reports, but they were both decided in the early days of July, and will doubtless shortly be reported.

In order to allow this question of law to be decided by this Court it is necessary that the Sheriff, acting as arbiter, should, when called upon, state intelligibly the salient points of evidence on which his finding was based. That duty is in general rightly and cheerfully fulfilled. On this occasion, in spite of a remit made by your Lordships with explicit directions to that effect, it has been plainly neglected. This Court will certainly not be prevented from doing its own duty, and thereby justice to litigants before it, by the inability or unwillingness of a subordinate member of the judicature to perform a simple statutory duty. But the difficulty and unpleasantness of enforcing that duty has been removed by the exceedingly proper and right-minded concession on the part of the respondent's counsel in consenting that the evidence as led should be put before us as it was recorded by a shorthand writer employed *ex parte* at the time.

In dealing with that evidence I wish to make it clear that I merely accept it as a substitute for the case which the Sheriff-Substitute ought to have stated, and propose to deal with it in the same way. In other words, I do not propose to consider what my finding would have been on that evidence. What I do propose to do is to take the Sheriff-Substitute's finding as it is, namely, that the death of the respondent's husband was caused by an accident arising out of and in the course of his employment, and then to see whether that finding can possibly be supported on the evidence led.

I am of opinion that it cannot. I do not myself think that it was proved that the deceased had a fall; but there was evidence to that effect, and accordingly I think that if the only question had been, was there a fall? that is, an accident, the finding to that effect could not have been disturbed.

I assume also that the accident was in the course of and arising out of his employment. But then comes the question—was the injury, that is to say, the death, caused by the accident? Now, here, the affirmer of that proposition must prove it, and here I find no evidence to support it. The evidence for the defence, including the very cogent evidence of the *post mortem*, is absolutely destructive of the idea. But, apart from that, the doctors who speak for the respondent affirm no such proposition. All they say, at the utmost, is that a fall may be the original cause of sarcoma, and that sarcoma may grow to the size here observed within a period no longer than that which elapsed between this fall and this death. But they never say that, in their opinion, the fall caused the sarcoma which caused the death. No wonder they did not do so, for their own diagnoses ignored sarcoma altogether, and their certificates of death are absolutely inconsistent with death being the result of the accident.

I must add that the entry "contusion of chest" in the register of deaths proves, in the absence of the doctor, nothing as to its own correctness.

There is, therefore, nothing, in my view, on which the finding of the Sheriff-Substitute can be supported.

The result must be to recall the interlocutor and find that the respondent is not entitled to compensation.

LORD KINNEAR and LORD JOHNSTON concurred.

LORD SALVESEN was sitting in the Second Division.

The Court pronounced the following interlocutor—

> "The Lords having considered the stated case on appeal along with the note to state a case between the same parties, Find in answer to the question of law in the case that the respondent is not entitled to compensation: Remit to the Sheriff-Substitute as arbitrator to dismiss the claim: Find no expenses due to or by either party, and decern."

Counsel for Appellants—Macmillan—Hon. W. Watson. Agents—Alexander Morison & Company, W.S.

Counsel for Respondent—Constable, K.C.—Garson. Agent—William Douglas, S.S.C.

Saturday, October 22.

SECOND DIVISION.

MARJORIBANKS AND OTHERS (TRUSTEES OF THE DUART BURSARY FUND), PETITIONERS.

Charitable and Educational Trusts — Bursary for "Young Man of Merit" to Secure University Education—Extension to Young Women—Trust Created after Admission of Women to University Degrees.

A truster who died in 1895, by a settlement executed in 1893, directed his trustees to apply the annual proceeds of a certain sum as a bursary "to be conferred on one young man of merit, being a native of the parishes of C or T, and to be tenable for three years," to enable the holder to attend the Arts Classes in any of the Scottish Universities with a view to taking his degree. In October 1892 women were admitted to the arts degrees of the Scottish Universities. In 1910 the trustees presented a petition to the Court craving power to extend the benefits of the trust to young women. They averred that in the fifteen years since the truster's death only three young men had been found eligible, and that in 1907, 1908, and 1909 no eligible candidate was found.

