirement under head 1—that of obtaining a certificate from a certifying surgeon—but he has fulfilled also the duty put upon him by the general words which come after, which say that the "disease is due to the nature of the employment in which the workman was employed." The employer may rebut that presumption, but so far as the workman is concerned he need not do any more. But then there are the words "except where the certifying surgeon certifies that in his opinion the disease was not due to the nature of the employment." I think that where he does put that addendum to his certificate the result is only that the presumption is gone. There is no presumption, and therefore it is necessary for the workman to prove, in terms of the first section, that the disease was due to the nature of the employment.

Now I think it is quite clear that the medical referee may do anything that the certifying surgeon could have done; and therefore if the certifying surgeon puts an addendum to the effect that the disease was not due to the nature of the employment I think the medical referee might take it out, or, on the other hand, if the certifying surgeon leaves it out I think the medical referee may put it in.

The question that really arises here is what is the precise nature of the report of the medical referee. In terms, in its first words it professes to allow an appeal. Now, allowing an appeal would strictly mean that the certificate given ought not to have been given, and if the certificate were not there then the whole matter must necessarily fall, because the condition precedent to the application of section 8 has not been fulfilled. That is really the view the Sheriff-Substitute has taken; and upon whatever the medical referee does say he is final.

But we have already decided in the case of *Winters* v. *Addie* that when a medical referee says "I allow an appeal subject to the following note," we are bound to read the note along with the finding in order to see what he has really done. Now when I read the whole thing here I cannot read this determination by the medical referee as saying that the certifying surgeon ought never to have given any certificate at all. What the medical referee says is that the man is suffering from nystagmus, but that the nystagmus is not due to the nature of the employment in which he was engaged. In other words, I think the effect of this appeal is not to say that there ought to have been no certificate given, but that the certificate ought to have had the addendum which the certifying surgeon here did not put in.

The result is, in my view, that this case must go on, but with no presumption in favour of the workman. On the contrary, it will be for him, if he is to recover, to show affirmatively that the disease of nystagmus from which he is certified to be suffering really arose from his employment and did not arise from other disease, such as sclerosis, a possibility which the medical referee points out.

That is the opinion to which I am driven by the way in which I find nystagmus mentioned in the schedule, where it is mentioned as purely and simply nystagmus. Here the certifying surgeon says that the man is suffering from nystagmus, and that being so I cannot read this addendum by the medical referee that the man is not suffering from industrial disease as ending the case. I come to that conclusion with great regret, because I am quite certain that the real view of the medical referee is that he is not suffering from an industrial disease. But the fault is the fault of the Home Secretary and not mine. The fault is that nystagmus is put in the schedule as being nystagmus instead of being put in as miner's nystagmus.

I do not know that I have any right to know these matters, and if my judgment turned upon it I should not consider that I had any right to say anything upon it. But, by the best advice I have got upon the question there seems to be no question that miner's nystagmus—that is to say, nystagmus induced by the position in which, to do his work, the miner has to keep his eye—is a pathological condition of the eye which is idiopathic, while all other forms of nystagmus are not so, but are the symptoms of other diseases of which this sclerosis is one, and there are several others. Now, if the Home Secretary had been awake to that and had put the disease in the schedule as "miner's nystagmus," then a pronouncement such as the medical referee here has given would be a pronouncement that the workman is not suffering from an industrial disease.

I think one can get a very good illustration of that in the next disease that happens to come in the schedule. The next disease is scrotal epithelioma—chimney-sweep's cancer. I have no doubt whatsoever that a certificate that a man was suffering from cancer would never be a good certificate under section 8, because cancer is not an industrial disease, although chimney-sweep's cancer is. I cannot help thinking that nystagmus ought to have been treated in the same way. But as it is I have to look at the schedule and I find nystagmus, and I am told by the medical referee that this man has nystagmus. That seems to be equivalent to an industrial disease in spite of his note, with the additional

opinion that the disease was not due to the nature of the employment.

