struction can substitute or supplement such written authority. I am of opinion, however, that Mair had a complete written authority to control the detonators, and that no verbal instructions were necessary. The reason why such verbal instruction was given seems to be this—that on the date in question it was apparently the turn of Lockhart, and not of Mair, to exercise control, and Mair was asked to act because Lockhart was not at the moment available.

The other matter which seems to complicate the case is the interposition of Wilson between Mair and those to whom the detonators were issued. Wilson had written authorisation to act, but he was, in the circumstances, merely the agent or hand of Mair in distributing, and the result would have been the same had either Mair or Wilson issued the detonators direct to the authorised miners.

As regards the charge under the second part of sub-section (*e*) the Sheriff-Substitute has found that although the detonators were distributed an hour or two before they were to be used, the miners who received them kept the detonators, prior to use, in a case securely locked, and that the detonators were kept separate from other explosives. The conditions prescribed in the second part of the sub-section were thus complied with.

I therefore agree that the question should be answered as suggested by your Lordship.

The Court answered both branches of the question in the case in the affirmative and dismissed the appeal.

Counsel for the Appellant—The Solicitor-General (Morison, K.C.)—W. T. Watson. Agent—Sir William S. Haldane, W.S., Crown Agent.

Counsel for the Respondents — Horne, K.C.—D. P. Fleming. Agents—W. & J. Burness, W.S.

COURT OF SESSION.

Friday, October 23.

SECOND DIVISION.

[Lord Cullen, Ordinary.

STEWART *v.* M'LEAN, BAIRD, & NEILSON.

Agent and Client — Reparation — Investment—Duty of Agent in Recommending Investments—Reversion of Heritable Property.

Circumstances in which *held* that a lady was not entitled to recover from her law agent loss incurred by her through the fall in value of heritable property, put before her as one of several alternative investments, and purchased by her through him subject to a bond and disposition in security for which she became in consequence personally liable.

Mrs Jessie Stuart Rainnie or Stewart, residing at Polnoon Street, Eaglesham, Renfrewshire, *pursuer*, brought an action against M'Lean, Baird, & Neilson, writers, West George Street, Glasgow, and James Alexander M'Lean, William Baird, and Robert Thomson Neilson, the individual partners of the firm, as such partners and as individuals, *defenders*, for, *inter alia*, payment of £750, being the loss which the pursuer averred she had sustained through the purchase of certain heritable property on the advice of the defender William Baird acting as her law agent.

The pursuer averred—"(Cond. 2) The pursuer was a personal friend of the defender William Baird, who had known her since she was a girl, and she was in the habit of visiting at his house before and after his marriage. In the end of the year 1898 or in the beginning of January 1899 the pursuer, while visiting at the house of the defender, the said William Baird, mentioned to him that she had £200 for which she desired an investment, and asked his advice on the matter. The pursuer stated that she had no idea of what kind of investment to select, and that she was entirely ignorant of and did not understand investment and financial matters, but suggested lending the money to the Corporation of Glasgow. The defender, the said William Baird, then advised the pursuer to invest the said £200 in the purchase of heritable property, and stated that he had a property in Govan for sale belonging to a lady friend of his who desired her money as she was getting married. The defender William Baird advised the pursuer to purchase this property. He repeatedly assured the pursuer that there was no risk whatever, and that the investment was a safe and sound one. He further stated that the property would give her a return of 10 per cent. The said defender further assured the pursuer that she would be able to get back her money whenever she wanted it. Relying upon the advice and assurances of the said defender the pursuer agreed to purchase the said property. The pursuer accordingly on 6th January 1899 paid to the defenders M'Lean, Baird, & Neilson the said sum of £200, to be invested in the purchase of said property. The said William Baird was informed by the pursuer, and he was well aware, that at that time the pursuer had no means or estate other than the said sum of £200. . . . Cond (4) . . . The price of the subjects . . . was £1500, £420 being paid in cash and a bond and disposition in security for the sum of £1080 over said subjects being taken over *in gremio* of the conveyance. The said sum of £200 formed part of the said sum of £420 and the remainder thereof, £220, was advanced by the defender, the said William Baird, on second bond over the said subjects. When the defender, the said William Baird, lent the said sum of £220 he was aware that the pursuer would eventually succeed either to heritable or moveable estate on the death of certain relatives for whom he acted as law agent. (Cond. 5) The defender, the said William Baird, when he led and induced the pursuer to go into the said purchase did

