

was out of the question, and that the defender had put a sum of £1000 beyond the reach of his creditors by transferring it to his wife and daughter and that these transferences would not bear inquiry. It is clear enough that the liquidator was not called upon to accept the mere statement of an opposing creditor as conclusive of the fact. But on the other hand the statement made it impossible for him to move for sanction without informing the Lord Ordinary that it had been made; and it is certain that on that information the sanction of the Court must have been withheld until the creditor's allegation was disproved or withdrawn.

The defender says that the liquidator had bound himself to "recommend" the compromise for sanction. No such obligation could have been lawfully undertaken, and there is nothing in the correspondence from which it can be inferred. The duty of the liquidator when he presents a compromise for sanction is to bring all the facts before the Lord Ordinary and to keep back nothing that is material to the propriety and expediency of the transaction. The pursuer would have been acting in breach of his duty if he had done what the defender says he ought to have done, and moved the Lord Ordinary to sanction the compromise in ignorance of the creditor's allegation that funds had been put away.

I am therefore for adhering to the interlocutor.

The Court adhered.

Counsel for Pursuers and Respondents—Graham Stewart—Mercer. Agents—J. & A. Hastie, Solicitors.

Counsel for Defender and Reclaimer—R. L. Orr—Burt. Agents—Gardiner & Macfie, S.S.C.

Saturday, January 28.

FIRST DIVISION.

[Lord Kincairney, Ordinary.]

BAIRD & COMPANY, LIMITED v.
KANE.

Master and Servant—Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), First Schedule, sec. 11—Workman in Receipt of Compensation Going to Ireland—Refusal to Submit to Medical Examination in Glasgow without Tender of Travelling Expenses—Obstructing Examination.

An injured workman who was in receipt of compensation in terms of a registered memorandum of agreement, and who, while resident in Scotland, had on two occasions submitted himself for examination by a medical practitioner provided by his employers, went to Ireland to live with his father, who was resident there.

Two months after he had left Scotland his employers called upon him to submit himself again for medical exami-

nation in Glasgow, but did not offer to pay his travelling expenses from Ireland to Glasgow and back. The workman intimated that he was willing either to submit himself for examination in Glasgow, provided the expenses of the journey from Ireland to Glasgow and back were paid him, or to proceed at the employers' expense to the nearest large town in Ireland and be examined there. The employers meantime stopped payment of the weekly compensation on the ground that the workman had refused to submit himself to, or had obstructed, medical examination.

In a suspension at the employers' instance of a charge by the workman on the registered memorandum of agreement, held (*aff.* the judgment of Lord Kincairney) that the workman had not refused to submit himself to, or obstructed, medical examination in the sense of section 11 of the First Schedule of the Act, and that the employers therefore were not entitled to stop the weekly payments of compensation due to him, and suspension *refused*.

The Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), First Schedule, sec. 11, enacts—"Any workman receiving weekly payments under this Act shall, if so required by the employer, or by any person by whom the employer is entitled under this Act to be indemnified, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, or such other person; but if the workman objects to an examination by that medical practitioner, or is dissatisfied by the certificate of such practitioner upon his condition when communicated to him, he may submit himself for examination to one of the medical practitioners appointed for the purpose of this Act, as mentioned in the Second Schedule to this Act, and the certificate of that medical practitioner as to the condition of the workman at the time of the examination shall be given to the employer and workman, and shall be conclusive evidence of that condition. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place."

This was a note of suspension at the instance of William Baird & Company, Limited, iron and coal masters, Twechar, Dumbartonshire, complainers, against Henry Kane, locomotive man, sometime residing at 19 Old Row, Twechar, but who at the time when the note was presented was residing at Burnquarter, Ballymoney, County Antrim, Ireland, respondent.

The complainers sought suspension of a charge, proceeding on a registered memorandum of agreement under the Workmen's Compensation Act 1897, at the instance of the respondent for payment of the sum of £4, 5s. 4d. alleged to be due to him under the agreement referred to.

On 17th October 1903 the respondent while in the employment of the complainers met with an accident which necessitated the

amputation of part of his left foot. The respondent having claimed compensation, the amount due was settled by agreement at 10s. 8d. per week, and compensation at that rate was duly paid him from 1st November 1903 to 4th June 1904.

On 16th December 1903 the respondent submitted himself for examination by Dr Moir, a qualified medical practitioner provided by the complainers, who reported that he would not be fit for work for 3 or 4 months.