Held that in the circumstances there was not sufficient to justify the extension craved, and petition *dismissed.*

In April 1910 the Reverend Thomas Marjoribanks and others, ministers and elders of the parishes of Callander and Trossachs, and, as such, trustees of the Duart Bursary Fund, presented a petition to the Court craving power to extend the benefits of the fund to women.

By his trust-disposition and settlement, dated 13th December 1893, the late James Stewart of Duart House, Callander, who died on 18th June 1895, provided, *inter alia*, as follows:—"*In the ninth place*, I direct my said trustees and their foresaids, at the first term of Whitsunday or Martinmas occurring after my death, to lay out the sum of Twelve hundred pounds sterling in a safe investment of as permanent a nature as possible, and to take the title thereto or other document thereof in the names of the Ministers and Kirk-Sessions of the parishes of Callander and Trossachs jointly, and their successors in office, and to deliver said title or document over to the said Ministers or Kirk-Sessions. And I request and direct the said Ministers and Kirk-Sessions regularly to uplift the interest or produce derived from such investment, and to apply the whole free amount thereof as a bursary to be called the 'James Stewart, Duart, Bursary,' to be conferred on one young man of merit, being a native of the parishes of Callander or Trossachs, and to be tenable for three years, to enable such young man to attend the Arts Classes in any of the Scotch Universities with the view of his taking the degree of Master of Arts, and his attendance at such classes shall be a condition of his holding such bursary; and I hereby give full discretionary power to the said Ministers and Kirk-Sessions jointly as to the mode of selection of the person from time to time to hold said bursary, hereby constituting them jointly the sole patrons thereof, their decision on all points to be final; and with power to the said Kirk-Sessions to alter the investment of the said sum of Twelve hundred pounds sterling as they may think proper or advisable."

The petitioners averred — "The petitioners, as soon as they were vested in the capital of the foresaid bequest, proceeded in every way they could think of to make known to the public, and more particularly to the inhabitants of the parishes of Callander and Trossachs, the terms of the said bequest, and to invite applications to be made to them by young men for the benefit of the bursary fund. Towards this end advertisements have also been frequently inserted in *The Scotsman*, *Glasgow Herald*, and *Callander Advertiser* newspapers. The petitioners, who, as a body, are thoroughly acquainted with the whole inhabitants of the foresaid two parishes, have also used every possible personal endeavour to inform all likely persons of the terms of the foresaid bequest, but, notwithstanding all their efforts, advantage has not been taken of it to anything like its full extent. Though the fund has now been in existence for nearly fifteen years only three young men have in all that time applied and been found qualified for the benefit of the bursary. In several years no young men presented themselves as applicants, and notably in 1907, 1908, and 1909 no eligible applicant was found. The accumulated revenue in the hands of the petitioners now amounts to £147. Though advantage does not seem to be taken of the fund by the young men of the said two parishes (which have not a very large population), the petitioners have, since the institution of the bursary, received repeated applications for it from young women in these parishes who are qualified in all respects but that of sex to receive the bursary, and who are desirous, with the assistance afforded by the bursary, of prosecuting their studies at a Scottish University. In particular, in the years 1907, 1908, and 1909, while there were no applications from young men, the petitioners received applications for the bursary from young women who, apart from sex, were fully qualified to receive it. In view of the terms of the bequest, however, all such applications from the young women of these two parishes have been rejected by the petitioners, who were advised that the constitution of the bequest was such that they were and are not entitled without the authority of the Court to select young women for the benefit of the bursary. . . . The petitioners accordingly respectfully suggest that the clause of the deed constituting the said bursary should be amended by substituting for the words 'young man' and 'his,' where these words occur in said clause, the words 'young man or woman' and 'his or her' respectively."

On 19th May the Court remitted to Lord Kinross, advocate, to inquire and report.

The reporter reported as follows—"The reporter is aware that the practice of the Court has been to authorise extension in the case of bequests of a nature so circumscribed as to result in practical futility, provided that such extension could fairly be regarded as in no way at variance with the wishes of the testator and in general harmony with the scheme of the settlement. The reporter does not think that a case for interference has been made out in the present petition.