not explain to her that she was to become personally liable under the said bonds for the sums of £1080 and £220. No valuation was shown to the pursuer at the time the property was purchased by the said M'Lean, Baird, & Neilson. . . . (Cond. 11) In investing the said £200 in said property the pursuer acted upon the advice of the defender William Baird. The pursuer had no knowledge with regard to the nature and liabilities of such investment, and had no business training or experience enabling her to acquire such knowledge. The said defender was aware of the nature of the proposed investment and held himself out as being in a position to advise, and did in fact advise, the pursuer with regard to the suitability and soundness of said investment. The said investment was not a safe or suitable investment and the defenders were aware of this. . . . In view of the price of said subjects, £1500, and the sum the pursuer had to invest, £200, and the personal liability under the said bonds amounting to £1300, and the feu-duty of £25 and other burdens, the said transaction is one which no prudent person would advise as a safe and sound investment."

The pursuer pleaded—"(1) The pursuer having suffered loss, injury, and damage through (1) the fault, (2) the negligence, and (3) the breach of duty of the defenders is entitled to reparation."

On 10th January 1912 the Lord Ordinary (CULLEN) assoilzied the defenders from the first conclusion of the summons.

The pursuer reclaimed, and on 30th November 1912 the Second Division recalled the interlocutor of the Lord Ordinary and remitted to him to allow a proof before answer.

On 10th June 1913 the Lord Ordinary, after a proof the import of which sufficiently appears from his opinion, again assoilzied the defenders from the first conclusion of the summons.

Opinion.—"The proof allowed by the interlocutor of the Second Division, dated 30th November 1912, has now been taken. As the result of it certain matters bearing on the case are put beyond dispute.

"In the first place, there is no foundation for the pursuer's allegation that the defender Mr Baird had a personal interest in the sale to her of the tenement No. 6 Hutton Drive, Govan. It is unfortunate that the pursuer should have conceived the suspicion that Mr Baird did have such an interest, because in that suspicion there is, I think, mainly to be found the genesis of her complaints against the defenders and of the present action.

"In the next place, it is clear, and is conceded, that the purchase of the tenement on its merits, as between seller and buyer, was a fair and proper transaction. The property was a new one, well built, and in a desirable neighbourhood. It was worth at least the price of £1500 paid for it. The pursuer in exchange for this price became the owner of a property of equivalent value. She was not, therefore, immediately damnified by the transaction. And for several years thereafter the property maintained its value and yielded a good return, in respect of which the defender received from the pursuer repeated expressions of gratitude. Then came bad years, when he was denounced by the pursuer as the author of her ruin.

"In the next place, it is, I think, clear enough that while the property was worth its price when bought, there were no circumstances attending it calculated to give rise, in the mind of a person of reasonable prudence and foresight, to the apprehension that it was not likely to maintain its value. It was, as I have said, new, well built, and in an eligible neighbourhood. It was fully let. It maintained its value for several years. The depreciation which ultimately ensued was due to no vice in the property itself but to general causes. These were that Govan became overbuilt for its needs in this class of property, and that there came a general 'slump' or depression—indeed stagnation—in the property market, which has not, unfortunately, been confined to Govan, but has equally affected Glasgow and many other towns.

