

a different category and is not as I think penal. It does not mean that if the purchaser should be a day, or for that matter an hour, late in paying the sum of £27,000 (the balance of the price less the deposit) he must forfeit both the deposit of £3000 and also his right to demand delivery of the ship. The clause as I read it assumes that the purchaser has so acted as to entitle the seller to treat the contract as repudiated. If that is its true meaning it cannot be described as so unreasonable that it ought not to be literally enforced. The vendor had a legitimate interest to stipulate for a forfeitable deposit as a guarantee that the purchaser would do his best to carry out his part of the bargain. As Lord Robertson pointed out in his opinion in the *Clydebank* case, 1904, 7 F. (H.L.) 77, at p. 84, 42 S.L.R. 74, the presence of this element does not invalidate such a stipulation. On the contrary, in *Howe v. Smith*, [1884] 27 Ch. D. 89, at p. 101, Fry, L.J., explained that one of the purposes of a deposit is to create "by the fear of its forfeiture a motive in the payer to perform the rest of the contract," or, as Lord Macnaghten expressed it in *Soper v. Arnold*, [1889] 14 A.C. 129, at p. 435, to "guarantee that the purchaser means business." A non-forfeitable deposit would not have the same effect.

The pursuers' counsel pointed out that in the *Commercial Bank* case the forfeiture of the deposit was expressed to be "in full satisfaction of all causes of action"—in other words, represented liquidate damages in respect of a breach of the whole contract on the part of the purchaser, whereas in the present case the seller was, in addition to the forfeited deposit, given the right to re-sell the ship and to claim from the purchaser the difference between the amount realised and the "amount due" under the agreement (viz., £27,000 as I construe it), plus interest and expenses. In one aspect this looks like a leonine bargain. The seller may if he pleases treat the deposit as representing his full liquidated loss whether he keeps the ship or re-sells it on favourable terms; but if he re-sells it at a loss he may treat the deposit as a payment to account and claim his actual loss estimated on the basis laid down in the agreement. Keeping in view, however, the primary purpose of the stipulation for a forfeitable deposit, the serious damage which a seller may sustain in cases where an immediate re-sale is impossible or imprudent, and the moderate and customary amount at which the deposit was fixed in the present case, I do not think that the alternative remedy conferred upon the seller makes the stipulation for a forfeiture so unreasonable that it ought not to be enforced by a court of justice. In two of the English cases already cited the clause was in this respect the same as in the present case, but no importance was attached to this circumstance—*Soper v. Arnold*, see Report 35 Ch. D. 384; *Howe v. Smith*.

I accordingly agree that the Lord Ordinary's judgment should be affirmed.

The Court adhered.

Counsel for the Pursuers (Reclaimers)—Chree, K.C.—A. M. Stuart. Agents—Hagart & Burn Murdoch, W.S.

Counsel for the Defenders (Respondents)—Blackburn, K.C.—Constable, K.C.—MacKinnon. Agents—Beveridge, Sutherland, & Smith, W.S.

Thursday, July 11.

FIRST DIVISION.

[Sheriff Court at Lanark.]

MARR v. THE LEADHILLS COMPANY, LIMITED.

Master and Servant—Workmen's Compensation—Industrial Disease—Form of Certificate of Certifying Surgeon—"Process"—Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 8 (1) and (3), and Third Schedule—Regulations dated June 21, 1907, Made by the Secretary of State and the Treasury as to the Duties and Fees of Certifying Surgeons, Form 3.

The statutory form of certificate to be granted by a certifying surgeon to a man whom he believes to be suffering from an industrial disease requires a statement of—"2. Process in which workman states he was employed at or immediately before the date of disablement." *Held (dis. Lord Skerrington)* that the word "process" was used as meaning employment or work, and was not limited to the processes mentioned in the second column of the Third Schedule of the Workmen's Compensation Act 1906 as extended by Order.

Consequently where a workman received a certificate from a certifying surgeon which stated that he was suffering from paralysis as a sequel to, and a result from, lead-poisoning, and that he was incapacitated as from a certain date, but which did not state the work in which the workman stated he was employed at or immediately before the date of disablement, the certificate was *held* invalid as not conforming with statutory requirement.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) enacts—Section 8—“(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 . . . he . . . shall be entitled to compensation under this Act as if the disease . . . were a personal injury by accident arising out of and in the course of that employment. . . . (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 that employment, shall be deemed to have been due to the nature of that employment, unless the employer proves the contrary. (3) The Secretary of State may make rules regulating the duties and fees of certifying and other surgeons (including dentists) under this section." The Third Schedule as extended by Order dated July 30, 1913, includes in the first column "Lead-poisoning or its sequelæ," and in the second column opposite thereto "Handling of Lead or its preparations or compounds."