"In the first place, the testator died at a comparatively recent date (1895), and at a time when the admission of women to the degrees of the Scotch Universities was an established practice. The admission of women to the arts degree in the Scotch Universities took place in October 1892. Therefore in this respect the case is different from any of the cases where extension to women has been granted —*Governors of Spence Bursary Trust*, 25 R. 11, 35 S.L.R. 18; *Macpherson and Others for Powers*, unreported, October 1898; *Clark Bursary Fund Trustees*, 5 F. 433, 40 S.L.R. 352; *Blyth Scholarship Fund Trustees* v. *University Court of St Andrews*, 7 F. 855, 42 S.L.R. 652).

"In the second place, the reporter cannot concur in the view that the bequest has become so practically unworkable as to justify the intervention of the Court (*Grigor Medical Bursary Fund Trustees*, 5 F. 1143, 40 S.L.R. 818).

"It is true that petitioners state that in fifteen years only three young men have enjoyed its benefits, but as the bursary is tenable for three years, the result is that during nine years out of the fifteen the funds have been fully employed as directed. The present accumulation amounts to only three years income, and the benefit of this will accrue to any suitable applicant when he presents himself. On the assumption that the testator desired to benefit 'young men' only, the extension would, if the failure of a male applicant in any given year permitted the introduction of a young woman to the bequest, result in the exclusion for the two following years of such male applicant as might emerge after the bursary had been given to a female. The reporter can see no reason why, although admittedly there may be years in which the income is for the moment derelict, the favoured parishes should not from time to time furnish male bursars in such numbers as to render the bequest practically useful."

In the Summar Roll the petitioners moved that the prayer of the petition be granted, and argued that in the circumstances the alteration craved was necessary —*Clark Bursary Fund Trustees*, February 5, 1903, 5 F. 433, 40 S.L.R. 352. There was more than mere difficulty in getting suitable candidates, which of course would not be sufficient — *Grigor Medical Bursary Fund Trustees*, July 15, 1903, 5 F. 1143, 40 S.L.R. 818.

LORD JUSTICE-CLERK—The Court think that the reporter has well stated the grounds on which the petition ought not to be granted at present. Our decision will not prevent the trustees from coming forward with another application if the circumstances change.

The Court dismissed the petition.

Counsel for the Petitioners — Kemp. Agents—W. & W. Finlay, W.S.

Saturday, October 22.

FIRST DIVISION.

[Sheriff Court at Glasgow.

M'NEICE *v.* SINGER SEWING MACHINE COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1)—*Accident "Arising out of" Employment.*

A salesman and collector, while riding in a street upon a bicycle, in the course of his employment, was kicked on the knee by a passing horse and injured.

Held that the injury was caused by an accident "arising out of" his employment within the meaning of the Workmen's Compensation Act 1906.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) enacts—Sec. 1 (1)—"If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall . . . be liable to pay compensation. . . ."

Samuel M'Neice, salesman and collector, Cathcart, having claimed compensation under the Workmen's Compensation Act 1906 from his employers the Singer Sewing Machine Company, Limited, Bothwell Street, Glasgow, the matter was referred to the arbitration of the Sheriff-Substitute at Glasgow [Scott Moncrieff], who assoilzied the respondents and at the request of the applicant stated a case for appeal.

The *facts* stated were as follows—"(1) That the appellant was a salesman and collector in the employment of the respondents. (2) That upon 3rd September 1909 he was riding in Holmlea Road, Cathcart, upon a bicycle in the course of his employment, when he was kicked upon the knee by a passing horse and incapacitated from work."

The Sheriff-Substitute further stated—"I found in point of law that as the accident did not arise out of his employment the appellant was not entitled to compensation in terms of the Workmen's Compensation Act 1906. I therefore assoilzied the respondents with expenses."

The *question of law* was—"In view of the findings in fact, was the arbitrator right in holding that the accident to the appellant did not arise out of his employment with the respondents?"

Argued for appellant — *Esto* that the accident arose "in the course of" the appellant's employment, it also arose "out of" it, for he was in the street not as an ordinary pedestrian but in pursuance of his employment. He was therefore entitled to compensation — *Mackinnon* v. *Miller*, 1909 S.C. 373, at p. 379 foot, 46 S.L.R. 299; *M'Donald* v. *Owners of the Steamship "Banana,"* [1908] 2 K.B. 926, at p. 929; *Andrew* v. *Failsworth Industrial Society*, [1904] 2 K.B. 32; *Challis* v. *London & South-Western Railway*, [1905] 2 K.B. 154;