

tion 67 of the Lands Clauses Act, because the specific object of that section is to secure the application of the purchase price of land sold compulsorily to the disburdening, purchase, or improvement of lands and heritages, for the benefit of the heirs in heritage, who would have been entitled to the lands taken.

"As regards section 68, however, it may be argued with some force that the object of that clause was simply to secure the safe interim investment of consigned money in one of the ways then recognised as legal for trust funds—that the interim investments therein specified were, at the date of the Act, practically the only trust investments sanctioned, and that as the selection of trust investments has been extended by the Act of 1884, it is reasonable that the provisions of the latter Act should be held to apply to the interim investment of consigned money under the Lands Clauses Act.

"As the question is one of general importance, and as I think it is probable that such applications will become numerous if this application is granted, I report the matter for the consideration and decision of the Court."

The Court delivered no opinions, and pronounced the following interlocutor:—

"On the report by the Honourable Lord Wellwood, remit to his Lordship with instructions to grant warrant to authorise and ordain the British Linen Company Bank to make payment to the petitioners of the sum of £2700 mentioned in the petition, with all interest accrued thereon, the said sum to be invested by the petitioners in accordance with their powers under the trust-deed: And further, to find the North British Railway Company liable in the expenses of this application, and of carrying through the investment of the said money."

Counsel for the Petitioners—D. F. Balfour, Q.C.—A. Mitchell. Agent—F. J. Martin, W.S.

Thursday, October 24.

SECOND DIVISION.

[Lord Fraser, Ordinary.]

ANDERSON AND OTHERS (M'KECHNIE'S TRUSTEES) *v.* SCOTTISH ACCIDENT INSURANCE COMPANY (LIMITED).

Insurance—Accident Policy—Cause of Death—Disease Accelerated by Accident—Construction of Policy.

A person insured his life for £1000 with an accident insurance company. The policy bore, that to recover under it an accident must be the direct cause of death and that within three months, and provided that the company would

not be liable for death arising from natural disease although accelerated by accident. The injured was thrown out of a Whitechapel cart and died within three months. After a proof, from which it appeared that the insured had for years suffered from attacks of kidney disease, that he was free from any active symptoms of that disease when he met with the accident, and that the disease had again shown itself five weeks after the accident.

held (by Lord Fraser) that death was caused by kidney disease accelerated by the accident, and that whether the company would have been liable for such acceleration of death if there had been no special clause in the policy or not, they were entitled to be absolved in consequence of said clause.

The Second Division upon a reclaiming-note adhered to the Lord Ordinary's interlocutor, but found that it had not been proved that the accident had caused the death at all, and reserved their opinions upon the clause as to acceleration.

John M'Kechnie, carting contractor, 128 Stobcross Street, Glasgow, effected an insurance upon his own life with the Scottish Accident Insurance Company, Limited, 115 George Street, Edinburgh.

The policy, which was dated 24th January 1887, bore that "if during the continuance of this policy the insured sustains any bodily injury caused by violent, accidental, external, and visible means, then in case such injury shall, within three calendar months from the occurrence thereof, directly cause the death of the insured . . . the company shall pay to . . . his legal representatives the full sum of £1000 . . . provided always that this policy shall not extend to nor cover the death of the insured . . . arising from natural disease or weakness or exhaustion consequent upon disease or any surgical operation rendered necessary thereby, or arising from such disease, weakness, exhaustion, or surgical operation, although accelerated by accident."

The said John M'Kechnie had suffered from kidney disease in 1883, 1884, 1886, and in the early part of 1887, but he was free from any active symptoms of that disease in October 1887. On Saturday 29th October 1887 he was thrown out of a Whitechapel cart in Glasgow and met with somewhat severe injuries, which confined him to his bed until the following Monday, when he was allowed by his doctor to go to a business meeting although told to rest as much as possible. He was laid aside from active work for several weeks in consequence of the accident, and upon 7th December 1887 kidney disease again manifested itself. He died upon 12th January 1888. The cause of death was certified as "Haematuria (Albuminuria)."

James Anderson and others, as M'Kechnie's trustees, brought an action against the said Scottish Accident Insurance Company to recover the sum of £1000 under the policy in consequence of the death, and pleaded—

“(1) The said John M’Kechnie having effected an insurance upon his own life against accidents with the defenders, and having sustained injuries which caused his death, the pursuers, as his trustees and executors foresaid, are entitled to payment of the sum sued for.”