On 21st March 1904 the respondent's agents intimated to the agent for the complainers that the respondent intended going to Ireland, and that he desired that the future compensation due to him should be paid to his sister Mrs Elizabeth Kane or Crawford, residing at Twechar, as his mandatory. The respondent shortly thereafter went to Ireland, but before leaving he was again examined by Dr Moir on 24th March 1904, who reported that the question of his return to work might be safely deferred for the next two months. Thereafter compensation was duly paid to the respondent's sister as his mandatory until 4th June 1904.

On 13th June 1904, when more than two months had elapsed since Kane left Scotland, the complainers called upon him to submit himself again to Dr Moir on 18th June for examination in Glasgow. The respondent declined to do so on the ground that he was resident in Ireland, and the complainers thereupon stopped payment of the compensation.

On 16th June they again called upon him to submit himself for examination by Dr Moir either at Twechar or Glasgow, but the respondent declined to do so.

On 20th June the respondent's agents intimated to the complainers that Kane would submit himself for examination in Glasgow if the complainers paid the expenses of the journey there and back, or otherwise that he would proceed to the nearest large town in Ireland at the complainers' expense and be examined there by the complainers' doctor. The complainers however replied that no further compensation would be paid until the respondent submitted himself for examination either at Twechar or in Glasgow.

In these circumstances the complainers averred that Kane, by failing to submit himself for examination since 18th June 1904, had obstructed the examination which they were entitled to require under the Act, and that his right to compensation thereby became suspended.

In answer the respondent averred that he went to Ireland to live with his father, as he was unable to work and had no means of supporting himself at Twechar or in Glasgow; that on account of want of means he was unable to travel from Ireland to Glasgow or Twechar; that the complainers had not offered to pay his expenses or any part thereof; that he was still willing (as he had all along been) to submit himself for examination in Ireland within reasonable distance of his place of residence, or to travel from Ireland to Glasgow or Twechar, provided his expenses were paid.

He pleaded—“(2) The respondent not having refused to submit himself to medical examination, and not having obstructed the same, the complainers were not entitled to suspend the weekly payments of compensation due to him.”

The letters produced contained, *inter alia*, the following passages:—“On 29th June 1904 the respondent's agents wrote to the complainers' agent . . .—“We have to suggest the following to you for your consideration, either of which we would advise him to accept, that if you wish him medically examined in Glasgow you pay him his outlays for coming here and returning, or that he proceed to the nearest large town to Ballymoney at your expense and be examined by your doctor there. You must, however, resume payment of the compensation forthwith. Please let us have your cheque by return paying him to date.” . . .

On 30th June the complainers' agent replied— . . . “We will pay no more compensation until Kane submits himself for examination either at Twechar or here.”

On 7th July the respondent's agents wrote— . . . “The request that you make that Kane should now return to Twechar or Glasgow merely to be medically examined is most unreasonable. In our letter of 29th ultimo we gave you a copy of a medical report which Kane sent us, which shows that he has not recovered, and if you wish to see the original we shall be glad to exhibit it here. We have no objections to your having a medical report of Kane as often as ever you please so long as it is at your expense and not his.”

On 11th July the complainers' agent replied— . . . “I do not argue that I had any right to object to your client going to Ireland, but I most certainly hold that if a workman in receipt of compensation does leave this country, he must, if he wishes to retain his right to same, be prepared to return at his own expense when called upon to comply with the provisions of the statute.” . . .

On 4th January 1905 the Lord Ordinary (KINCAIRNEY) dismissed the note, holding that the respondent was not bound to submit himself for examination in Glasgow unless the complainers paid his travelling expenses, and that he had not incurred the penalty imposed by the statute.

Opinion.—“This case raises a question of some importance under the Workmen's Compensation Act, and involves a consideration of the 11th section of the First Schedule, which has been differently construed by the two Divisions of the Court in recent cases—in *Davidson v. Summerlee and Mossend Iron and Steel Co., Limited*, June 24, 1903, 5 F. 991, pronounced in the Second Division; and in *Niddrie and Benhar Coal Co. Limited v. Mackay*, July 14, 1903, 5 F. 1121; and *Strannigan v. Baird & Co.*, June 7, 1904, 41 S.L.R. 609—both decided in the First Division. These cases refer chiefly to the meaning of the provision in the 11th section of the First Schedule in regard to the right conferred on a workman who has been injured to submit himself for examination to a medical practitioner appointed for the