The Regulations dated June 21, 1907, made by the Secretary of State and the Treasury as to the Duties and Fees of Certifying and other Surgeons, provide—"Regulation 3. After personally examining the workman the certifying surgeon shall either give the workman a certificate of disablement or shall certify that he is not satisfied that the workman is entitled to such certificate, and shall in either case deliver his certificate to the workman. The certificate shall be given in the form prescribed in the schedule to these Regulations." The schedule contains Form 3, headed "Certificate of Disablement," which provides for a statement by the certifying surgeon as to the following—"2. Process in which workman states he was employed at or immediately before the date of disablement."

James Marr, *appellant*, being dissatisfied with an award by the Sheriff-Substitute at Lanark (HARVEY) in an arbitration brought by the appellant against the Leadhills Company, Limited, *respondents*, to recover compensation under the Workmen's Compensation Act 1906 and the Workmen's Compensation (War Addition) Act 1917, in respect of having on or about 15th November 1916 contracted the disease of paralysis as a sequel to lead-poisoning while engaged as a workman in the employment of the respondents, appealed by Stated Case.

The Case stated—"The case was heard before me and proof led on 14th December 1917, when the following facts were established, viz.—On 7th October 1917 the appellant obtained from Dr T. Duncan Newbigging, Abington, a certifying surgeon under the Factory and Workshop Acts for the Leadhills area of Lanarkshire, a certificate, bearing to be a certificate under section 8 (1) of the Workmen's Compensation Act 1906, in the following terms—"I hereby certify that James Marr, Lowther View, Leadhills, is suffering from paralysis as a sequel to and a result of lead-poisoning, and has been so suffering from about the middle of November 1916. He is thereby entirely incapacitated for work and disabled from earning any wages at the work at which he was employed."

"I found in law that the said certificate was irregular and invalid in respect that it failed to set forth *first* 'the process in which the workman states he was employed at or

immediately before the date of disablement,' and *second* the 'leading symptoms of disease' from which in the opinion of the certifying surgeon he was suffering, as required by Regulation 3 of the Regulations of 21st June 1907 made by the Secretary of State in pursuance of the powers conferred on him by section 8 of said Act, and I continued the case to enable the appellant, if so advised, to apply of new to a certifying surgeon for a certificate in terms of said Act and Regulations, and to enable either party who might be aggrieved by the granting or refusal of said certificate by the certifying surgeon to appeal to a medical referee, as provided by section 8 (1) (f) of the Act and Regulations relative thereto.

"The appellant applied of new to the said certifying surgeon, Dr T. Duncan Newbigging, who granted him a certificate of disablement in statutory form, which was received by the respondents on 14th February 1918. On 20th February 1918 the respondents being aggrieved by the granting of this certificate, applied to the Sheriff-Clerk for the matter to be referred to a medical referee, and on 20th March 1918 the medical referee (Dr Alexander Scott, 4 Newton Place, Glasgow) to whom the matter was referred by the Sheriff-Clerk, in terms of section 8 (1) (f) of the Act and Regulations, issued his decision allowing the respondents' appeal.

"On 27th March 1918, in respect of the medical referee's decision, I refused to award the appellant compensation, dismissed the application, and found no expenses due to or by either party."

The *questions of law* were—"1. Is the certificate granted by Dr T. Duncan Newbigging, dated 7th October 1917, a valid certificate of disablement in terms of section 8 (1) (i) of the Workmen's Compensation Act 1906, and Regulation 3 above referred to? 2. Was the Sheriff-Substitute entitled to allow a new certificate by the certifying surgeon to be lodged after finding that the first certificate granted by him, and founded on by the appellant, was invalid? 3. Was the Sheriff-Substitute right in refusing to award compensation and dismissing the application?"

