practical redress for salient cases of hardship.

Now, the question mainly turns on the first section of the first schedule, head (*a*), which begins, "Where death results from the injury." It is necessary, however, to remember that the general words with which the whole section begins are "The amount of the compensation under this Act shall be," and then follows "where death results from the injury." Immediately after these latter words the subsection is again branched, and deals with three cases—first, "if the workman leaves any dependants wholly dependent upon his earnings;" second, "if the workman does not leave any such dependants, but leaves any dependants in part dependent;" and third, "if he leaves no dependants." In each case the amount is stated; but it is to be noted that while in the first case (that of persons wholly dependent) three years' earnings, not exceeding £300, is the amount prescribed, in the second case (that of persons partially dependent) it is so much, not exceeding the amount payable under the first head, as is found to be reasonable. In the third case (that of no dependants) the amount is merely medical and burial expenses, not exceeding £10.

Now, it seems to me that this sub-section when read as a whole defines the total liability of the employer, and presents three alternative cases which are mutually exclusive. If there are persons wholly dependent, then the employer has got to pay three years' earnings not exceeding £300. The next case contemplated is that of those partially dependent, but their right is conditioned by the opening words "if the workman does not have any such" (*i.e.*, wholly dependent) "dependants." If he has left such wholly dependent dependants, then the Act does nothing for the partially dependent. There is no provision authorising the arbitrator to carve a provision for them out of what is devoted to the wholly dependent, and no provision for any further liability on the part of the employer than what is set forth in the three cases put in the sub-section. The first schedule in which those provisions occur is expressly pointed to in the first section of the Act itself, which declares generally the liability of the employer, as stating the rules of that liability. Accordingly, the employer is only liable in those events which are provided for in the first schedule.

I am therefore for answering the second question in the affirmative. This supersedes the first question, which was not debated.

LORD ADAM and LORD KINNEAR concurred.

LORD M'LAREN was absent.

The Court answered the second question in the affirmative, and found it unnecessary to answer the first question.

Counsel for Appellant—G. Watt—Glegg. Agents—Macpherson & Mackay, S.S.C.

Counsel for Respondent — Orr — J. D. Miller. Agents—Inglis & Orr, S.S.C.

Tuesday, July 18.

FIRST DIVISION.

STARK *v.* FIFE AND KINROSS COAL COMPANY, LIMITED.

Company—Lien over Shares—Obligation by Shareholder to Trustee for Preference Shareholders.

The vendors of certain property, for the purchase of which a company had been formed, entered into an agreement with the company whereby they undertook, *inter alia*, to guarantee the interest on the preference shares of the company for three years. In implement of their agreement they granted a bond of guarantee by which they bound and obliged themselves jointly and severally to pay to certain trustees for the preference shareholders the interest on the preference shares for three years.

One of the vendors having died, and his estates having been sequestrated, his trustee sold certain ordinary shares of the company standing in his name to a purchaser. In an action by the purchaser to have the shares registered in his name, *held* that the company had no lien over the shares in question, in respect that the creditors in the bond of guarantee were the trustees for the preference shareholders, and not the company.

The Fife and Kinross Coal Company, Limited, was incorporated on 3rd February 1897 with a capital of £70,000, divided into 3,500 cumulative preference shares of £10 each, and 3500 ordinary shares of £10 each.

Article 36 of the articles of association of the company was in the following terms:—"The company shall always have a first and paramount lien on the whole of the shares of every member, for all debts, liabilities, or engagements, ascertained or contingent, of such member, solely or jointly with, or as surety for, any other person, to the company; and the board may not only refuse to register the transfer of any such shares if the transferrer is indebted to the company as aforesaid, but may, after six days' notice in writing, absolutely sell and dispose of, for behoof of the company, all or any of the shares of such debtor, and apply the proceeds, so far as the same extend, in discharge or satisfaction of such debts, liabilities, or engagements, or may hold the proceeds in security thereof; and upon such sale the board shall, without any further or other consent from the holder of such shares, transfer the same to the purchaser thereof; but subject always to the provision in article 30 as to members whose registered place of address is not in the United Kingdom. The said lien shall also extend to all dividends from time to time declared in respect of such shares."