purposes of the Act, and the consequences to the workman if he does not do so. Generally speaking the difference between the judgments of the two Divisions may be said to consist in this. The Second Division held that the provision was obligatory on the workman, and that his failure to comply with it involved the suspension of his right to weekly payments until that examination had taken place, holding that the words 'such examination' at the close of the section refer to or include a reference to the examination by the medical practitioners appointed under the Act, whereas in the First Division it was held that the provision was not obligatory but optional only, and that no such consequence followed if the workman did not avail himself of the option. Their Lordships held that the words 'such examination' refer only to examinations required by the employers and by the medical practitioner provided and paid by them. In the Second Division Lord Young dissented, and expressed an opinion in accordance with that afterwards adopted by the First Division. In the case of the *Niddrie and Benhar Coal Company, Limited*, in the First Division, the judgment in the case of *Davidson* was doubted, but in the case of *Strannigan* it was expressly dissented from.

"In the case of *Neagle v. Dixon's Navigation Company*, January 13, 1904, 1 K.B. 339, a judgment was pronounced in the Court of King's Bench, in which the opinion of Lord Young in the case of *Davidson* and the judgment of the First Division in the case of *Niddrie and Benhar Coal Company* were expressly adopted. In that state of the authorities I think it would be proper to follow the later judgments on these points so far as they fall to be considered in this case, even if I did not, as I do, assent to and concur in them.

"There are, however, peculiarities in this case which differentiate it from these cases. The special features of this case seem to be these—First, the workman Kane, the respondent, registered a memorandum of the agreement as to his remuneration, as provided by section 8 of the Second Schedule of the Act, and charged upon the extract of it, and the case was brought into the Court by a suspension of the charge by the employers instead of by a stated case. Secondly, the injured workman was thrice requested to submit to examination, and he complied with the first two requisitions, he being then resident in Scotland, and submitted twice to examination by the medical practitioner named by the employers, but he has not complied with the third requisition, on the ground that he was now resident in Ireland and cannot afford the expense of coming to Scotland to be examined by the employers' medical practitioner. Here, as in the cases cited, the workman has not, as he was entitled to do, exercised the option of submitting himself for examination to an official medical practitioner—although I take it for granted he could have found an official practitioner conveniently accessible in Ireland. I understand that

the respondent offers to come to Glasgow at the complainers' expense, or else to submit to examination by a practitioner accessible to him in Ireland selected by the complainers.

"The complainers have contended that the workman, by failing to submit himself to examination by a statutory practitioner, incurred the penalty of the suspension of his right to weekly payments, as provided at the close of section 11 of the First Schedule. For this contention their authority is the case of *Davidson*, and their argument would be conclusive if that judgment were followed. But I am of opinion that that judgment has been overruled by the cases of *Niddrie* and *Strannigan*, supported by the English case of *Neagle*, and that, following these decisions, I must hold the respondent did not incur the statutory penalty merely because he has not exercised the option of applying to the medical referee.

"But it is argued that in these cases there was no refusal by the workman to submit himself for examination by the medical man selected by the employer. In these cases the workman had in fact submitted to the examination required. In this case also the workman has submitted twice to the examination of the medical practitioner provided and employed by the employers. But then the employers have required him to submit to such examination a third time, as, if their demand was reasonable, they were entitled to do, the Act providing that the workman shall submit to examination 'from time to time' if so required by his employers, and he seems to be under the same obligation to comply with the last of such requisitions as with the first, and the statutory consequences of refusal must be the same in the one case as in the other, and that consequence is undoubtedly suspension of payments until the examination takes place.

"If Kane had continued to reside in Glasgow, and had failed to submit to examination by the employers' medical man, there can be no doubt that the complainers would have been entitled to judgment, so that the question comes to be simply this—whether, having in view the circumstances of the case, the workman can be held to have refused, within the meaning of the section, to submit himself for examination by the practitioner provided by the employers. That depends on whether the requisition made by the complainers was a requisition which in the special circumstances they were entitled to insist on.

