Inglis in the case of the *Scottish Property Investment Company Building Society* v. *Horne*, 8 R. 737. His Lordship said—"Now the question is, Is this a case for summary ejection? To warrant that the possession must either be vicious possession, that is, obtained by fraud or force, or precarious possession, *i.e.*, without a title. In this case there is neither. There is no question of vicious possession. A precarious possession is a possession by tolerance merely. . . . The law on this is very clearly settled, and I need only refer to *Halley* v. *Lang*, 5 Macph. 951, the rubric of which is—'A petition for summary ejection which contained no allegation of vicious or precarious possession without title held incompetent.' I need not quote more than the opinion of Lord Deas, who, says—'The first ground on which we must dismiss this petition is that there is not set forth here any such ground of action as, according to the forms of process in the Sheriff Court, will warrant an ejection. An ejection is only competent when a party is either a vicious possessor or a precarious possessor, in the sense of having no title at all, and the party asking ejection must set forth something *ex facie* to support his application.'"

We have here no case of possession had *vi aut clam*. The possession is said by the pursuers to be precarious, and the judgments of the Sheriff-Substitute and the Sheriff adopt that view. I am unable to agree with these judgments. To make out a case of precarious possession it is not enough to set forth facts inferring that a party sought to be ejected has no longer any valid legal right to continue in possession, so that it has become a matter of free-will on the part of the pursuer either to allow him to remain or to take legal proceedings for having him put out of possession. If that were enough it would apply to a tenant under a lease after it has been duly terminated by warning or legal notice. It is necessary to look at the footing on which the possession has been had. It must have been had *precario* in the sense above explained. Now the defender's possession of the premises was not one had merely by tolerance of the pursuers. He entered into possession by virtue of a contract of sale which gave to the purchaser in exchange for payment of part of the price "entry" to the subjects, he being under obligation to pay the balance one month thereafter in exchange for a conveyance. The entry so given to the purchaser was not qualified or limited in any way by the terms of the contract either as to time or as to his powers of dealing with the subjects after the date of entry. The balance of the price was not duly paid, and has never been paid, but the possession had under the entry given by the contract has continued, with pressure on the part of the pursuers for payment of the balance of the price. It is unnecessary to consider all the legal questions to which such a state of matters is capable of giving rise. One thing is clear, that the defender's possession was not obtained *vi clam aut precario*, but was obtained by virtue of the onerous contract above-mentioned; and it continued down to the initiation of the present proceedings on no other footing, no species of novation having taken place. It appears to me to follow that *esto* the pursuers were entitled to rescind the contract of sale, and that they had effectually done so prior to raising this process, the possession of the defender which they desired to have brought to an end was not a species of possession to which summary ejection was applicable.

I concur in the judgment which your Lordships propose.

The Court recalled the interlocutors of the Sheriff and Sheriff-Substitute, sustained the second plea-in-law for the defender, and dismissed the action.

Counsel for the Appellant—J. Stevenson. Agent—John Baird, Solicitor.

Counsel for Respondents—Mackay, K.C.—Henderson. Agents—Wishart & Sanderson, W.S.

Saturday, December 18.

FIRST DIVISION.

[Lord Sands, Ordinary.

CATHCART *v.* BAXTER'S TRUSTEES.

Trust—Investment—Liability of Trustees—Ultra vires—Duty to Realise—Negligence — Investment in Debenture Stock of Mexican Company.