"In the next place, the defender Mr Baird acted in perfect good faith towards the pursuer. She was an old friend. He was kindly disposed towards her and desired to do her a good turn. He lent her £220 to enable her to make the purchase, for which she gave him a second bond ranking after the first bond for £1080.

"In these circumstances the pursuer's case does not rest on any negligence or breach of duty on the defender's part in the selection of the particular property which she purchased. It was an eligible property as a subject for the kind of investment which was made of her money.

"The pursuer's case, however, is that Mr Baird should not have allowed her, so to speak, to embark her money in that kind of investment at all, no matter how sound in itself was the purchase of the property which formed the subject of it. And the ground she advances comes, I think, to this, that in the event of a depreciation from unforeseen causes of the value of the property, the pursuer stood exposed to the risk of not only losing her £200, but of being called on to make good the personal obligations under the bonds. She says that it was the duty of Mr Baird to bring under her notice the matter of her personal liability on the bonds, and that he failed to do so.

"That the pursuer must have realised well enough that she might, through a fall in the value of the property, lose part or all of her £200 goes without saying. She was purchasing a heritable property, and the risk of depreciation in its market value was an inherent and obvious one. She charges the defender Mr Baird with having told her that the purchase was a safe and sound one. This expressed Mr Baird's opinion that the purchase was a sound one on its merits, which was justified. The pursuer's apparent view that Mr Baird meant by so expressing himself to guarantee her against any possible loss is a merely feminine one.

"The pursuer's claim must be founded on some distinct failure of professional duty towards her on the part of the defenders. And the failure of duty on which the pursuer's counsel rested his case was failure on the part of the defender Mr Baird to explain to the pursuer the nature of the investment which she was making, and in particular that she was becoming personally liable for the bonds. There is a conflict between the evidence of the pursuer and Mr Baird on this matter. I accept the evidence of Mr Baird, which impressed me as truthful and reliable. He had no end of his own to serve by getting the pursuer to invest her money as she did. He says that when she consulted him as a friend regarding an investment he told her that he was conversant only with investments in heritable property—in which region his professional practice lies—and that there were three modes of investment, namely—(1) to lend on first bond at a small rate of interest with a correspondingly good security; (2) to lend on a postponed bond at a higher rate of interest with a correspondingly inferior security; and (3) to buy a property with the aid of money borrowed on bond, and with the prospect of a much higher return, if the property were well purchased, than could be obtained by lending on either a first or second bond, but with a greater risk. He further says that the pursuer, after consideration, pronounced in favour of the third mode of investment, and that thereafter he proposed to her the purchase of the tenement No. 6 Hutton Drive, Govan, as a suitable subject for such an investment, as in fact it was. I believe Mr Baird's evidence.

"The pursuer, however, maintains, as I have said, that Mr Baird did not explain to her that in purchasing the property on the footing she did she undertook personal liability for the bonds. Mr Baird says that he did.

" Now it is the evidence of both the pursuer and Mr Baird that the latter read over and explained to the pursuer the deeds which she signed. These were (1) the second bond for £220 granted by the pursuer to Mr Baird, and (2) the disposition by the seller in favour of the pursuer which contained, *in gremio*, a clause, conform to section 47 of the Conveyancing Act of 1874, whereby the pursuer undertook personal liability under the first bond for £1080. Now as Mr Baird was acting in perfect good faith it seems to me quite clear that his motive in reading over and explaining the deeds must have been, as he says, that the pursuer might understand clearly what she was doing. The pursuer did not ask him for any additional explanations, and she appeared to him to fully understand the purport of the transactions. If she did not, I do not think that was his fault. It may perhaps be that the pursuer being convinced in her own mind that Mr Baird was doing his best for her lent an inattentive ear to the terms of the deeds and his explanations, while appearing to be quite satisfied and asking no questions. I cannot, however, think that Mr Baird can be responsible for this, if he gave such explanations as were calculated to inform the mind of any intelligent person paying the attention to them which he was entitled to expect would be given. He depones that he was satisfied that the pursuer understood what she was doing. And I believe that he is speaking the truth.