The *note* of the Sheriff-Substitute appended to his award was—"The questions discussed at the hearing in this case seem to be covered by cases recently decided in England and Scotland as to the construction of section 8 of the statute, and the relative Regulations issued for the purpose of carrying its provisions into effect. The obtaining by the workman of a certificate that he is suffering from a scheduled disease, and is thereby disabled from earning full wages at the work at which he was employed, is a condition-*precedent*, not to the right to institute proceedings for an award of compensation, but to the right to obtain an award. It is sufficient if such a certificate is tabled at any stage of the proceedings—*Taylor v. Burnham & Company*, 1909 S.C. 704, 46 S.L.R. 482. The application for a certificate must in the first instance be made to a certifying surgeon, but if the workman or employer, as the case may be, is aggrieved

by the action of the certifying surgeon in granting or refusing such a certificate, he may appeal against his decision to a medical referee, and it is clearly important for the latter to have before him the grounds of the decision he is asked to review. He must know what employment is alleged by the workman to have caused the disease, and also the symptoms upon which the diagnosis of the certifying surgeon is based. It is therefore made imperative by Regulation 3 of the Regulations in question that the certifying surgeon's certificate should contain these particulars. They are essential particulars, and their absence, in my judgment, renders the certificate invalid."

Argued for the appellant—The certificate was unobjectionable in point of form; it set out that the appellant was suffering from a scheduled disease, that he was incapacitated, and the date of disablement. That was all that was necessary—Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), section 8(1) and (4). Rules as to the duties of certifying surgeons under the Act might be made—section 8(3)—and Regulations dated June 21, 1907, had been made under that section. Form No. 3 appended to the Regulations required the certifying surgeon to give information which was not contained in the certificate now in question, but the absence of that information did not nullify the certificate. That information was only required for the purposes of section 8(2) of the Act and was unnecessary for the purposes of section 8(1) which was here in question. "Process" was carefully distinguished from employment by section 8(2). The medical referee could only decide whether the certificate had been rightly granted—*Garrett v. Waddell & Son*, 1911 S.C. 1168, 48 S.L.R. 937. The appellant did not know upon what ground the medical referee had proceeded, but he must give a categorical answer as to whether the certificate had been rightly granted—*Winters v. Addie & Sons Collieries, Limited*, 1911 S.C. 1174, 48 S.L.R. 940—and that had not been done here. The appellant was not barred by having gone back to the certifying surgeon, for that was done on the footing that it was without prejudice to the appellant's contention that the certificate was perfectly good. Question 1 should be answered in the affirmative and the case remitted back.

Argued for the respondents—The first certificate was bad. It did not set out the process in which the workman said he was working prior to the disablement. The Regulations were authorised by the Act, and Regulations 2 and 3 were imperative. Until a proper certificate was obtained there was no appeal open to the medical referee, who had to proceed upon a certificate—Regulation 16 and Form 15. The information desiderated in Form 3 was necessary for the medical referee, and the process query must be filled up. "Process" meant work. If, however, the first certificate was good in point of form, the appellant had abandoned it and could not go back on that now. If the arbitrator had decided against the appellant on the first certificate, he could

have taken a stated case to raise the very point now raised. But he had in effect prorogated the jurisdiction and it was now too late to go back. Question 1 should be answered in the negative; question 2 and question 3 in the affirmative.

At advising—

LORD PRESIDENT—I consider that the learned arbitrator has reached a correct conclusion in this case. The sole question submitted for our consideration, as I read the case, is whether a certificate granted by a certifying surgeon under the Workmen's Compensation Act 1906 is valid. The difficulty arises from the use, in the form prescribed by the Regulations, of the word "process," where it is said the proper word would be "employment" or "work" or "industry." I consider that this certificate is invalid because it does not conform to the schedule appended to the Regulation dated 21st June 1907. By the third of these Regulations it is made imperative that the certificate given shall be in the form prescribed in the schedule. And when we turn to the schedule, Form 3, which is the one applicable to the present case, we find there that the certifying surgeon is enjoined to answer this question—"2. Process in which workman states he was employed at or immediately before the date of disablement."

The certificate before us is silent in answer to that question, and admittedly is thus disconform to the form prescribed by the Regulations. But the appellant says that the question which I have just read did not in his case fall to be answered, because at and prior to the date of disablement he was not employed in any process. And that is quite true if the expression "process" as used in the schedule is limited and confined to the industries or employments set out in the second column of the Third Schedule appended to the Act of Parliament and to the industries which may be from time to time embraced in that second column. I am of opinion that that is not the correct interpretation of the expression "process" as used in the certificate, but that it is equivalent to, and is synonymous with, "employment" or "industry" or "work." I come to that conclusion for two reasons—(first) because I find that in the Act of Parliament and in the very section with which we are here concerned (section 8) the terms "employment" and "process" are used interchangeably. They seem to me to be regarded as exact synonyms. Thus, for example, in section 8(1)(iii)(b) the expression "entering the employment" appears to me to be equivalent to "engaging in the process." In section 8(1)(iii)(c) "employment" I think must mean "process," and I refer very particularly to sub-section (6) of section 8, where the expression "other processes" plainly means "other employments." And it is noticeable that in sub-section (7) of section 8 the expression "industry" is used as obviously equivalent to "process." I cannot but come to the conclusion that "process" is used, just as in the Act of Parliament, as synonymous with and inter-