The defenders explained that the insured died from disease and not from the said accident. They offered, however, £13, 15s. in full of any claims under the policy, being the allowance due under the said policy for three days’ total disablement and three weeks’ partial temporary disablement caused to the insured by the accident in question, but without prejudice to a plea that the policy was void and null.

They pleaded, *inter alia*—“(4) The death of the insured having arisen from natural disease or weakness or exhaustion consequent upon disease (whether accelerated by accident or not), and liability on the part of the defenders for death so arising being excluded by the terms of the policy, the defenders are entitled to absolvitor, with expenses.”

The Lord Ordinary (FRASER) allowed a proof, which established the facts stated above, and afterwards pronounced the following interlocutor:—“Finds that, as the said John M’Kechnie died from chronic Bright’s disease of the kidneys, and not from the effects of the accident, although such disease was accelerated by the injury received from the accident, the defenders are not liable for the sum contained in the said policy as upon a death: . . . Finds that the said John M’Kechnie was in consequence of the fall from the cart totally disabled for three days, and partially disabled for nine weeks: Finds that the defenders are due to the pursuers the sum of £13, 15s., as allowance for such total and partial disablement, and for said sum of £13, 15s. decerns against the defenders in favour of the pursuers: *Quoad ultra*, Assolizies the defenders from the conclusions of the action, and decerns: Finds the pursuers entitled to expenses down to the date of closing the record, and the defenders entitled to expenses subsequent thereto, &c.

“*Opinion.*—It is clearly proved that the deceased John M’Kechnie was labouring under Bright’s disease of the kidneys in a more or less acute form from August 1883 down to the time of his death. He was attended by medical men for this disease in August 1883, and again in December 1884, when the doctor found that the disease had become chronic; and again in February 1886, and again in June 1886—this last attack being a very serious one, and was expected by the two doctors who then saw him, viz., Dr Cameron and Dr M’Conville, to terminate in death. Again he was attended for the same disease in June 1887. The accident occurred on 29th October 1887, and after the best consideration which the Lord Ordinary can give to the irreconcilable opinions of the medical witnesses who were examined, he cannot hold that that accident caused, although it might, and in the opinion of the Lord

Ordinary did, accelerate the disease of the kidneys which made its appearance on the 7th of December 1887, and terminated in death on the 11th of January 1888. The special clause freeing the company from responsibility, if the bodily injury from the fall was not the primary cause of death (though it accelerated it), must be given effect to. Whether the company would have been exempted from liability if there had been no such special clause is not very clear, provided it be held that the injury caused the acceleration of the death. This point arose in a Divisional Court in England in the case of *Issit and Others v. The Railway Passengers’ Assurance Company*, January 18, 1889, 5 Times Law Reports, 194. The policy of assurance in that case said that the money should be payable if the assured ‘die from the effects of such injury.’ The injury received by the assured was a fall by which his shoulder was dislocated. He was taken home and put to bed, and died within a month of the accident. The fact of the shoulder being dislocated was not discovered till a week after the accident, on account of the swelling, when the dislocation was reduced by a consulting surgeon who was called in. A few days after this the assured was found to be suffering from pneumonia, and he died from that disease. Upon the question, whether the pneumonia was directly caused by the accident, it was found, upon a special case submitted by a referee, to whom the matter had been referred, that it was not, but that it was pneumonia resulting from cold. The award continued in these words:—‘I find that the deceased would not have died as or when he did if it had not been for the accident. He suffered great pain as a consequence of the accident, and was extremely restless and unable to bear his usual clothing, or any heavy or warm clothing on him. He was reduced by the accident to a state of debility, in which he was more susceptible of cold than he would have been but for the accident, and was also less able to resist the effects of any illness which might come on him. I find that the pneumonia from which the deceased died arose from his catching cold during his illness from the accident; that he caught the cold by being exposed in some way to cold air, but that such exposure could, on the evidence, only have been slight, and not such as would have caused his death if he had been in a normal state of health. I find that his catching cold, and the fatal effects of the cold, were both due to the condition of health to which he had been reduced by the accident. On the part of the executors it was contended that the words in the policy, “die from the effects of such injury,” were wide enough to include a death happening in the way hereinbefore described, and that the assured did “die from the effects” of the injury caused by his accident within the true meaning of the policy. On the part of the company it was contended that the policy only covered death caused immediately or directly by the accident. I find and award (subject, however, to the