"On the whole matter I am of opinion that the pursuer has not shown that the defender Mr Baird was guilty of any breach of professional duty towards her in connection with her investment, which has proved unfortunate through causes for which he is not responsible, and that accordingly the defenders are entitled to absolvitor."

The pursuer reclaimed, and argued—On the evidence it was the defender and not the pursuer who selected the investment, but where a client relied on an agent to select an investment for him, the agent was bound to exercise reasonable care that the investment was a safe and proper one. If the law agent held himself out as competent to advise as to investments, he had the liabilities of a trustee. The defender in the present case had not exercised reasonable care and was in fault in not pointing out the disadvantages of the security which he ought to have been aware of, and which his client could not be expected to know—*Rae* v. *Meek*, July 19, 1888, 15 R. 1033, 25 S.L.R. 737, August 8, 1889, 16 R. (H.L.) 31, *per* Lord Shand, at pp. 1051-1052, on the liabilities of law agents, 27 S.L.R. 8; *Oastler* v. *Dill, Smillie, & Wilson*, October 29, 1886, 14 R. 12, 24 S.L.R. 18; *Cleland* v. *Brownlie, Watson, & Beckett*, November 30, 1892, 20 R. 152, 30 S.L.R. 149.

Counsel for the respondents were not called on.

LORD JUSTICE-CLERK—We think it is not necessary to call for a reply. Formerly when this case was before us we thought it desirable before disposing of it that there should be a proof in view of certain very specific averments which were made by the pursuer in her record, and which, if proved, might have been of the greatest value to her case, but which, if not proved, left the case in a very different position. The proof has been led, and I am satisfied that she has failed to prove the strong averments which she made in her record.

The history of the transaction is extremely simple in itself. The pursuer had a small sum of money which she wished to invest, and she wanted to get interest at as high a rate as possible. She was not at the time applying to Mr Baird as a client to a solicitor, because Mr Baird and she were on very friendly terms, and the conversations which ensued in reference to this matter at first took place in his house where she was a guest. Accordingly, as was quite proper, up to a certain point Mr Baird made no professional charges whatever in connection with this matter.

Mr Baird told the pursuer of three modes of investment which were of the nature of "safe and sound investments." One was to get a first bond over heritable property,

the second was to proceed upon a second bond, which was not so absolutely safe as a first bond, and the third was to do what was ultimately done, to purchase a property with the aid of money borrowed on bond, and thus to become the proprietor of the property.

For a good number of years the return was excellent. The pursuer, I think, in one of her letters expresses her great delight and satisfaction that Mr Baird should be able to send her such handsome cheques as he was doing. Then there came, as often comes in Glasgow in a cycle of years, a sudden and terrible depression in the value of property.

The question is whether it is proved that Mr Baird acted in a way which placed him in the position of being personally responsible if there was any loss caused by the transaction. Having looked at the evidence with care, I am satisfied that there is no such proof. I am perfectly satisfied that Mr Baird did as he was quite entitled to do, or as he was bound to do, namely, placed the matter before his client in its different aspects and left her to judge whether she would take the gilt-edged course, the medium course, or the ultimate course, which last would yield a very large amount of interest, attended necessarily, of course, with risks greater than in the case where the interest was small. She had that under consideration for a considerable time, and she came and said to him that she had made up her mind to take the course number three. I confess for myself, having gone over the different points which the Lord Ordinary makes in reference to this matter, that they all meet with my complete concurrence. I think he has dealt with the case in the only way in which it could be dealt with, and the necessary result is that there is no case against Mr Baird of having acted wrongly in any way in the advice he gave. That advice was such as any solicitor might reasonably have given in the circumstances as to the effect of investments of that kind, and I am of opinion that he was not in any way acting contrary to his duty, and that neither he nor his firm are liable for any loss which has resulted from the unfortunate state of things which has arisen in Glasgow.