Under a deed of trust for behoof of a beneficiary in liferent and his children in fee trustees had power to invest "in good heritable moveable or personal security in the Government or parliamentary funds in the stock of any chartered or incorporated bank or on debentures or mortgages by railway or other joint-stock companies or trusts or corporations of a public nature. . . ." The investments made by the trustees included £1000 4 per cent. A debenture stock of the Mexican Central Railway Securities Company, Limited—a company registered in London. The stock subsequently declined in value, and no interest was paid for several years upon the investment. In an action at the beneficiary's instance against the trustees in respect of loss of income owing to their alleged unwarrantable investment of the trust funds and failure to realise, *held* that the trustees had acted within their powers and without negligence, and defenders *assoilzied.*

Alan Taylor Cathcart, Weem, Aberfeldy, brought an action of count, reckoning, and payment against Edward Armitstead Baxter of Kincaldrum and another as trustees acting under deed of declaration of trust for the pursuer in liferent and his children in fee, dated 3rd and 5th November, and registered in the Books of Council and Session 15th December 1914, and as individuals, in which he concluded for decree of accounting by the defenders of their intromissions with his (the pursuer's) share (one-half) of a legacy of £20,000 bequeathed to him by the late Sir David Baxter, and administered by the defenders as trustees under the said deed of declaration, and for payment of the sum of £200 as the balance of their intromissions.

The averments and pleas of the parties sufficiently appear from the opinion (*infra*) of the Lord Ordinary (SANDS), who on 14th February 1920, after a proof, assoilzied the defenders.

Opinion.—"This is an action against trustees in respect of loss of income owing to an unwarrantable investment of the trust funds. The action purports to be one of count, reckoning, and payment, and in its original form pursuer's pleadings seemed suggestive of the theory that it is the duty of trustees to make the interest forthcoming whether or not the trust investments have earned it. It was only in adjustments in answer to the defenders that the true question at issue was brought out.

"The defenders are called as trustees acting under a declaration of trust made by themselves in 1914 as trustees of the late Sir David Baxter. *Prima facie* they cannot under this action be held responsible for anything which was done before 1914, and yet a great part of the evidence is directed to the alleged misfeasance of their technical predecessors, Sir David Baxter's trustees. There was, however, apparent indisposition on both sides to argue this question, and I shall treat the matter upon the footing on which apparently both parties were content to take it, that the trust is to be regarded as a continuous one throughout.

"One of the investments of part of the estate of the late Sir David Baxter, in which the pursuer is liferenter, is £1000 4 per cent. 'A' debenture stock of the Mexican Central Railway Securities Company, Limited—a company registered in London. No interest has for several years been paid upon the investment, and the pursuer maintains that the defenders are bound to account to him for interest for the period on the ground that the investment was an unwarrantable one.

"The first question is whether the investment was of a category within the investment powers of the trustees. Under the investment clause both of the original trust and of the declaration of trust the trustees may invest, *inter alia*, 'in debentures or mortgages by railway or other joint-stock companies or trusts or corporations of a public nature.' It was argued for the pursuer that the company here in question was not a public company within the meaning of this power. I am of opinion, however, that the Mexican Central Railways Securities Company falls under this description. That appears to me to be settled by a number of authorities, most of which are collected under Vox 'Public Company' in Stroud's Judicial Dictionary.

"Pursuer, however, argues further that, *esto* that the investment was of a class within the powers of the trustees, this particular investment was of so hazardous a nature that the defenders are responsible for having made and retained it. The investment was made in 1909 after full consideration by three trustees, all men of high standing in the business and financial world, and one at least of them, the late Sir William Ogilvie Dalgleish, of exceptional authority in financial matters. They had the guidance and assistance of a firm of solicitors of good standing and wide investment experience, and also the advice of experienced London brokers. Notwithstanding these considerations, it may still be possible for the pursuer to show that the investment was an improper one. It is therefore necessary to consider the evidence as to the nature of the security. The Mexican Central Railway Company had issued a number of 4 per cent. debenture bonds which constituted a first charge upon its revenue and capital. A number of these bonds were held in this country. In 1899 the Securities Company was formed with a strong board of directors to acquire these bonds in return for debenture stock to be issued by the company. The object was twofold. In the first place the bonds of the railway company were of short currency, and it was desirable to have an organisation in London, where the bonds were largely held, to negotiate the terms of their renewal. But behind this, and probably quite as potent a factor in leading to the formation of the company, were certain financial considerations which about that time were very operative. There were many investorswho desired a safe investment and were content with moderate interest with security. On the other hand, there were many more or less speculative investors who were content to take some risk for the sake of high interest and possible capital appreciation. Many of the stocks in the market did not satisfy either class. An element of risk frightened away the former class. Only a moderate rate of interest and limited speculative possibilities presented insufficient attraction to the latter. Accordingly the expedient was devised of splitting stocks and creating one block with the security of the whole but yielding a low rate of interest, and another block with only the residual security but yielding a high rate of interest upon its market price. This created a much freer market, with the result that the split stock really commanded a higher price than the original stock.