opinion of the Court in this special case) that the death of the said F. T. Isitt was not a death from the effects of the injury caused by accident within the meaning of the said policy, and that the said company are not liable to pay the sum of £500 assured by the policy, but are only liable to pay the sum of £12, 10s. tendered.' The Court, consisting of Mr Baron Huddleston and Mr Justice Wills, held that the executors were entitled to recover from the company in respect of the death. The arbitrator had found that if, as a point of law, it was necessary that the accident should be the proximate cause of death, then the company was liable to pay. It was important to observe that the words in the policy were, that if the assured should 'sustain any injury caused by accident,' and should 'die from the effects of such injury' within three months, the company would be liable. There was then a distinction between cause and effect. The Court was of opinion that the natural intervening consequences should be considered, and, if so, the arbitrator's finding amounted to this—that the assured had died from 'the effects' of the injury. The cold which he caught, and which resulted in fatal pneumonia, was a natural consequence, and not anything external of an exceptional description. A man who lived some time after an accident could not avoid being exposed to some external conditions. If the natural consequence of the accident was death, the company were liable under their policy. It will be observed that in the case of *Issitt* there was not the special clause about acceleration which occurs in the present case, and as that clause—although a very harsh and severe one as against the assured—is not in itself illegal, the defenders will escape liability.

"That John M'Kechnie might have lived for some years had it not been for the fall from the cart—no doubt with intermittent attacks of disease of the kidneys—the Lord Ordinary considers very probable. Dr Cameron thought he ought to have died from the attack of 1886; but he did not, and the Lord Ordinary thinks that he might have survived for a long time the attack of December 1887 had his system not been weakened by the fall from the cart, and this opinion he holds, notwithstanding that Dr Cameron and Dr Grainger Stewart think to the contrary. But still the fact remains, that he did die in consequence of the disease of the kidneys, and the fall from the cart merely accelerated his death. It was not the primary cause of that ending; and the clause in the policy comes into play.

"It is with reluctance that the Lord Ordinary comes to this result. He would have wished to have taken the same view as the Divisional Court in England did; but the language of the policy here is too explicit to a contrary effect."

The pursuers reclaimed, and argued—they had proved the policy, the accident, and the death. That was enough. The death was *prima facie* caused by the accident. It lay with the defenders to

prove it was not. The deceased may not have been a very robust man, and may have been predisposed to haematuria, but he was suffering from no disease when he met with the accident. The clause in the policy about acceleration upon which the Lord Ordinary had decided the case only applied where there was an existing disease at the date of the accident to be accelerated. Here there was none. It was set up by the accident, which accordingly directly caused the death within three months. To hold that a delicate man who had not very many years to live could not recover under such a policy would be to encourage a fraud upon the public. Such a policy was to be liberally interpreted in favour of the insured—*Fitton v. Accidental Death Insurance Company*, June 18, 1864, 17 C.B. (N.S.) 122; *Winspear v. Accident Insurance Company, Limited*, November 29, 1880, L.R. 6 Q.B.D. 42; *Lawrence v. Accident Insurance Company, Limited*, June 22, 1881, L.R. 7 Q.B.D. 216; *M'Glinchy v. Fidelity and Casualty Company*, 1888, American State Reports, vi. 190; *Scott v. Scottish Accident Insurance Company, Limited*, March 19, 1889, 16 R. 630.

Argued for respondents—If the accident in any way caused death, it was only by accelerating the disease, and the defenders were freed from liability by the clause about acceleration as the Lord Ordinary had held. It had not been proved, however, that there was any connection between the accident and the death. The haematuria did not show itself at once as it should have done if caused by the accident. It only manifested itself five weeks afterwards and in the way it had done at intervals for several years. Accordingly the pursuers had completely failed to discharge the *onus* which lay upon them of connecting the accident and the death.

At advising—

LORD JUSTICE-CLERK—This is an interesting and in some respects a difficult case, but there is no difficulty in understanding what the contract between the parties was.

The insurance company were to pay the representatives of the insured for any bodily injury directly causing death within three months thereof, but they were not to be liable if the death occurred from natural causes although accelerated by the accident.

Now, the first question we have to consider is, have the pursuers discharged the burden which lay upon them of proving that the death of M'Kechnie on 12th January 1888 was the result of the accident of 29th October preceding, because, if they have failed to prove that, then it is plainly unnecessary to go into any of the other questions at all.