LORD DUNDAS—I am of the same opinion. It is, I think, matter for regret that this lady should have raised and pursued this very protracted and to her disastrous litigation, and I find it is impossible not to have a great deal of sympathy with her. She has lost, apparently, her savings and her all, and she is no doubt sincerely convinced that she has been badly treated by the defender. But we cannot proceed upon grounds of sympathy or pity, but must take a legal view of the case and endeavour to administer justice between the parties.

I see no ground of liability against this defender in the matter. I agree with what your Lordship has said. The Lord Ordinary has to my mind summed up the result of the evidence so admirably that one might well be content to adopt his language rather than go over the same ground again in perhaps less well-chosen terms. I can only say for my own part that I demur to the idea that a law agent is liable in damages for loss ensuing from an investment of which he has honestly expressed a favourable opinion to his client even although it be of a somewhat speculative character, provided he has sufficiently explained to the client the true nature of the investment and its attendant risks and dangers as well as its temptations and advantages. The amount and kind of explanation that may be necessary will vary largely in different cases, according, not so much to the sex of the client—a view which was somewhat strongly advocated at one stage of the pursuer's argument—as in accordance with the client's intelligence and experience and the nature of the subject which is being discussed.

The point is, did Mr Baird sufficiently explain the position to his client? I think he did. The Lord Ordinary believes Mr Baird's evidence and I accept his view. Mr Baird's *bona fides* was fully conceded; and the pursuer's counsel at our Bar frankly declined to make any point based upon the defender's alleged personal or pecuniary interest in the matter. Mr Baird says that he explained to Mrs Stewart that the only investments that he knew about, or would undertake to talk about, were heritable investments, and anything that passed between them was on that footing. He says he described to her to the best of his ability the three classes of heritable security with which he was familiar. He says—"I told her what I thought of them, and I said—'A first bond is a first charge on a property, and it is the safest investment with the smallest return. A second bond is a second charge. It is a safer investment than buying, because you have the reversion between you and a loss; and the third is buying the reversion where the return is big and the risk is greater.' As far as I know that is all I said." The evidence goes on—"(Q) Before you came to consider No. 6 Hutton Drive, had you expressed to her an opinion that any one of the three modes of investment over property you had told her about was a safe and sound means of investment for a person in her position?—(A) At the meeting when I told her about my knowledge of investments, I simply told her that these were the three investments I knew of. I told her the features of each. (Q) Did you express approval of them?—(A) I told her my own experience. I said—'I have invested money in the reversion of property and it has paid me well.' (Q) Did you make a general recommendation to her of such a mode of investment?—(A) I believe, no doubt, I said that if she wished a big return I considered that quite a good investment, a sound investment. *By the Court*—I mean a sound investment if the property were well bought."

It seems that thereafter the lady expressed her preference for the third class of investment which Mr Baird had explained to her. The defender says—"She called on me at that time, either in the end of 1898 or beginning of 1899, and told me she had con-

sidered the matter and decided to invest in the purchase of property in respect of the large return that she got. (Q) Do you say that she called upon you and intimated her deliberate selection of one of these three things?—(A) Yes." Again he says—"When she called on me first I explained those investments to her, and she went away, and then she came back and said she had decided to buy a property. (Q) The question put to you is whether, as against that, it was not you who advised her to buy a property and made the choice for her?—(A) No, I did not make the choice for her. I put the information before her and she made the choice. (Q) Are you speaking now of the general mode of investment or of the particular investment selected?—(A) I put the various modes before her and she came back and decided she would buy and asked me to look out for a property. (Q) Your previous answer implied that it was you who chose for her this particular mode of investment?—(A) No; I chose the property, but I did not choose the particular mode of investment. I put the particulars before her, and she herself came back and said she had decided to take the investment giving the large return."