"The workman has provided himself with a registered memorandum, which certainly provides him with a *prima facie* right to the compensation agreed to, and it falls on the employers to show why that compensation should not be paid. The employers are, it is true, authorised to require the workman to submit himself for examination. It does not follow that they are entitled to require him to go to the medical practitioner. In many cases of accident that would be impossible for the workman, often disabled by the accident, to comply

with, or it would be unreasonable to ask him to do so if involving much suffering or danger of aggravating his injury. In such cases the employer might be under the necessity of sending his medical practitioner to the workman, and if he did not do so, but required the workman to go to the practitioner, it would be a question depending on the special circumstances whether the workman's non-compliance would amount to a refusal to submit himself for examination in the sense of the statute. That case is provided for in the Statutory Rules and Orders of 1898, but these do not seem to apply directly to the present case, but they assume the employers' liability in the circumstances to which they refer to send a medical practitioner to the workman where that is reasonable. In each case the question, I apprehend, would be what was reasonable.

"If the workman lived, say in the neighbourhood of Glasgow, but at some distance, I am not prepared to say that there might not be exceptional circumstances in which it might be held more reasonable to send the medical practitioner to him than to insist on the workman coming to Glasgow, or else to pay his expenses. I do not see that any absolute rule can be laid down.

"In this case the workman has gone to Ireland, not, as I understand, illegitimately, or with the object of evading medical examination—that is not stated—but simply, he says, because of his poverty. All the length the complainers go is to say that he went to Ireland unnecessarily. Now, I do not think it would be reasonable to incur the expense of an inquiry on this point. The question can be settled more economically. The employers may, if they choose, employ a medical practitioner in Ireland within reasonable distance of the workman's residence, or they may pay the workman the expense of a visit to Glasgow and back. These are the employers' remedies. On the other hand, the workman has a remedy which is in some respects still cheaper. He may submit himself for examination to the nearest medical practitioner appointed under the Act. But then the Act does not require him to do that, and if he does it, that carries the consequence that the certificate of the practitioner is final. I do not see that I can either add to the Act a prohibition of the workman to leave the neighbourhood so long as his injury continues, or convert the option which the statute gives him to apply to the medical referee into what would be practically an obligation to do so. I incline to think that in the circumstances the employers must provide and pay for a medical practitioner to whom the workman may have reasonable access without unreasonable expense.

"It is averred that the workman promised to return. But it is not averred that he promised to return at his own expense, and he is willing to return at his employers' cost; besides, I fail to see that the statutory penalty would be incurred by the workman's failure to keep his promise. It is only imposed for failure to fulfil a statutory duty; so that I do not think that this aver-

ment is important or must be sent to proof.

"A case called *Finnie & Son v. Duncan* was quoted, decided on 13th December. It had not appeared in any of the reports, but through the courtesy of the reporters I was furnished with a note of the opinions of the Judges. I thought it, however, better to delay my judgment until the case was reported. It will be found now reported at 42 S.L.R. 192. The workman had gone to Australia without leaving his address, and neither his wife, whom he had left in Scotland, nor his former agents could discover it. In these circumstances the Court, under section 11, suspended the weekly payments because he had made it impossible for the employer to avail himself of the machinery of the Act, and had obstructed the Act. But in this case there is no such impossibility, only some increase of difficulty and expense.

"I am, on the whole, of opinion that the case of *Finnie* does not apply, and that the respondent is entitled to judgment."

William Baird & Company reclaimed, and argued—The respondent had obstructed the examination. He had gone to Ireland when he was nearly convalescent, and so had rendered examination by the complainer's doctor impossible. Examination by another doctor would not be satisfactory, as Dr Moir who had previously examined him knew the nature of the case and the progress made towards recovery. To affirm the Lord Ordinary's interlocutor would be to impose a serious burden on employers, for it would enable workmen to remain away from home at their employers' expense, and that was unreasonable. On the question of obstructing the examination, reference was made to *Niddrie and Benhar Coal Company, Limited v. M'Kay*, July 14, 1903, 5 F. 1121, 40 S.L.R. 798; *Strannigan v. Baird & Company, Limited*, June 7, 1904, 6 F. 784, 41 S.L.R. 609; *Finnie & Son v. Duncan*, December 13, 1904, 42 S.L.R. 192.

Counsel for the respondent were not called on.