"In the case of the Mexican Central Railway Securities Company, the holder of 100 of 4 per cent. 'A' debenture stock had the security both as regards principal and interest of £200 4 per cent. debenture bonds. If only one-half of the interest, or 2 per cent. should be paid in any year, he would still be secure. The company was successful, and down to the date of the investment in 1909 it held a high position in the London market where its stock was principally dealt in. At the price of the day the return for investment was approximately 4¼ per cent., a rate which obviously was not such as would attract the speculative investor. From the market point of view I do not think that any exception could be taken to the investment under a trust where the testator had authorised his trustees to go outside the limits of ordinary trust investment. It is objected, however, that the security depended upon political conditions in Mexico which were of an unstable character. The position which the stock held in the London market was no doubt governed by the opinion held in the world's banking and financial centre of the stability of Mexican Government. But it is said that the trustees in Dundee might have known better. Mexico was a Latin American Republic, and such republics have had chequered histories. Now doubtless there would be great force in such an argument if used of a Mexican investment now, and there might have been like force forty years ago. But in the beginning of the present century it appeared to the world that in the apparently progressive Latin Republics like the Argentine, Uruguay, and Mexico, the wild oats had been sown, and that these countries with their enormous natural resources had definitely entered upon an era of stable government and assured prosperity. As regards Mexico this belief has been falsified. It was not realised either in the financial or political world that order and progress in Mexico were largely dependent upon the iron rule of President Diaz. It was not realised that his removal would mean the deliverance of that country from an autocracy and the restoration of all the joys of self-determination.

"I am unable to hold these trustees responsible for not having been wiser than the rest of mankind and for not having anticipated the renewal of revolutionary government in Mexico. Accordingly I cannot hold that in making this investment in the circumstances the trustees were guilty of such negligence as to render themselves personally liable for the depreciation of the security.

"There remains the question—Whether the defenders ought to have realised the investment subsequently when clouds had gathered. Mr Mackay for the pursuer fixed upon two alternative dates when the security ought to have been realised, and limited his argument on this branch to these dates. The first was January 1912. At that date there was no appreciable decline in the market value of the security. A sale would I think have shown a loss of £37, an amount not greater than is represented by the slight sagging in the value of all high-priced securities which at that time was general. By this time President Diaz was gone, and there had been political disturbances in Mexico, but the matter was not regarded by the market as portending any serious financial collapse or repudiation, and interest on Mexican securities was being regularly paid. A great deal was made by the pursuer of certain changes that had been made in the securites held by the company. The Mexican Central Railway Company had been amalgamated with the Mexican National Railway and new bonds had been issued. This matter had been negotiated with the Securities Company who were perfectly satisfied with the arrangement. There was no suggestion of financial difficulty or default about the matter. In regard to the nature of the arrangement I accept the evidence of Mr Dickson, late Chairman of the Edinburgh Stock Exchange, who seemed to me to speak with full knowledge and understanding of the matter. The bonds of the Mexican Central Railway Company stood at their normal face value in the books of the Securities Company. This value had always been greater than market value. In exchange for these bonds, which were of short currency, the Securities Company obtained, as the result of amalgamation, 4½ per cent. long currency securities. An amount of these equivalent in market value to those for which they were exchanged would have shown a less face value, as the new 4½ per cent. securities were of higher market value than the old 4 per cent. ones. This would have disturbed the theoretical balance of the Securities Company. Accordingly some second preferred shares were given in addition to bring up the face value of the Securities Company's holdings to the full amount of the old face value. Such shares in such railways generally represent not money but water, and as they come after almost everything else they are seldom more than a speculative possibility. They are like the 1s. ordinary shares one often sees in a prospectus, which are not to rank for dividend until the preferred shares get a dividend of ten per cent. In selling these shares for £189,000 the Company did exceedingly well. It is true that they found difficulty and were not very successful in adjusting the matter to their theoretical balance sheet. But to anybody who had followed the history of the Company and understood the nature of the transaction there was nothing to cause any disquiet. I am of opinion that the pursuer has not made good that the defenders were guilty of negligence in not realising in January 1912.