changeable with the expression "employment." (Second) Good sense appears to me strongly to support this view, because it is essential that the certifying surgeon as well as the medical referee should know the nature of the employment in which the man was engaged at or immediately before the date of disablement even although that employment should not be found enumerated in the second column of the Third Schedule. The fact that it is in that column merely gives the workman the benefit of a certain presumption, but it appears to me to be essential that the certifying surgeon and the medical referee should be fully apprised of the history of the case with which they are dealing and that they could not be if this question is not answered.

No practical difficulty appears to have been experienced in interpreting the form which we have before us, because when the learned arbitrator appointed a correct certificate to be made out the certifying surgeon obtained and recorded the answer from the workman in the present case that the process in which he was employed at or immediately before his disablement was that of an engineman at a lead mine and that he was occasionally employed cleaning flues.

On these grounds I am of opinion that this certificate was not valid in terms of the statute, and accordingly that the learned arbitrator was quite right when he appointed a certificate in terms of the statute to be given in before proceeding to deal with the case. I propose that we should answer the first question put to us in the negative, and if so it follows that the second and third require to be answered in the affirmative.

LORD MACKENZIE — I am of the same opinion. From the statement of the case it appears that the workman here has failed to get the necessary certificate to enable him to take steps to bring himself within section 8(1)(i). He got a certificate from the certifying surgeon, but the finding of the certifying surgeon was reversed by the medical referee, and the workman now seeks to revert to the original certificate which the learned arbitrator has found to be invalid. Therefore the case comes up in an unfavourable way for the workman. But the question raised is a question of law. The arbiter has found in law that the original certificate was irregular and invalid in respect that it failed to set forth (first) the process in which the workman states he was employed at or immediately before the date of disablement, and (second) the leading symptoms of disease from which in the opinion of the certifying surgeon he was suffering, as required by the Third Regulation. I am unable to take the same view as the arbitrator in regard to the non-disclosure of the symptoms of disease, because I think the original certificate, disclosing, as it does, that the man was suffering from paralysis as the result of lead poisoning, would be sufficient in itself as satisfying the requirement that the leading symptoms be set out. But I am of opinion that it was invalid in respect that it failed to set out what the process was in which the workman stated

he was employed at or before the date of disablement. This is not a case in which the workman made no statement. We were informed that the workman stated he was employed as an engineman in a mine and occasionally as a flue cleaner.

The object of section 8 was to extend the benefits of the Workmen's Compensation Act to workmen who were suffering from diseases due to the nature of their employment, and I think the soundness of the conclusion reached by the learned arbitrator may be tested in this way. The Third Regulation is—"After personally examining the workman, the certifying surgeon shall either give the workman a certificate of disablement or shall certify that he is not satisfied that the workman is entitled to such certificate, and shall in either case deliver his certificate to the workman. The certificate given shall be in the form prescribed in the schedule to these Regulations." Now, supposing that the certifying surgeon was not satisfied that the workman was entitled to the certificate, if one turns to the form in the schedule for such a case as that, it appears under Form 5 that it is his duty to set out "2. The employment to the nature of which the disease complained of was attributed." Why should the employment be set out where the certificate is refused, and the employment not set out under Form 3 where the certificate is granted?

In both cases a right of appeal to a medical referee is given. In the one case, where the certificate is granted, the appeal is at the instance of the employer; where the certificate is refused, the appeal is at the instance of the workman. In either case it is necessary that the medical referee should be put in possession of the same information. That appears to me to be a strong reason for construing "process in which the workman was employed," not in the narrow sense, but as being synonymous with "employment" in the sense of Form 5. The two cases seem to me to be in exactly the same position.

I am unable to find any warrant in the Act for limiting the term "process"—which in a popular sense is wide enough to cover any employment—to those processes only which may from time to time be enumerated, and which therefore give the workman the benefit of the presumption under sub-section 8(2). It will be observed that the presumption under sub-section 2 is only to apply in the cases where the certifying surgeon does not certify that the disease was not "due to the nature of that employment." In that sub-section "process" and "employment" are used as interchangeable terms.