LORD ADAM—This is a suspension brought by William Baird & Company, Limited, who were the employers of the respondent. The facts which raise the question are not in dispute. They are set forth in the Lord Ordinary's interlocutor—[*His Lordship stated the facts and read the portions of the letters dated 7th and 11th July 1904 which are quoted supra*]. These letters show the positions taken up by the complainers on the one side and the respondent on the other, and the question is, which of these positions is the reasonable one. The complainers justify themselves under the 11th section of the 1st schedule to the Workmen's Compensation Act 1897—[*His Lordship read the section.*]

Under the Act the obligation of the workman is confined to submitting himself to examination by the employer's doctor, and the question upon the construction of the Act is whether Kane refused to submit himself for examination or obstructed the examination. It is to be observed that while it is the employer's right to select

his own medical man, there is an obligation upon him to provide and pay the medical man so selected. This appears to me to indicate an obligation upon the employer to select a medical man within a reasonable distance of the workman who is to be examined. There may be a question, but I do not think it arises in this case, as to what is meant by the words "submit himself." Is it enough for the workman when called upon to say "I am quite ready to submit myself for examination if you send your medical man to me at any reasonable time you choose?" That is one view of the meaning of the words, and if it is correct the workman here has never refused to "submit himself," for he has offered to submit himself for examination as often as the employer likes to anybody he chooses to send. The question would then be, if it were necessary to decide it here, whether the employer had complied sufficiently with the statute, and whether he was not only to select and pay a medical man but to send him to the residence of the workman who was to be examined. I see nothing in the Act to show that any duty is laid on the workman to go any distance—it may be a mile, or five miles, or as in this case two hundred miles—to be examined. But it is not necessary to decide that question. It is enough to consider whether what the employers did here was reasonable. The workman was entitled to go to Ireland, and he was entitled to say to the employer—"If you wish to have me examined you must select a medical man who is within my reach." There are plenty of qualified medical men in Ireland, and if the employer had chosen to select a medical man within this workman's reach there is no doubt he would have gone and submitted himself to examination. Many cases might be put by way of illustration. One was suggested by Lord M'Laren. Suppose a man was injured in Scotland and the employer wished that he should submit himself for examination by a London specialist. Would it be reasonable to demand that the workman should travel to London at his own expense? I think it would not. I think if the workman declined to do so he would not be refusing to submit himself to examination or obstructing examination in the sense of the Act. Has the workman done anything more unreasonable here? Having gone to Ireland to reside with his father, as he was entitled to do, he refused to come to Glasgow for examination at his own expense. I think he was not under any obligation to do so. No doubt the selection of the medical man lies with the employer. But it is his duty to select one within reasonable reach of the man to be examined. If he does that and the workman refuses to go, say two miles, to be examined by the medical practitioner, and says, "You must send your doctor to me," then a question of some difficulty might arise. But that is not the kind of case we have here. The employers have demanded that the workman should come from Ireland at his own expense, some 200 miles, to Glasgow, to be examined by a medical man there who has

been selected by them. I think that demand was not reasonable. The workman said he would come to Glasgow for examination if the employers would pay his expenses. That was quite reasonable.

On the facts of the case and the construction of the Act I think the Lord Ordinary was right, and that we should adhere to his interlocutor.

LORD M'LAREN—I am of opinion with the Lord Ordinary and your Lordship. There are cases where we have found the clauses of the Workmen's Compensation Act somewhat obscure and difficult of interpretation, but in the present case I think the language is well chosen and admits of only one construction. Every word of the clause which has been the subject of criticism points to the result at which the Lord Ordinary has arrived. I would observe that under the 11th section it is contemplated that the workman and the medical practitioner selected by the employer shall be brought together, because it is only by a personal examination that a useful medical report can be given. While that is the contemplation of the Act, the duty laid on the workman is merely passive—he has to submit to such examination; while the duty laid on the employer is active—he has to provide and to pay the medical practitioner by whom the examination is to be conducted. That is a broad distinction which seems sufficient in itself to decide this case. But further, I notice that not only is the practitioner to be provided by the employer, which according to the ordinary use of language would mean that he is to be brought to the spot and put into the position of making an examination, but he is to be paid by the employer, and I think that word was designedly selected so as to include not only the medical fee, which in all cases would be required, but also travelling or other expenses in case the employer thought that for his own advantage or in the interests of justice it was desirable to obtain the opinion of a medical expert from a distance.