Article 42 provided—"The board may, in their sole discretion, decline to register any transfer of shares upon which the company

has a lien. In the case of shares not fully paid up, the board may refuse to register a transfer to a transferee of whom they do not approve. The board shall not be bound to assign any reason for declining to register a transfer."

The vendors of the property which the company was formed to acquire, viz., Messrs Peter Harrower, Alexander Thomson, and Lewis Grant, had, by minute of agreement dated 27th January 1897, agreed to accept ordinary shares in the company in payment of the price, and had also bound themselves, jointly and severally, to "guarantee to the holders from time to time of preference shares to the extent of £35,000 in the company, full and timeous payment of all dividends due or that may become due during the three years from the date of allotment of the first of such preference shares that may be issued upon all such preference shares subscribed for and allotted so far as paid up." The vendors also undertook to pay all expenses connected with the transfer of the property and the floating of the company.

In implement of this agreement Messrs Harrower, Thomson, & Grant executed a bond of guarantee dated 16th July and 8th September 1897, whereby "as individuals and as joint-adventurers" they bound and obliged themselves and their respective heirs, executors, and representatives, jointly and severally, "to content and pay to Sir James Alexander Russell, LL.D.," and others, "and the survivors and survivor of them, and the heir of the last survivor, as trustees and trustee of the holders from time to time of said preference shares in said Fife and Kinross Coal Company, the sum of £1750 yearly for the period of three years subsequent to the 22nd day of February 1897, being the annual amount of £5 per centum per annum upon said 3500 preference shares of £10 each." The bond was granted under the condition, *first*, that the said annual amount of 5 per cent. on said preference shares "shall only be prestable hereunder to the extent to which such dividends shall be due and payable during said period on said 3500 preference shares so far as paid up from time to time, and not met and timeously paid out of the free yearly and termly profits of said company during each respective year of said period;" and, *second*, that "the whole sums due and payable under these presents, and which may be recovered from time to time, shall be held by the said trustees or trustee, for and on behalf of all holders of said 3500 preference shares as their personal property for their respective rights and interests therein."

Of the shares allotted to Alexander Thomson in payment of his proportion of the purchase price, 154 were registered in his name. These 154 shares were sold in January 1899 by the trustee on Alexander Thomson's sequestrated estates (Mr Thomson having died in the interval) to Miss Margaret Maclaren Stark, who requested the company to enter her name on their register as the holder of said shares.

The company having refused to do so, Miss Stark presented this application under secs. 35, 36, and 62 of the Companies Act 1862 (25 and 26 Vict. cap. 89), craving the Court to order the register of members of the Fife and Kinross Coal Company, Limited, to be rectified by entering therein her name as holder of the shares in question.

On 20th June 1999 the company lodged amended answers, in which they made the following averments—"By the minute of agreement above referred to, the vendors, the said Peter Harrower, Alexander Thomson, and Lewis Grant, agreed to personally guarantee the full payment of the dividends upon the preference shares, so far as subscribed, allotted, and paid up, for three years from the date of the allotment. The price payable to the vendors in terms of said minute of agreement was, as the said minute bore, paid in consideration, *inter alia*, of the said guarantee. 3500 preference shares were allotted to subscribers on 22nd February 1897, and of these shares £19,545 has been paid up on calls made and in anticipation of calls. The guarantee which the said Alexander Thomson granted as above mentioned is still current, and the respondent company maintains its right of lien upon the shares held by the said Alexander Thomson in respect thereof. . . . The respondent company submits that the averments in the petition are irrelevant, and that the company is entitled to maintain its lien on the said shares, and cannot be called on to register the petitioner's transfer."

The petitioner argued that the company had no lien over the shares, inasmuch as the creditors in the obligation contained in the bond of guarantee were the trustees for the preference shareholders, and not the company — *In re South Llanharran Colliery Company*, L.R., 12 Ch. D. 503, referred to.

The respondents argued that they were truly the creditors in the said obligation, and therefore had a lien over Mr Thomson's shares until the period of three years expired.

Lord Adam—The petitioner is proprietor of 154 shares in the Fife and Kinross Coal Company, Limited, which she acquired from the trustee on the sequestrated estate of the late Alexander Thomson.

The object of the petitioner is to have the register of the company rectified by entering her name therein as the holder of these shares.

