

it is so enforced as representing one hour after sunset for the county of Inverness. It was not proved for what actual place in the county this time was calculated. I held it proved that the respondents were fishing after 8.17. If it had been proved that 8.17 was one hour after sunset, I should have found the respondents guilty of attempting to take salmon. I held it not proved that they were fishing after 8.53, or that they had any intent to take salmon after that time. On any view of the times of sunset and sunrise, it was proved that the respondents were fishing 'prior to one hour before sunrise on the following day.' I found the charge not proved on the ground that the prosecutor was bound to prove the time at which the sun set and rose at the *locus*, and that he had not done so."

The questions for the opinion of the Court were—"2. Was the time of sunset the time at which the sun set at Greenwich? or 3. Was it the time at which the sun set at the *locus*?"

Argued for the appellant—The hour of sunset must be fixed by Greenwich time. *Curtis v. Marsh*, 1859, 28 L.J., Ex. 36, in which the local time was taken as the criterion, was no longer an authority as the result of the Statutes (Definition of Time) Act 1880 (43 and 44 Vict. cap. 9). The hour of sunset was an expression of time in the sense of that Act, and must be taken to be the hour of sunset as fixed by Greenwich time. *Gordon v. Cann*, 1899, 80 L.T.R. 20, was wrongly decided, for the actual hour of sunset in any locality could not be proved except by expert scientific evidence, and to insist on proof thereof would render the Act unworkable.

Counsel for the respondents was not called upon.

LORD JUSTICE-CLERK—I think the only questions we need answer are the second and third questions, which are alternative. I am of opinion that in a prosecution for a contravention of section 27 of the Salmon Fisheries (Scotland) Act 1862, which deals with illegal fishing at night, the time to which regard must be had is the local time and not Greenwich time. Otherwise the absurdity would arise that a statutory enactment directed against fishing in the dark might be contravened by a person who was fishing in broad daylight.

Accordingly the first question having been withdrawn by consent of both parties, I think we should answer the second question in the negative and the third question in the affirmative.

LORD GUTHRIE—I am of the same opinion. I think the case of *Gordon v. Cann*, (1899) 80 L.T.R. 20, although not binding upon us, was rightly decided. The words in the Statutes (Definition of Time) Act 1880, "Whenever any expression of time occurs in any Act of Parliament," in my opinion really mean whenever a certain hour is named in any Act. I do not think it has any bearing on what we are dealing with here.

LORD HUNTER—I concur.

The Court answered the second question in the negative and the third in the affirmative.

Counsel for the Appellant—MacRobert. Agents—Duncan Smith & McLaren, S.S.C.

Counsel for the Respondents—Cooper. Agent—Alexander Ross, S.S.C.

## COURT OF SESSION.

Tuesday, January 25.

### SECOND DIVISION.

[Sheriff Court at Dunfermline.

#### KIRK v. LOCHGELLY IRON AND COAL COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 2, sub-sec. 1—Notice of Accident—"As Soon as Practicable"—"Reasonable Cause"—Prejudice.

The widow of a workman who had died of an accident arising out of and in the course of his employment, on the evening of the day of his death, which took place on 28th December, informed a delegate of her husband's union of the accident and death, and left the matter of compensation in his hands. The union officials, however, did not give notice of the accident till 6th January, and in the meantime the body had been interred. Held that notice had not been given as soon as practicable, and that there was no reasonable cause for delay, but that there was evidence on which the arbiter was entitled to find that the employers had not suffered prejudice by the delay.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) enacts—Section 2 (1)—"Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof. . . . Provided always that (a) the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake, absence from the United Kingdom, or other reasonable cause. . . ."

In an arbitration under the Workmen's Compensation Act 1906 in the Sheriff Court at Dunfermline between Mrs Mary Hepburn or Kirk, widow of David Kirk, miner, Lochgelly, respondent, and the Lochgelly Iron and Coal Company, Limited, Lochgelly, appellants, the Sheriff-Substitute (UMPHERSTON) sitting as arbiter found the company liable for compensation, and at their request stated a Case for appeal.