Then the question is, whether this workman who had gone to Ireland legitimately, as the Lord Ordinary has found, because he was unable to work and had been invited to go and reside with his father—the question is whether this man who had gone to Ireland, not for any purpose of obstructing medical examination, but for a lawful purpose, can be required to travel to Glasgow in order to be examined by a medical expert selected by his employer. I cannot think that the direction to submit to examination can include an obligation to make a long journey to a place selected by the employer—a journey which in many cases of injury to person could not be undertaken without possible risk to health, to say nothing of the expense, which is always an important consideration to a disabled and impoverished workman. There must be cases where it is difficult to satisfy both parties in making a selection of an examining medical practitioner—a gentleman whose report would have the concurrence

of both parties—and this is provided for by an examination by a medical referee selected by a public authority. But in this case the parties do not differ upon any question as to the suitability of the medical practitioner. The respondent is quite willing to submit himself to examination by a doctor selected by the employer if the employer will either appoint a doctor in Ireland or pay the workman's expenses of going to Glasgow to be examined, and therefore I cannot hold that there has been any obstruction to an examination any more than that there was a refusal to submit himself. I would only add this, that while under the obligation to provide and pay for medical examination, I think the duty is put upon the employer of bringing the medical practitioner to the place if he is not resident in the vicinity of the workman's home—this must always be construed with regard to professional usage and etiquette. If, for example, a statute directed the person to submit himself to examination upon the facts of the case by a legal commissioner appointed by the Court or the Sheriff, I should hold that it was the duty of the workman, if health permitted, to attend on the commissioner, because it is the usage of the profession that a party who is to be examined always goes to the judicial authority. If the injury is not of a disabling kind—if it does not prevent the man walking to the doctor's residence—then I think he must do what all other patients do, go to the doctor if able to do so, though doctors are always willing, if there is the slightest need for it, to attend at the house of the patient. But where the doctor is at a distance, then I think the case is different, because I could not stretch the code of medical practice further than that a man may be required to attend at the medical practitioner's house where he is a resident practitioner. But that does not imply any duty on the part of the workman to travel at his own expense in order to be examined by a medical practitioner at a distance from the place where he is residing.

LORD KINNEAR—I quite agree with your Lordships and the Lord Ordinary. My only doubt is whether it might not be sufficient to substitute for the somewhat numerous findings of the Lord Ordinary the respondent's own way of putting his case, which I think is perfectly satisfactory, as it is embodied in the second plea-of-law. The ground of judgment in my opinion is quite well stated there. "The respondent not having refused to submit himself to medical examination, and not having obstructed the same, the complainers were not entitled to suspend the weekly payments of compensation due to him." I think that both of these two propositions in fact which form the basis of the plea are perfectly well made out for the reason your Lordships have already given. The respondent submitted twice to examination. So long as he was in the same place as the medical man, and the complainers desired to have him examined, he made no difficulty. He was called on to submit to examination on

16th December 1903. He was called on to do so again on 24th March 1904, and again submitted himself, and the only occasion on which he has declined to come to the doctor for examination is the occasion on which he was asked to come from Ireland to Glasgow, or to a place in Dumbartonshire, at his own expense, in order to be examined by this medical practitioner. I agree that it was not reasonable to ask him to do so, and therefore the complainers have not satisfied the obligation laid on them by the statute in order to enforce his attendance, which is, that they have in a reasonable sense "provided" a doctor by whom he is to be examined. I think the distinction between the present case and the case of *Finnie* is perfectly obvious, and it is quite rightly pointed out by the Lord Ordinary when he says that in *Finnie*'s case the man had gone to Australia without leaving his address with anybody, leaving his wife at home, and neither his wife nor his former law-agents were able to find out where the man had gone to. That was held to be an obstruction to the operation of the statute, because it was impossible to find out the man and make any provision for examination. But in the present case there would not have been the slightest difficulty in the employer discovering a qualified practitioner where the workman was living, or if they could not find a qualified practitioner at the place where he was living, they could have found one within a reasonable distance. I think that in asking the respondent to come from Ireland to Glasgow at his own expense the employers were making an unreasonable demand.

The Court adhered.

Counsel for Complainers and Reclaimers—Campbell, K.C.—Lippe. Agents—W. & J. Burness, W.S.

Counsel for Respondents—Watt, K.C.—A. M. Anderson. Agents—Balfour & Manson, S.S.C.

Tuesday, January 31.

FIRST DIVISION.

[Lord Stormonth Darling,
Ordinary.]

TONI TYRES, LIMITED *v.* THE
PALMER TYRE, LIMITED.

Jurisdiction—Preventive Jurisdiction—Interdict—Wrongs Committed in Scotland by English Company—Jurisdiction of Court of Session to Interdict a Foreign Wrongdoer from Continuing to Commit Wrongs in Scotland—Jurisdiction Independent of Arrestment or Personal Service in Scotland—Forum non conveniens.

An English company brought a suspension and interdict against another English company, craving interdict against the respondents infringing within Scotland certain patent rights of the complainers which, it was