I think that there was failure here to obey the plain directions of the statute, because under sub-section 3 of section 8 the Regulations have the force of statute. Accordingly I am of opinion that the course taken by the learned arbitrator is correct.

LORD SKERRINGTON — The respondents' counsel stated a serious objection to the competency of this appeal upon the ground that the appellant must be held to have acquiesced in the arbitrator's ruling to the

effect that the first of the two certificates granted by the certifying surgeon was irregular and invalid. So far as appears from the Stated Case this question of competency was not argued to the arbitrator, nor are the facts which raise this plea fully before us. No motion was made to us to remit the Stated Case with a view to its being amended. Accordingly, the appeal must be considered upon its merits.

The Stated Case raises somewhat obscurely the question whether a certificate of disablement from an industrial disease, granted by a certifying surgeon to a workman in pursuance of section 8 (1) of the Workmen's Compensation Act 1906, is necessarily and always invalid if it fails to answer the second query in the statutory form of certificate by not mentioning the "process in which workman states he was employed at or immediately before the date of disablement." The form in question is "Form 3" of the schedule to the "Regulations, dated June 21, 1907, made by the Secretary of State and the Treasury as to the duties and fees of certifying and other surgeons, and as to references to, and remuneration and expenses of, medical referees, in Scotland under section 8 of the Act." Form 3 concludes with four questions to be answered by the certifying surgeon. For the purpose of the present appeal I shall assume that any material deviation from the form would invalidate the certificate. Obviously section 8 (2) of the Act makes it material that the employers and also that the medical referee (in case of an appeal) should be informed whether the workman claims that at or immediately before the date of disablement he was employed in one of the "processes" set forth in the second column of the Third Schedule to the Act, or in a process to which the provisions of section 8 have been extended by the Secretary of State as authorised by sub-section (6). In either case if the workman proves his claim he has the benefit of the presumption established by sub-section (2) to the effect that the disease was due to the nature of the employment, unless the certificate bears that the certifying surgeon is of a contrary opinion. The effect of this presumption when it applies is to throw upon the employer the burden of proving that the industrial disease which caused the disablement was not due to the nature of the workman's employment. On the other hand, if the workman was not employed at or immediately before the date of disablement in a process to which the Third Schedule applied or to which section 8 was subsequently extended by the Secretary of State, the burden lies upon the workman of proving that the disease was due to the nature of his employment.

The industrial disease from which the appellant claimed that he had been disabled is described in the first column of the Third Schedule to the Act as "lead poisoning or its sequelæ." The process mentioned in the second column of the same Schedule, and set opposite the foregoing disease, is described as "any process involving the use of lead or its preparations or compounds."

Accordingly if the appellant had stated to the certifying surgeon that he had been employed as a plumber at or immediately before the date of disablement, he would probably, on proving that fact, have had the benefit of the presumption that the lead poisoning was due to his employment as a plumber. It would, therefore, I assume, have been necessary that this very material statement by the workman should be mentioned in the certificate of the certifying surgeon as required by Form 3. On the other hand, if the workman alleged that being employed to work as a carpenter in a house which was being repaired and painted, he had contracted lead poisoning from the fumes of the paints used by the painters or from water on the premises which it was necessary for him to drink, he could take no advantage from the presumption but would require to prove that the disease was due to the nature of his employment. In this case the certifying surgeon would, in my judgment, be quite in order if he left question 2 unanswered as inapplicable to the circumstances.

The flaw in the arbitrator's reasoning, as it seems to me, consists in his assumption that every person who suffers from an industrial disease must necessarily have been employed in a "process" within the meaning of section 8 of the Act and of Form 3. Accordingly he has not thought it necessary even to mention in the Stated Case the kind of work at which the appellant was engaged at the time of his disablement. Counsel agreed, however, that he was then working as an engineman in a lead mine. He may be able to prove that he contracted lead poisoning either by drinking water or by inhaling gases in the workings or in some other way, and that the nature of his employment exposed him to this danger, but he did not and could not allege that he was employed "in any process involving the use of lead or its preparations or compounds." Accordingly the certificate properly left this question unanswered as being inapplicable to the circumstances.

