

The Court pronounced this interlocutor—

“The Lords (along with Lord Hunter, who presided at the trial) refuse the bill; disallow the exceptions; of consent apply the verdict found by the jury on the issue in the cause, and in respect thereof assoilzie the defenders from the conclusions of the action, and decern: Find the defenders entitled to expenses, and remit,” &c.

Counsel for Pursuer—Sandeman, K.C.—MacRobert. Agents—Connell & Campbell, S.S.C.

Counsel for Defenders—Watt, K.C.—Macmillan, K.C.—Black. Agents—Macpherson & Mackay, S.S.C.

Thursday, January 24.

SECOND DIVISION.

[Sheriff Court at Dumbarton.

HERBISON v. M'KEAN.

Sheriff—Poor's Roll—Application for Admission—Reporters on Probabilis causa litigandi—Poor's Agents—Poor's Agents Acting in Double Capacity in Same Action both as Agent for Party and as Reporter—Competency—Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51), Sched. I, Rule 163.

The Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51) enacts—“First Schedule, Rule 163.—The Sheriff shall remit the application [for the benefit of the poor's roll] to the procurators for the poor, who shall notify the parties, and after inquiry shall make a report to the Sheriff.”

It is incompetent in the Sheriff Court for a poor's agent to act as a reporter on the *probabilis causa litigandi* in an action where he is acting as poor's agent for one of the parties.

May M'Kean, Yoker (*respondent*) presented a petition in the Sheriff Court at Dumbarton for the benefit of the poor's roll for the purpose of prosecuting an action against James Herbison, Dalmaur (*appellant*). Mr Andrew Duncan, one of the agents for the poor, acted as agent for the petitioner, and as such signed the petition. On 17th December 1912 the Sheriff-Substitute (M'DIARMID) remitted “to any two of the agents for the poor to inquire and report as craved,” and on 24th December 1912 Mr Duncan, along with Mr Kenneth S. Mackenzie, another of the agents for the poor, considered the application in the capacity of reporters on the *probabilis causa litigandi*, and reported as follows:—

“Report.—At Dumbarton the 24th day of December 1912. Appeared the defender, with John Lawrie, writer, Clydebank, as agent for him, and in presence of the undersigned agents for the poor, who, after due inquiry into the pursuer's cause, report that the pursuer has a probable cause of

action and is entitled to the benefit of the poor's roll.

“AND, DUNCAN, *Agent for the Poor*.
“KENNETH S. MACKENZIE.”

Thereupon the Honorary Sheriff-Substitute (HENDERSON), by interlocutor dated 30th December 1912, appointed Mr Duncan, “one of the agents for the poor, to take charge of the pursuer's cause and conduct the same to its final issue.”

The defender appealed to the Second Division of the Court of Session, and on the case appearing in the Single Bills objected to the admission of the pursuer to the poor's roll on the ground that one of the two reporters on the *probabilis causa litigandi* who had considered the pursuer's application and reported in favour of her admission was the agent who was acting for her at the time.

The Court, which consisted of the LORD JUSTICE-CLERK, LORDS DUNDAS, SALVESEN, and GUTHRIE, pronounced this interlocutor—

“Find that the proceedings before the agents for the poor on the remit to them by the Sheriff-Substitute were irregular and incompetent, in respect that the agent for the applicant was one of the two agents who reported in favour of the admission of the applicant: *Hoc statu* recal the interlocutor of 30th December 1912, and remit the petition to the Sheriff to remit of new to the agents for the poor to inquire and report and thereafter to proceed as accords.”

Counsel for the Appellant—Aitchison. Agents—Dove, Lockhart, & Smart, S.S.C.

Counsel for the Respondent—W. A. Fleming. Agents—Shield & Purvis, S.S.C.

Saturday, January 25.

SECOND DIVISION.

(Before Seven Judges.)

[Sheriff Court at Alloa.

ALLOA COAL COMPANY, LIMITED v. DRYLIE.

Master and Servant—Workmen's Compensation Act 1906 (6 Edw. VII, c 58), sec. 1 (1)—Injury by Accident—“Accident”—Pneumonia following Chill Caused by Partial Immersion in Water.

A pump in a wet pit having been stopped in order to repair a defect, water accumulated in the pit bottom and rose to the knees of certain miners, who in consequence of the rising water had left their work, and were waiting for the cage to take them to the pit-head. One of the miners in consequence of this immersion contracted a chill, on which, after he had done some work on three subsequent days, pneumonia

ensued, from which he ultimately died. *Held* (*diss.* Lord Salvesen) that the contraction of pneumonia in such circumstances might be an injury by accident in the sense of the statute, and consequently that there was evidence on which the arbiter could find that the workman's death was due to accident.