The pursuer maintains that there was no proper explanation made to her in regard to her personal liability under the bonds. There again Mr Baird's statement, which the Lord Ordinary believes, and which I accordingly accept, is quite distinct. The documents were read to the pursuer and such explanations as Mr Baird thought necessary were given, and he believes that she understood them. He sums up the matter when he says—"I have no doubt, and had no doubt then, that she understood the transaction perfectly in all its details."

If one is to accept that evidence, as the Lord Ordinary has done, it seems to me that there is no case made out against this defender, and the only course open to us is to adhere to the interlocutor. It is unfortunate in a way that all this long expensive proof had to be taken. The shorter course would, no doubt, have been to throw out the case upon the record as the Lord Ordinary originally did, but I still think we were bound to do what we did in allowing a proof. I am afraid the pursuer has only herself to blame for what has occurred, because of the averments which she thought fit to make upon record and which have not been established when the facts were brought to probation.

LORD SALVESEN—In common with Lord Dundas I regret the pursuer did not acquiesce in the first judgment on relevancy which Lord Cullen pronounced; but when the case came before us and our attention was called to certain averments upon record which the pursuer did not formally withdraw we had no option but to allow inquiry.

In condescendence 2 she said—"The defender William Baird advised the pursuer to purchase this property. He repeatedly assured the pursuer that there was no risk whatever." If that had been proved it would have affected very seriously my mind as regards the defender's liability, because if a law agent asserts that the purchase of the reversion of a property is as safe an investment or as free from risk as a loan of money upon a first bond, then I think he makes an assertion which is not merely untrue to his knowledge but would be extremely misleading to the client. In another part of her condescendence the pursuer said—"The defender when he led and induced the pursuer to go into the said purchase did not explain to her that she was to become personally liable under the said bonds for the sums of £1080 and £220." That averment the Lord Ordinary has held to be entirely disproved. Then there are further averments that this property was part of a building speculation of Mr Mickel and Mr Baird and that both these gentlemen were interested in getting the property sold, and that Mr Baird made certain untrue representations with that object. There is no trace of evidence supporting these very serious averments.

No doubt Mr MacRobert came here saying that he did not impugn the honesty and good faith of Mr Baird in this matter, and that he did not assert that the price of £1500 which was paid for this property was not a perfectly fair price. Standing these averments, however, we thought we could not take the shorthand method which the Lord Ordinary followed of disposing of the case on relevancy. The result has been that there has been a proof in which it has been demonstrated that these averments, which alone made this record relevant, ought never to have been made by the pursuer and are not even supported by her own evidence.

On the merits of the case I agree with both your Lordships in what you have said, and I do not desire to add anything to what has already been so well stated by the Lord Ordinary.

LORD GUTHRIE—I am of the same opinion. The question is accurately stated by the Lord Ordinary when he says that the pursuer has not shown that the defender Mr Baird was guilty of any breach of professional duty towards her in connection with her investment. Mr Baird's case certainly starts favourably, because it is perfectly clear, as the Lord Ordinary puts it, that he had no personal interest whatever in the matter, and further that as an old friend he was willing to advance £220 out of his own funds to enable the transaction to go through.

I think it is fairly clear that this action really originated in two mistakes in the pursuer's mind—first, that the defender had a direct and personal interest, and second, as the Lord Ordinary puts it—"The pursuer's apparent view that Mr Baird meant by so expressing himself to guarantee her against any possible loss is a merely feminine one." The last view was naturally not maintained by her counsel, but it appears from her evidence quite distinctly that that has always been her position.

Mr MacRobert said that Mr Baird might be considered either as having selected the

investment or as having advised as to the investment. It seems to me that it is not proved that he selected the investment. It is proved that he told the pursuer that the only investments about which he could advise were investments in land, because they were the only investments that he knew about, and that she then selected the investment in land and instructed him to go on and invest her money.