The view, as I understand it, which commends itself to your Lordships is that the word "process" as it occurs in the second question in Form 3 is used in a general sense as equivalent to "work" or "employment," and that therefore in answer to the second question the certificate should have borne that the process in which the man had been employed was that of an engineman in a lead mine. The word "process" occurs twice in section 8, sub-section (2), and is there used in a special sense as meaning a process to which the statute has been expressly applied by the Third Schedule. The same word occurs once in sub-section (6), and is there used in a very general sense so as to enable the Secretary of State to schedule as a process any kind of work whether such work would be ordinarily described as a process or not. Seeing that Form 3 is not concerned with the duties of the Secretary of State, but is a form intended to be used in the case of disputes between employers and workmen, I consider that the word "process" was there

used in the only sense in which it has any relevancy or importance in such disputes, viz., as signifying a process which has been actually scheduled either by the statute or by Order of the Secretary of State, and not as signifying a work or employment which the latter might schedule if he thought proper to do so. It so happens that "lead poisoning or its sequelæ" is described as a "disease or injury" in the schedule to the Order of the Secretary of State of 30th July 1913, which extends the provisions of the Act of 1906 and consolidates and amends earlier Orders. The process set opposite to this disease in the second column of the schedule to the Order is described as "Handling of lead or its preparations or compounds," but this description has no application to the circumstances of the appellant's employment.

For the foregoing reasons I think that the arbitrator was mistaken in supposing that the original certificate by the certifying surgeon was defective in respect that it failed to mention the process in which the workman was employed at or immediately before the disablement. While the appeal is rested upon very technical grounds I am of opinion that it is well-founded in law.

Though the first certificate of the certifying surgeon did not in so many words reply to the fourth question in Form 3 by setting forth "the leading symptoms of disease," I did not understand it to be disputed that this requirement had been in substance complied with by the special reference to "paralysis as a sequel to, and a result of, lead poisoning" contained in the certificate quoted in the Stated Case.

For the foregoing reasons I am of opinion that the first question of law should be answered in the affirmative and the third in the negative. It is unnecessary to answer the second question.

LORD JOHNSTON was absent.

The Court answered question 1 in the negative and questions 2 and 3 in the affirmative.

Counsel for the Appellants—Watt, K.C.—A. M. Stuart. Agents—Fraser & Davidson, W.S.

Counsel for the Respondents—Sandeman, K.C.—Gentles. Agents—Robson & M'Lean, W.S.

HIGH COURT OF JUSTICIARY.

Thursday, July 11.

(Before the Lord Justice-Clerk, Lord Dundas, and Lord Guthrie.)

MACKENNA v. CITY AND SUBURBAN DAIRIES.

MACKENNA v. SCOTTISH FARMERS' DAIRY COMPANY (GLASGOW), LIMITED.

Justiciary Cases—Complaint—Citation—Competency—Summary Jurisdiction (Scotland) Act 1908 (8 Edw. VII, cap. 65), sec. 28.

A company, which bore a distinctive name but which was not a limited company, was charged on a summary complaint in which the individual partners of the company were not called. *Held* that the complaint as laid against the company was competent.

Justiciary Cases—War—Food Control—Milk—Maximum Price—Milk Order 1917—Vicarious Liability.

A company trading in milk employed a number of servants for the purpose of selling milk in the streets. A servant of the company sold milk at a price above the maximum price fixed under the Milk Order 1917. The excess of price was not handed over to the company but was retained by the servant. *Held* that the company was not liable for its servant's contravention of the Order.‡

The Milk Order 1917, No. 939, 7th September 1917, provides—Section 1—"No person shall directly or indirectly sell or offer for sale or buy or offer to buy any milk at prices exceeding the maximum prices provided by or in pursuance of this Order."

Peter Fraser Mackenna, Procurator-Fiscal, Glasgow, *respondent*, brought a summary complaint in the Sheriff Court at Glasgow, against the City and Suburban Dairies, 22 St Mungo Street, Glasgow, *appellants*.

The complaint was as follows—"The City and Suburban Dairies, 22 St Mungo Street, Glasgow, you are charged at the instance of the complainer that you did on 9th March 1918 in Wellfield Street, Springburn, Glasgow, by the hand of your servant Alexander M'Millan, who was in charge of a milk barrow or hand cart belonging to you, sell to Agnes Kerr, 85 Parnie Street, Glasgow, 19½ fluid ounces of milk for 4d., being at the rate of 2s. 8½d. per gallon, and in excess of the maximum rate of 2s. 6d. per gallon fixed by the Food Control Committee of the Burgh of Glasgow on 24th December 1917, under the powers conferred by article 5 of the Milk Order 1917, made under section 2F of the Defence of the Realm Regulations, contrary to article 1 of said Order, whereby you are liable to the penalties set forth in section 58 of said Regulations."

On 17th April 1918 the Sheriff-Substitute (CRAIGIE) found the charges in the complaint proven, and at the request of the appellants