It appears that by minute of agreement, of date 27th January 1897, entered into between the vendors and a trustee for the proposed company, the vendors bound themselves by bond or other formal deed to be granted by them, jointly and severally, to guarantee payment of all dividends due or to become due on all preferential shares to the extent of £35,000 duly allotted and paid-up during three years from the date of allotment of the first of said shares. The dividends in question were to be cumulative preferential dividends at the rate of 5 per cent. per annum.

It further appears that in implement of this obligation the vendors granted a bond of guarantee dated 16th July and 8th September 1897, by which they bound themselves, conjunctly and severally, to pay to Sir James Russell, and certain other persons therein named, as trustees for the holders from time to time of the preference shares in question, £1750 yearly for three years subsequent to 22nd February 1897, being the annual amount of £5 per cent. per annum upon the said 3500 preference shares of £10 each, but, *inter alia*, under the condition and declaration that the said annual amount should only be prestable to the extent to which such dividends should be due and payable during said period on said 3500 preference shares so far as paid-up from time to time, and not met and paid out of the free yearly and termly profits out of each respective year of such period. There are other declarations and conditions in the deed, but I do not think they call for notice. The obligation, therefore, undertaken by the vendors was to make good to the holders of preference shares any deficiency there might be in the profits of the company to yield them a dividend of 5 per cent. on their shares in each of the three years.

It is said by the company that the guarantee is still current and will continue to be current until the 22nd February 1900, and they maintain their right of lien on the shares held by Mr Thomson in respect thereof.

I do not think that this contention is well founded.

It appears to me that the vendors fulfilled the obligation undertaken by them to the company in the original agreement of January 1897 when they granted the bond of guarantee. But the company are not the creditors in this bond. It is not granted for the benefit of the company, but for the benefit of the preference shareholders only. It appears to me further that if the company had any claim on Thomson's estate they should have claimed in the sequestration, when the value of the alleged lien, if any, would have been ascertained, the amount paid, and the lien discharged.

I do not think, therefore, that the company have a lien over the shares held by the late Mr Thomson in respect of this guarantee, and therefore that the application should be granted.

Lord M'Laren, Lord Kinnear, and the Lord President concurred.

The Court granted the prayer of the petition.

Counsel for the Petitioner—Orr. Agents—Simpson & Marwick, W.S.

Counsel for the Respondents — Clyde. Agents—J. K. & W. P. Lindsay, W.S.

Tuesday, July 18.

FIRST DIVISION.

SHAW STEWART AND OTHERS, PETITIONERS.

Trust—Charitable Trust—Gift of Charitable Trust Funds to Society—Failure of Objects of Society—Absolute Donation or Trust.

An association was formed for the purpose of founding a school for destitute children. Subscriptions were collected and a property purchased to use as a schoolhouse. By the disposition it was declared that it was to be used as a school for destitute children "until the same shall be sold or the destination thereof otherwise changed by a majority of subscribers." Among the subscriptions was a donation from certain trustees, who were directed by their trust to set apart a certain sum "to and for the benefit of and among such ragged or industrial schools in Scotland as my said trustees shall select."

The purpose of the school having failed, the association craved the authority of the Court to sell it, and to devote the proceeds to giving certain gratuities to the officials of the school and to benefitting other charitable institutions consisting of a town mission, a cottage hospital, and certain Science and Art evening classes.

The trustees claimed that their subscription should be returned to them, on the ground that the new purposes were not in accordance with those contemplated by their trust.

Held that the gift by the trustees was unconditional and not affected by the terms of the Ferguson Trust, and that the trustees were not entitled to repayment.

In 1857 an association was formed for the purpose of establishing an industrial school in Falkirk, and funds were raised for the purpose of carrying out that purpose partly by local subscription and partly by a grant of £150 from the trustees of the Ferguson Bequest Fund, the receipt for which bore that it was a grant "on condition that the association should raise £350, and erect a building . . . from the £10,000 legacy for ragged and industrial schools in Scotland." A constitution and rules were drawn up, in which it was stated that "It is the object of this school to reclaim the neglected or profligate children of Falkirk and neighbourhood by affording them the means of a good common and Christian education, and by training them to habits of industry so as to enable them to earn an honest livelihood and fit them for the duties of life."

Certain heritable property was purchased to be used as a schoolhouse, the disposition being granted in favour of the trustees of the Industrial School.