It is certain that the deceased met with an accident on 29th October, but must we answer in the affirmative the question whether he died in consequence of that accident? After a full debate I have arrived at the conclusion that it is not proved that the accident was in any sense the

cause of death in January following.

The history of the deceased's case is somewhat remarkable. In 1883 he was under medical treatment for the same disease as he actually died of. Again in 1884 he was ill from the same cause. He was twice ill in 1886 from the same cause, and in 1887 before the illness could have been caused by the accident he was once ill. It is clear and certain that on all these occasions the symptoms were not set up by an accident.

Now, with that history before us, we come to the fact that he did meet with an accident. For five weeks after it he showed no symptom of the haematuria, which had manifested itself previously, but after five weeks the same symptoms showed themselves as had appeared on the five or six previous occasions, and the illness resulted in death.

Whatever the illness was from which he was suffering, can we take it that he was a sound man in October 1887? Whether it was Bright's disease or not is of no consequence. In these circumstances I think there was no connection between the accident and the death, and unless the former was at least a cause and the other the effect the pursuers have no case.

I am therefore for adhering to the interlocutor of the Lord Ordinary. The Lord Ordinary has said something about acceleration, but in my view that is not in the case.

LORD YOUNG—I am of the same opinion, and I only wish in a single sentence to say that I give no opinion upon the clause in the policy about natural disease and that I express no opinion upon the views of the Lord Ordinary as to the accident having accelerated the death. The case before us is that the insured sustained a bodily injury caused by an accident, which injury directly caused death within three months. That must be established to enable the pursuers to recover under this policy.

I think it is not proved at all that this injury within three months caused death. The evidence does not enable us satisfactorily to attribute the death to the accident.

LORD RUTHERFURD CLARK and LORD LEE concurred.

The Court pronounced the following interlocutor:—

“Find that the deceased John M'Kechnie was disabled for three days wholly, and for nine weeks partially, by a fall from a Whitechapel cart, and that the defenders are due to the pursuers, his executors, the sum of £13, 15s. sterling in respect thereof: Find that it is not proved that the bodily injury sustained by him by the said fall caused his death: Recal the interlocutor of the Lord Ordinary reclaimed against: Ordain the defenders to make payment to the pursuers of the said sum of £13, 15s., with interest thereof at the rate of £5 per cent. per annum from the date of citation to this action till

paid: *Quoad ultra* assolzie the defender from the conclusions of the action: Find the pursuers entitled to expenses to the date of closing the record, and find the defenders entitled to expenses subsequent to that date,” &c.

Counsel for the Pursuers—M'Kechnie—G. W. Burnet. Agent—D. Maclachlan, S.S.C.

Counsel for the Defenders—Jameson—Crole. Agents—J. & R. A. Robertson, S.S.C.

Friday, October 25.

FIRST DIVISION.

[Lord Wellwood, Ordinary.

HENDERSON v. HENDERSON.

Husband and Wife—Jus mariti—Married Women's Property (Scotland) Act 1881 (44 and 45 Vict. cap. 21), sec. 4.

The Married Women's Property (Scotland) Act 1881 permits parties married before July 18, 1881, to declare by mutual deed that the wife's whole estate, including such as may have previously come to the husband in right of his wife, shall be regulated by the Act; and provides that upon registration and advertisement of this deed as specified, the said estate shall be vested in the wife, and subject to the provisions of the Act.

A woman who possessed the stock and plenishing of a farm and the furnishings of an inn was married in February 1881. The spouses voluntarily separated in November 1882, and the husband allowed his wife to retain possession of the stock and plenishings of the farm and inn. He made no allowance for aliment. In 1888 the spouses were mutually divorced.

Held that the stock and furnishings which had passed to the husband *jure mariti* remained his property, as no mutual deed under sec. 4 of the Married Women's Property Act of 1881 had been executed, and as there was no evidence of intention on the husband's part between 1882 and 1888 to re-transfer this property to his wife.

This was an action whereby Andrew Henderson, blacksmith, Slains, Aberdeenshire, called upon Isabella Burd or Henderson, his wife, to produce an account of her intromissions with the estate which fell to the pursuer in virtue of his *jus mariti*. The parties were married in February 1881. There was no antenuptial marriage-contract between the spouses, and at the date of their marriage the defender was possessed of the stock and implements on a small farm of which she was tenant, as well as of the furniture, stock, and other effects in the inn at Whiteness, of which she was also tenant.

The spouses separated in November 1882, at which date the defender remained in