"The last date is January 1914. By this time matters in Mexico had become serious and interest on the 'B' debentures was in default. The shares could then have been realised for £640, showing a loss of £317, or one-third of the whole investment. The defenders deemed it better to hold on in the expectation of more settled conditions rather than to cut this loss. There is no doubt that trustees would not have been justified at this time in putting £640 into this investment. I do not think, however, that this is a satisfactory test and that trustees are bound to realise in an adverse market whenever the conditions have become such that a new investment would not be warranted. Regard must be had to the circumstances which have caused the slump. The special conditions of the European war present illustrations of this. Trustees might not have been justified, though it was within their powers of investment, in investing in Russian stock immediately after the revolution was announced. But I do not think that trustees who held stock at that time could now be made liable for having held on, disastrous as the sequel has been. The interference with the railway by the Revolutionary Government, and default in interest which happened in the present case, might very well appear to trustees to be events which had depressed the current value of the shares much below their intrinsic worth. I think that trustees are entitled to exercise their judgment in the matter. It is contended that in the present case the suspension of interest was specially serious in view of the fact that the pursuer had only a liferent interest. If the matter rights itself the interest must be paid up to him, but this does not altogether eliminate the difficulty. This consideration, however, is one, but only one among several, which trustees must keep in view, and they are not under obligation to let it over-ride all other considerations.

"If the defenders erred in not realising this stock when it had fallen very considerably in value owing to the revolution in Mexico, in my view that was an error in judgment, and not negligence rendering them personally liable. It would have been more satisfactory if they had regularly minuted their consideration of the matter. But the defenders were brothers in daily touch with one another, and I accept their evidence, and that of their law agent, Sir Herbert Ogilvy, with whom they were in constant communication, that it was their deliberate opinion that it was the wiser course to hold on and not realise the investment.

"I shall accordingly assoilzie the defenders with expenses."

The pursuer reclaimed but did not lodge prints of the evidence.

Argued for reclaimer — The Mexican Central Railway Securities Company was not a company "of a public nature" in terms of the trust deed. The investment therefore was *ultra vires*. Assuming the investment to have been within the powers of the trustees, it was of so hazardous a nature that they had acted with negligence in making and retaining it. The following authorities were referred to—Bell's Principles, 403 A; Ersk. Inst., iii, 3, 28 note; *Sanders* v. *Sanders' Trustees,* November 7, 1879, 7 R. 157, 17 S.L.R. 75; *In re Sion College,* 55 L.T. 589; *Wale* v. *Westminster Palace Hotel Company,* Scot's Rep., 8 Com. Bench (N.S.) 276; *Attorney-General* v. *Margate Pier Company* [1900], 1 Ch. 749; *In re Castlehone* [1903], 1 Ch. 352; *In re Sharp,* L.R., 45 C.D. 286; *In re Lysaght* [1898], 1 Ch. 115; *In re Hilton* [1909], 2 Ch, 548; *Breatcliff* v. *Bransby's Trustees,* January 11, 1887, 14 R. 307, 24 S.L.R. 233.