The Case stated—"This is an arbitration in an application for an award of compensation under the Workmen's Compensation Act 1906 by the respondent in respect of the death of her husband David Kirk, miner, who resided at 2 Dundas Street, Lochgelly, on 28th December 1914, by heart failure from heart strain as a result of injury by accident arising out of and in the course of his employment with the appellants at their Mary Pit, Lochgelly, on said date. In her application the respondent claimed to be awarded the sum of £300, or such other sum as the Court might fix. The claim was resisted by the appellants on the following grounds, viz., that the said David Kirk's death did not result from personal injury by accident arising out of and in the course of his employment; that notice of accident was not given to them as soon as practicable after the happening thereof, and they were prejudiced in their defence by the want of notice; and that the deceased's earnings in the employment of the appellants during the three years next preceding said alleged injury amounted, in the sense of the Workmen's Compensation Act 1906, to £280, 15s. 6d.

"Proof was heard before me, sitting with the medical assessor, on 16th June 1915, and on 19th June 1915 I found the following facts admitted or proved:—(1) The appellants are coalowners carrying on business at, *inter alia*, the Mary Pit, Lochgelly. On 28th December 1914 the late David Kirk was a miner in their employment at said pit. The claimant and respondent is the widow of the said David Kirk. She was wholly dependent on him at the time of his death. (2) The late David Kirk was a big man, about 5 feet 9 inches in height, a steady and able workman, and except for slight attacks of neuralgia had not suffered in any way from ill-health. He was 62 years of age at his death. He was in the habit of taking a day off each week; there was an idle Saturday every alternate week at the pit; but in addition to that David Kirk stayed at home on the Wednesday of the week when there was no idle day, and he gave as his reason that he was feeling tired. Apart from these idle days he was able for his work and did it efficiently. (3) On 28th December 1914 David Kirk went to his work as usual in apparent good health, and worked at his ordinary work as a miner from 6 a.m. until the usual breakfast time, about 9 a.m. About that time a haulage rope on a brae near his working-place broke, and an empty hutch stopped about 15 yards from the top of the brae, the gradient of which was 1 in 3. (4) Shortly before 10 o'clock David Kirk, who appeared to be in his usual health, along with his drawer Wilson and other two men, proceeded to pull the empty hutch to the top of the brae by means of the steel haulage rope, the two others pulling directly upwards on the rope and Kirk and Wilson pulling downwards on the rope, which was passed round a pulley at the top of the brae. This work was within the scope of their employment. The method adopted was when all were ready for the four to pull simultaneously

in successive 'heaves.' The operation lasted 10 or 15 minutes. Owing to the low roof (the height being from 4 feet to 4 feet 6 inches) the men were necessarily standing in a crouching position, and the work was hard. When the hutch reached the top of the brae Kirk complained to Wilson of the stiffness of the pull, and Wilson advised him to sit down and smoke his pipe. Wilson and the other men then left the place. (5) In about five or seven minutes Wilson returned. He found Kirk in a position indicating that he had sat down and then fallen over. He was only semi-conscious, and was breathing heavily. Wilson also noticed that two 6-foot rails had been laid in position, which was the work of a minute, and he presumed that this had been done by Kirk. Assistance was obtained, brandy was administered to Kirk, which slightly revived him, and he was conveyed to the pithead, where he was examined by a doctor and spoke for the first time, being able to tell the doctor his name. The doctor diagnosed that he was suffering from heart failure. Kirk was then taken home and put to bed, where his consciousness improved and he was able to speak, complaining of cold feet and pain in the back. (6) Kirk died about 4 p.m. on said 28th December, the cause of death being heart failure caused by heart strain. (7) On the evening of said 28th December a local delegate of the Miners' Union (of which Kirk was a member) called on the respondent, and in the course of conversation asked her if she wished the Union to attend to the matter of compensation. The respondent agreed to this and left the matter in his hands. At that time the respondent believed that her husband's death was due to injury by accident sustained in the pit, and that she was entitled to compensation. She had no reason to think that that claim would be questioned. (8) Nothing was done by the Union officials until after the New Year holidays. On 6th January 1915, prior to which date the remains of deceased had been interred, one of the secretaries of the Union wrote a letter to the manager and solicitor of the Fife branch of the Mine Owners' Defence Association, with whom the appellants were believed by him to be insured, and who was agent for the appellants in the present arbitration. In doing so the Miners' Union secretary acted according to the custom of the officials of the Miners' Union in cases of fatal accidents occurring in the appellants' pits. The letter was in the following terms:—'6th Jan'y. 1915. John M. Davidson, Esq., 17 Maygate, Dunfermline. Dear Sir—*David Kirk v. Lochgelly Coal Co.*—This man was injured in the Mary Pit, Lochgelly, on the 28th ulto., and died on the same date. Kindly let me know what compensation you are prepared to pay.—Yours truly, JAMES ROBERTSON.' (9) The said letter was received in course of post by the branch manager of the Mine Owners' Defence Association, who thereupon communicated with the appellants, and they made such investigation as they considered necessary. Prior to receipt of this letter appellants