Per Lord Dundas—"I think one may postulate as a result of all the decisions that you must have a definite accident of some sort—not necessarily an occurrence extraneous to the workman—involving something unusual, unexpected, and undesigned, to which the injury or death can be unequivocally—or at least by a reasonably inferred train of causation in fact—attributed; and also probably, as a corollary, that death from disease—apart from the industrial diseases specially mentioned in the Act of 1906 and subsequent statutory rules and orders—is not an 'accident' unless the disease which caused death can be definitely collocated in the relation of effect to cause with some unusual, unexpected, and undesigned event arising at an ascertained time out of the employment."

Mrs Margaret Walls or Drylie, widow of John Drylie, as an individual, and as tutrix and administratrix-in-law for her two pupil children, Jeanie Drylie and Robert Drylie, and John Drylie, another son of the deceased, *respondents*, claimed compensation under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), from the Alloa Coal Company, Limited, *appellants*. The Sheriff-Substitute at Alloa (DEAN LESLIE), acting as arbiter, having awarded compensation, the Alloa Coal Company, Limited, appealed by way of Stated Case.

The Case stated—"The case was heard before me on 17th January 1912, the medical referee also being in attendance as assessor, and on 3rd February 1912 I found after advising with the medical referee, that the pursuers are the wife and children of the deceased John Drylie, and were dependent upon him; that John Drylie was a brushing contractor in the service of the defenders, forty-five years of age; that he was a healthy man; that his average weekly earnings were at least £2; that on 25th September 1911, while he was at work along with two other men in the defenders' Brucefield Pit, owing to a defect in the pump water began to accumulate at the pit bottom; that the pump was stopped in order that this defect might be remedied; that the stoppage allowed the water still further to accumulate; that when the men found the water rising they became somewhat alarmed, and decided to leave their work and the pit; that they arrived at the pit bottom heated from the exertion of their work and their haste on the way to the shaft; that the cage did not descend for them in reply to their signals until they had stood for about twenty minutes at the pit bottom while the repair to the pump was being completed; that, while

they were standing there the water rose two inches, until they were immersed up to the knees in icy cold water; that there was a draught of cold air falling down the shaft upon them; that they were severely chilled by this exposure; that on reaching the pit-head the deceased John Drylie remained hanging about for twenty minutes or half an hour; that he complained of chill on arrival at his house; that on the following day, Tuesday, 26th September, he suffered from cough, hoarseness, and pains, but went to his work; that he left his work early; that the next day, Wednesday, was an idle day, and he only left his house to arrange about his pay lines; that occasionally while quite well he did not remain a full shift in the pit; that on Thursday and Friday he was again at work, but not for the full shifts; that his cough continued during these days; that on Friday, 29th September, he was shivering, and complained of cold all over; that on Saturday, 30th September, he was seen by a doctor, who suspected pneumonia; that on Sunday, 1st October, the doctor was assured that he was suffering from pneumonia; that on 8th October John Drylie died of pneumonia; that the Brucefield Pit is a wet pit; that the workmen there generally get wet at their work; that John Drylie was exposed to wetting at his work on the days following 25th September; that it was unusual for water to accumulate in the pit to the depth of two feet; that it was unusual to repair the pump when men were at work in the pit; that the pneumonia from which deceased died was due to the chill which he received on 25th September; that his remaining at the pit-head in his wet condition, and his working on the days following, and his wetting on these days, had not a favourable effect upon the illness caused by the chill on 25th September; that the pneumonia from which deceased died was a natural sequence of the chill to which he was exposed on 25th September. On these facts, I found (1) that the death of the deceased John Drylie resulted from injury by accident arising out of and in course of his employment with the appellants; (2) that the respondents were entitled to compensation for the appellants in terms of the Workmen's Compensation Act 1906, to the amount of £265, 3s. 8d."

The *question of law* was—"Did the death of the deceased John Drylie result from injury by accident arising out of and in the course of his employment with the appellants?"

The case was heard by the Second Division, and in consequence of a difference of opinion on the Bench was thereafter appointed to be heard before Seven Judges.

Argued for the appellants—Accident was to be construed in the popular sense of the term, and there was nothing in the circumstances of this case which in ordinary popular language could be held to be an accident. The mere contracting of disease was not an accident.—*Fenton v. J. Thorley & Company, Limited*, [1903] A.C. 443;