Argued for Respondents—The 4 per cent. "A" debenture stock of the Mexican Central Railway Securities Company, Limited, being one of the authorised securities set forth in the schedule annexed to the Declaration of Trust, was an investment within the powers of the trustees. The Company in question fell within the category "trusts or corporations of a public nature"—*Macintyre* v. *Connell,* 1 Simon (N.S.) 225; *In re Sharp* (*cit.*); *In re Stanley* [1906], 1 Ch. 131; *In re Hilton* (*cit.*). The pursuer had failed to prove negligence on the part of the trustees. The proof was not before the Court, and on this question therefore the Lord Ordinary's judgment must stand.

At advising—

LORD PRESIDENT—This is a reclaiming note against an interlocutor by the Lord Ordinary assoilzieing the defenders from the conclusions of the summons. The summons, which was signeted in 1919, is a simple one of count, reckoning, and payment as from the date of the declaration of trust under which the defenders are trustees, in respect of their intromissions with the pursuer's share of a certain legacy whereof he is liferenter. The summons contains no conclusions except those which are usual and necessary in an action for accounting brought against trustees by a beneficiary. Unfortunately the procedure appropriate to such an action was entirely departed from in the Outer House. The action was treated as if it were not an action for accounting at all, but an action for payment of the arrears since 31st December 1914 of a liferent legacy. The record was closed as usual on the condescendence annexed to the summons and the defenders' answers thereto. Along with these answers the defenders lodged certain accounts relative to a part of the period covered by the conclusions for accounting, namely, from 25th June 1915 to 31st December 1917. The pursuer's condescendence disclosed only two points of attack against the defenders' intromissions—(1) That an investment in the 4 per cent. 'A' debenture stock of the Mexican Central Railway Securities Company, Limited,—which had yielded no dividend since 31st December 1914 and had become greatly depreciated in value—was not an investment within the powers of the trustees to make, and (2) that assuming the debenture stock in question to be an investment within the powers of the trustees, the trustees had acted with negligence both in making and in holding it. A proof was allowed, as the result of which the Lord Ordinary thought that neither point of attack was well-founded. Decree of absolvitor followed. The present reclaiming note is presented without lodging prints of the proof. The result of the procedure which was followed, and of the Lord Ordinary's decree, is to absolve the defenders from any obligation whatever to account to the pursuer for any of their intromissions from the date of the declaration of trust until the date of signeting the summons. No such result was of course intended—so counsel for both parties assured us—but the position in which disregard of the rules of procedure has placed this case should be a warning against similar aberrations in future. The Lord Ordinary's interlocutor assoilzieing the defenders must in any case be recalled. But this having been done, it remains impossible to deal with the merits of the case even to the limited extent to which (in the absence of prints of the proof) it is competent to do so—while the action is in its present shape. In order to save the expense already incurred, and with the consent of parties if they are willing to give it, it is possible, the interlocutor reclaimed against having been recalled—to regularise the incompetent procedure which has taken place (1) by holding the accounts produced by the defenders relative to their answers as the account called for in the summons; (2) by holding the record made up on the condescendence annexed to the summons and the defenders' answers thereto as the record made up on objections by the pursuer to the said account and answers thereto by the defenders; and (3) by holding the proof as being led with reference to those objections and answers. This can be done of consent of parties, and, if done, it will enable us to give our decision on the argument we heard last week.

The declaration of trust contains the following investment clause, which I reproduce without any attempt to supplement the absence of punctuation in the original:—"To set aside and retain as investments of the" pursuer's "share of said legacy portions of the securities set forth in the . . . schedule hereto annexed and from time to time in the administration of the said share for behoof foresaid to realise the securities representing the said share for the time and to invest and re-invest the capital thereof in good heritable moveable or personal security in the Government or Parliamentary funds in the stock of any chartered or incorporated bank or on debentures or mortgages by railway or other joint stock companies or trusts or corporations of a public nature and that at such rate of interest as can be got therefor." The investment which is the subject of attack by the pursuer is one of those in the schedule. So far therefore as the declaration of trust and the responsibilities of the trustees to the pursuer under it are concerned that investment is undoubtedly within the powers of the defenders.