That being so, I concur with your Lordships in thinking that the Lord Ordinary has correctly negatived the case made by the pursuer in the record and in the evidence. It was a case of advising, not of selecting, and as adviser he was bound to do two things—first, to explain the nature of the investment, and second, to read over to her the deeds she had to sign. It seems to me clearly proved that he did both. It does not follow she is dishonest when she gives a different account.

I only add, that while I hold that no legal liability attaches to Mr Baird in connection with the transaction in question, I think that as her friend it would have been better if he had endeavoured to dissuade a client in Mrs Stewart's position financially from the investment which she made. But that is to enter into a region with which we, dealing with the question as a legal one, have nothing to do. In Mr MacRobert's able argument I think the duties of a friend and the duties of an agent were often confused.

The Court adhered.

Counsel for the Pursuer and Reclaimer—Blackburn, K.C. — MacRobert. Agent—Henry Wakelin, Solicitor.

Counsel for the Defenders and Respondents—Sandeman, K.C.—D. P. Fleming. Agents—Laing & Motherwell, W.S.

Thursday, October 29.

FIRST DIVISION.

[Sheriff Court at Hamilton.

MERRY & CUNINGHAME, LIMITED *v.* M'GOWAN.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 8—*Industrial Disease—Liability of Last Employer.*

A miner was disabled by an industrial disease on the day after he entered the service of his employers. On his bringing an application to receive compensation from his employers it was found by the arbiter that the nature of his employment with them had contributed to his disablement, but that the disablement was due in part to his previous employment within twelve months of the disablement, and that the symptoms had first manifested themselves considerably before that period. *Held* that the disease being due to the nature of his employment within the twelve months previous to the disablement in the sense of section 8 (1) of the Act, compensation was recoverable in the first instance from the employers who had last employed him during that period.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) enacts—Sec. 8—"Application of Act to Industrial Diseases—(1) Where (i) the certifying surgeon appointed under the Factory and Workshop Act 1901 for the district in which a workman is employed certifies that the workman is suffering from a disease mentioned in the Third Schedule to this Act, and is thereby disabled from earning full wages at the work at which he was employed . . . and the disease is due to the nature of any employment in which the workman was employed at any time within the twelve months previous to the date of the disablement . . . whether under one or more employers he or his dependants shall be entitled to compensation under this Act as if the disease . . . as aforesaid were a personal injury by accident arising out of and in the course of that employment, subject to the following modifications:—(*a*) The disablement . . . shall be treated as the happening of the accident . . . (*c*) The compensation shall be recoverable from the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due . . . (2) If the workman at or immediately before the date of the disablement . . . was employed in any process mentioned in the second column of the Third Schedule to this Act, and the disease contracted is the disease in the first column of that schedule set opposite the description of the process, the disease, except where the certifying surgeon certifies that in his opinion the disease was not due to the nature of the employment, shall be deemed to have been due to the nature of that employment, unless the employer proves the contrary.

"*Third Schedule.*

"Description of disease.	"Description of process.
"Anthrax.	"Handling of wool, hair, bristles, hides, and skins."

By Order of the Secretary of State, dated May 22, 1907, "nystagmus" as a disease opposite "mining" as a process comes under section 8 as if in the third schedule.

Michael M'Gowan, miner, 107 Stonefield Road, Blantyre, *respondent*, presented an application in the Sheriff Court at Hamilton against Merry & Cuninghame, Limited, coalmasters, Auchenraith Colliery, Blantyre, *appellants*, to recover compensation from them in respect of miners' nystagmus contracted by him while in their employment. Proof was led before the Sheriff-Substitute (HAY SHENNAN), sitting with a medical assessor, who found in favour of the respondent, and at the appellants' request stated a Case for the Court of Session.

The Case stated—". . . The following facts were admitted or proved:—(1) Since 28th January 1914 the respondent has been disabled by miners' nystagmus from earning full wages at the work at which he was employed. At the date of his disablement he was employed by the appellants as a