My opinion, therefore, upon the whole matter, is that the case must go down to the Sheriff-Substitute that he may allow the matter to go on in order to let the man prove if he can, because he has no presumption in his favour, that the nystagmus from which he is suffering is a nystagmus which arose from the nature of his employment and not from sclerosis or any other cause.

LORD KINNEAR—I entirely agree with your Lordship. But I have had difficulty in the case, not from any obscurity in the statute, but from uncertainty as to the true intention of the medical referee's decision. The provisions of the statute with reference to industrial diseases seem to me to be sufficiently clear. A workman who makes a claim must in the first place obtain a certificate from the district surgeon that he is suffering from one of the diseases mentioned in the Act or in the extension of the Act provided by the Home Secretary's Order. If he fails to obtain such a certificate the condition upon which his claim arises has fallen and he has no claim. If he succeeds in getting that certificate then it must be shown also that the disease—that is the industrial disease defined in the schedule—is due to the nature of the employment in which he was employed at the time.

If he has obtained a certificate without any qualification, then under the second subsection of the clause he is to be deemed to have satisfied that other requirement that the disease is due to the nature of the employment. That raises a presumption which the employer is allowed to rebut, and if the case stops there and the employer does not succeed in rebutting the presumption the workman is entitled to his compensation. But then if there is a qualification inserted, and if the surgeon says that the man is suffering from the disease, but that in his opinion it is not due to the nature of the employment, the condition of the first sub-section—that the disease must not only be established by the certifying surgeon's certificate but also that it must be due to the nature of the employment in which the man is engaged—has still to be satisfied. He must go on to show not only that he has the disease but, inasmuch as the certifying surgeon has said that the disease is not due to the nature of the employment, he must go on to show that it is.

Now I quite agree with your Lordship's view that when the statute provides that the certificates of the certifying surgeon may be appealed at the instance of either party to a medical referee whose decision shall be final, it puts the decision of the medical referee to all effects in the place of the certificate of the certifying surgeon. If he sustains the certificate of course there is no question. If he allows an appeal he may allow it to the effect of refusing a certificate altogether or to the effect of qualifying its terms if he thinks that the certifying surgeon has erroneously granted it without qualification.

Now it is upon the effect of the medical referee's decision upon the appeal with reference to these conditions that my difficulty arises. I think the question is—whether he means to recall the certifying surgeon's certificate altogether and put nothing in its place, or whether he means to recall it as expressed and insert a qualification which he thinks the certifying surgeon ought to have inserted and failed to insert. I agree with your Lordship that upon the fair construction of the medical referee's note the latter of these two views must be taken to be what he meant. If he meant to say that this man is not suffering from nystagmus but from a different disease—sclerosis—which causes certain affections of the eye which may be mistaken for nystagmus, but which in reality are only the symptoms of sclerosis, and the certifying surgeon has gone wrong because he has mistaken the symptoms of sclerosis for the industrial disease of nystagmus—if that were the true meaning of his decision I should say it recalled absolutely the certificate and put nothing in its place, and therefore that the primary condition of the workman's case had gone. But then he does not do so, as your Lordship has pointed out. He says, in the plainest words, that the man unquestionably has nystagmus. He begins with that explicit statement and he ends with a repetition of it. But then he qualifies it only in this way, that he says he does not think it is miner's nystagmus, that is to say, he does not say there is one disease called nystagmus which corresponds with the industrial disease in the schedule, and something which does not correspond with that description but is a mere symptom of a different disease. He says—"There is nystagmus, but I do not think it is the nystagmus which is caused by the miner's employment."

Accordingly I think the Sheriff-Substitute puts quite reasonably the question of law which he thinks arose upon the medical referee's decision when he says—Was the medical referee entitled to allow the appeal and recall the certificate on the ground that the nystagmus from which the appellant suffered was not due to the nature of his employment as a miner?

I must say, although not without considerable difficulty, I consider the decision in the same way as the Sheriff-Substitute considered it. I think, with all the information we possess judicially, we cannot read the deliverance of the medical referee as meaning that the man is not suffering from the disease specified in the schedule as nystagmus, although he considers that it is not due to his employment as a miner. Now whether it is due to his employment as a miner or not is not a question which is submitted by the statute to the final decision of the medical referee. It is a question of fact which must be proved by one or other of the parties, the employer

or the workman, according as the *onus* is laid by the terms of the medical certificate.