Now the declaration of trust was granted in December 1914 by the two assumed and then remaining trustees of the late Sir David Baxter of Kilmaron in virtue of powers in the settlement of the latter (dated in 1869), whereby, on the succession of the pursuer to his legacy under that settlement, they could "if they thought proper secure the same to the legatee . . . in liferent and his or her children in fee." The investment in question was originally made in 1909, five years before the declaration of trust, by the then acting trustees under Sir David Baxter's settlement. The then acting trustees were three, of whom the defenders (who became trustees under the declaration of trust) are two. Notwithstanding this circumstance, and notwithstanding the fact that the action is brought only against the surviving two trustees *quâ* trustees under the declaration of trust, the parties have by going to proof on the averments on record treated the action as embracing the administration by the defenders of Sir David Baxter's trust so far as regards the making of this investment in 1909, and the inclusion of it among the scheduled securities in the declaration of trust, and the defenders have accordingly not pled that all parties are not called. The investment clause in Sir David Baxter's settlement was identical with that in the declaration of trust, except with regard to the authorisation of the scheduled securities.

It seems to have been assumed in the Outer House that the part of the investment clause on which the question turns is that which deals with "debentures or mortgages by railway or other joint stock companies or trusts or corporations of a public nature." At any rate the Lord Ordinary's opinion makes no reference to the power to invest "in good heritable moveable or personal security." It was argued that this part of the clause did not constitute a class by itself but referred only to security (be it heritable, moveable, or personal in character) in Government or Parliamentary funds, or in chartered or incorporated banks, or in mortgages or debentures of railway or other joint stock companies, trusts, or corporations of a public nature; and the contentions of parties centred round the interpretation of the last words, and the applicability of cases in which the expression "public company" has been construed. I am unable to weave together the opening part of the description of the authorised investments with the subsequent part of the clause in this manner. On the contrary, I think the words "good heritable moveable or personal security" define by themselves one of the separate classes of authorised investment.

If this be sound, the result is greatly to simplify the question submitted to us. We know from the memorandum and articles of association of the Mexican Central Railway Securities Company Limited, which were proved in evidence and included in the inventory of documents put in evidence by the defenders, that the company had power (articles of association, section 55 (*c*)) to issue debentures secured by mortgage or charge on all or any part of the company's property. In *Sim* v. *Muir's Trustees* (1906, 8 F. 1091) it was held that personal security included bonds, and the like, depending only on personal obligation. In M'Laren on Wills and Succession (section 2179), the opinion is expressed that personal security means the security of personal property; and in *Sim v. Muir's Trustees* reference was made to Lord Watson's earlier *dictum* in *Knox* v. *Mackinnon* (1888, 15 R. (H.L.) 83) to the effect that trustees with a power to invest on personal security might not be justified in lending on the security of mere personal obligation if the security of heritable or personal property was available. But even if the security of personal property had been necessary, we are bound to assume, in the absence of either averment or proof adduced by the pursuer—as I have said, the proof is not before us and the *onus* is on him—that the debenture stock of the company did have the security of the company's personal property behind it. Moreover, and for the same reasons, we are bound to assume that the personal security was "good." It follows that the objection stated to the account on the ground that the investment was *ultra vires* of the trustees must be repelled.

As regards the alleged negligence of the trustees, with which we were told the proof in the Outer House was wholly or mainly concerned, no question is raised by the reclaiming note; and the objection on this head must, in accordance with the conclusion reached by the Lord Ordinary in his opinion, be likewise repelled.

The only objections stated to the account having been thus repelled, the action must, *quoad ultra*, be dismissed.

LORDS MACKENZIE, SKERRINGTON, and CULLEN concurred.