The result is that the workman is entitled to go on and prove that, notwithstanding the medical opinion, his morbid condition of the eye was caused by his employment. And accordingly I agree with your Lordship in the course you propose.

LORD JOHNSTON.—I have experienced very much greater difficulty in this matter than apparently your Lordships have, for I cannot personally reconcile the provisions of section 8 (1) (i.) followed as it is by the words "and the disease is due to the nature" of the workman's employment, with the finality of the referee's determination under section 8, (1) (*f*) and with section 8, (2). But my own reading of the statute is not to my mind sufficiently satisfactory to justify me in differing from the judgment your Lordship proposes.

LORD MACKENZIE.—There is, I think, much to be said in support of the conclusion reached by the Sheriff-Substitute, but I do not feel it safe to take the same view.

If one was in a position to consider the certificate of the medical referee as being equivalent to this, that the workman was not suffering from industrial disease, then, of course, that would be equivalent to finding that there never had been any accident and there would be no need for any further procedure. It is just because I do not feel that, judicially, one has sufficient knowledge of where the medical referee passes from the region of science into the region of fact that I am unable to construe the certificate in that way.

I agree with your Lordship's observation that probably the whole difficulty in the case has arisen from the way in which the Order in Council was framed, and that, had it been framed so as to apply to miner's nystagmus only the difficulty in this case would not have arisen.

The Court answered the first question of law in the negative and the second in the affirmative; recalled the determination of the Sheriff-Substitute as arbitrator; and remitted the cause to him to allow parties a proof of whether the nystagmus from which the appellant was certified to be suffering was or was not due to his employment with the respondents, and to proceed as accords.

Counsel for the Appellant—Moncrieff. Agents—Simpson & Marwick, W.S.

Counsel for the Respondents—Russell. Agents—W. & J. Burness, W.S.

Friday, March 8.

SECOND DIVISION.

[Sheriff Court at Aberdeen.

MACKENZIE *v.* THE NORTH OF SCOTLAND PROPERTY COMPANY, LIMITED, AND OTHERS.

Right in Security—Heritable Creditor in Possession—Right to Let Security Subjects—Heritable Securities (Scotland) Act 1894 (57 *and* 58 *Vict. cap.* 44), *sec.* 6.

A property company granted a five years' lease from Whitsunday 1909 of a shop to an auctioneer, and a few months later, in respect of a payment by the auctioneer, undertook, by an arrangement embodied in two improbative letters, not to let certain adjoining premises of which they were the owners for the purpose of selling goods by auction during the currency of the lease. In 1908 the company had obtained an overdraft from a bank, for which three of its directors undertook personal liability, and it had disponed to the bank in security thereof the whole of the property. In April 1910 the bank demanded payment of the overdraft and, the company being unable to pay, the three directors paid it up and got from the bank an assignation of their bond. As holders of the bond they then intimated to the company that they intended to enter into possession of the security subjects and collect the rents thereof, and that they had appointed a firm of law agents to act for them as factors. The directors of the company thereupon resolved that it be left to the bondholders' factors to collect the rents of the security subjects for behoof of their principals, and its agents notified the tenants that the rents would be collected by these factors. In 1911 the factors let the adjoining premises for a year to an auctioneer for the purposes of his business. The tenant under the five years' lease thereupon brought an action to interdict the bondholders from letting or giving possession of the adjoining premises to any person for the purpose of selling goods by auction in breach of his lease and the letters above mentioned between him and the company.

Held that the bondholders were heritable creditors in possession, and as such were entitled to grant the lease complained of.

The Heritable Securities (Scotland) Act 1894 (57 and 58 Vict. cap. 44), section 6, enacts—"Any creditor in possession of lands disponed in security may let such lands held in security, or part thereof, on lease for a period not exceeding seven years in duration."

Robert John Mackenzie, auctioneer, 120 Union Street, Aberdeen, *pursuer*, brought an action against (1) the North of Scotland