The Court pronounced this interlocutor—

"Recal the said interlocutor: Of consent (1) hold the accounts produced by the defenders relative to their answers as the account called for in the summons; (2) hold the record made up on the condescendence annexed to the summons and the defenders' answers thereto as the record made up on objections by the pursuer to the said account and answers thereto by the defenders; and (3) hold the proof as being led with reference to these objections and answers: Repel said objections, dismiss the action, and decern. . . ."

Counsel for Pursuer and Reclaimer—Mackay, K.C.—R. M. Mitchell. Agents—J. Miller Thomson & Company, W.S.

Counsel for Defenders and Respondents—Hon. W. Watson, K.C.—Maitland. Agents—Dundas & Wilson, C.S.

Friday, February 4.

SECOND DIVISION.

[Lord Hunter, Ordinary.

M'KEATING *v.* FRAME.

Master and Servant—Reparation—Negligence—Illness and Death of Servant—Relevancy.

The mother of a domestic servant who had been employed at a farm brought an action of damages for her daughter's death against the farmer, in which she averred that her daughter, a girl of seventeen years, when suffering from a cold in the month of March complained to the defender of severe pain in the region of the lungs; that the defender was aware that the girl was far from well; that she was then suffering from double pneumonia, was in great peril of her life, and in need of instant medical treatment; that two days later she collapsed in the byre, where she was found in a very weak state; that she was carried into the house in an unconscious condition and put to bed; that on the following day the defender though aware of these facts ordered her to get up and go home, saying there was no one in the house to look after her; that with great difficulty she managed to do so; that at the time she left the farm she was almost in a dying condition, and traversed with extreme difficulty the distance of half a mile between the farm and the place where she could meet the omnibus; and that she died two days later of pneumonia. The pursuer further averred that it was the duty of the defender, as the girl's employer, either to have called in medical assistance or to have communicated with the pursuer.

Held (*rev.* the judgment of Lord Hunter, Ordinary) that the pursuer had stated a relevant case, and issue allowed.

Observations (*per* the Lord Justice-Clerk and Lord Ormidale) as to the duty of masters in the case of illness of domestic servants to call in the panel doctor.

Mrs Elizabeth Ferguson or M'Keating, widow, residing at 45 Rosehall Road, Shotts, *pursuer*, brought an action of damages for the death of her daughter Lizzie M'Keating, a domestic servant, against Thomas Frame, farmer, Shotts, *defender*.

The pursuer averred—"(Cond. 1) The pursuer is a widow, and resides at 45 Rosehall Road, Shotts. She was the mother of Lizzie M'Keating, who died on 26th March 1919 as after mentioned, aged 17 years and 4 months. The defender is a farmer residing at South Dyke Farm, Shotts. (Cond. 2) At or about the November term 1918 the said deceased Lizzie M'Keating entered the service of the defender as a domestic servant at the said farm, and in his service she continued until her death. Her said engagement was for the half-year ending Whitsunday 1919, and her work consisted of domestic duties in the farm house and the milking of cows in the byre. Her wages were at the rate of £14 for the half-year, board included. The only inmates of the farm house other than the said Lizzie M'Keating were the defender, his wife, and his father-in-law. There were no other female servants on the farm. (Cond. 3) On or about Thursday, 20th March 1919, the deceased Lizzie M'Keating, who had then a cold, come home to see her mother. She was a strong and healthy girl, and but for the said cold she then appeared to be and was in perfect health. She did not complain of illness. That same evening she returned to her work at defender's farm. On the morning of Friday, 21st March, the said Lizzie M'Keating felt severe pain in the region of both her lungs. She then informed both the defender and his wife thereof, and although the knowledge of such a symptom, particularly when associated with a cold of whose existence both were then well aware, should have been sufficient to make them suspect serious illness in the girl, yet they took no steps to ascertain her condition or to have her treated medically, except that Mrs Frame gave her a dose of salts, a medicine quite unsuited for lung trouble. She received no further attention from them, but continued with her work though still suffering from pain in her lungs during the Friday and the two following days. The defender and his wife were aware throughout these days that the girl was far from well. In point of fact she was then suffering from double pneumonia, was