had no knowledge of an accident having occurred to Kirk, although some of the officials of the pit knew that Kirk had turned ill in the pit and had died the same day. No application was made for exhumation of Kirk's body in order that a post-mortem examination might be obtained. Apart from such examination all information necessary for the defence could then be obtained. (10) If a post-mortem examination had been made after receipt of said letter, it is probable that the condition of David Kirk's heart at the time of his death would have been sufficiently ascertained to determine definitely whether death was due to a heart condition; it could have been ascertained without doubt whether death was due to cerebral hæmorrhage, which the appellants maintained in the arbitration was the cause of death.

"On the above facts I held; after having consulted with the medical assessor, that on 28th December 1914 David Kirk sustained personal injury by accident arising out of and in the course of his employment with the appellants, viz., a strain to the heart due to excessive exertion while pulling on the rope as above mentioned; that death resulted therefrom; that the respondent was wholly dependent on the said David Kirk at the time of his death; and that the respondent was not barred from maintaining proceedings for recovery of compensation on the ground that she had not given notice of the accident as soon as practicable. I also held that the appellants were not prejudiced by want of notice. I awarded £261, 4s. 2d. as compensation, being a sum agreed on by the parties.

"If I had held on the evidence that the death of the said David Kirk was due to cerebral hæmorrhage, I should have required to consider whether the death resulted from a strain, on which question there was evidence, but I did not consider it."

The *questions of law* for the opinion of the Court were—"1. Was there evidence upon which it could competently be found that the deceased David Kirk's death resulted from personal injury by accident arising out of and in the course of his employment with the appellants? 2. Was there evidence upon which it could competently be found that the respondent was not barred from maintaining the present proceedings?"

Note.—" . . . I am not aware that these words ['as soon as practicable'] have been the subject of judicial interpretation, although in the weekly increasing number of decisions under the Act I hesitate to say there are not at least dicta on the subject. But I venture to express what they convey to my uninstructed mind. I think they mean that a person who intends to claim compensation must give notice to the employers of the incident on which that claim is to be founded; and that he must do so at such a time as a reasonable person would give it who has a belief in his ground of claim, is acting in *bona fide*, and has no desire to conceal anything from the employers. Now I put to myself this question

—If the claimant had given the statutory notice on 6th January, would that notice be 'as soon as practicable'? I think that in the circumstances it would. Her husband died on the same day as he received his injury, viz., 28th December. Her first thoughts would naturally be taken up with the arrangements for the funeral and other things consequent on the tragic occurrence. The New Year holidays began on the last day of the year. She understood that the cause of her husband's death was a strain in the pit on the day of his death. She had no reason for suspecting that anyone might have a different opinion. If she gave notice within a few days of people returning to business after the holidays it seems to me that she would be fulfilling the conditions which I have stated in explaining the meaning of the words 'as soon as practicable.'

"Assuming, however, that what I have said is not in accordance with what may be laid down by courts of appeal as the correct interpretation of these words, it is necessary to consider whether the exceptions in the proviso to the section with regard to notice apply. I think there was 'reasonable cause' for not giving earlier notice, and that that 'reasonable cause' is to be found in the facts set forth in the immediately preceding paragraph. I think, further, that the respondents have suffered no prejudice through the failure to give earlier notice. It was admitted that after the letter of 6th January they could have taken steps for the exhumation of Kirk's body in order to obtain a post-mortem examination. They did not do so. If they had done that it was proved that it was at least probable that the condition of Kirk's heart at the time of his death could have been sufficiently ascertained to determine whether death was due to a heart condition. But if this could not be ascertained in such a manner as to be wholly satisfactory, they could have ascertained whether his death was due to cerebral hæmorrhage. Dr Comrie's view was that the illness might have been caused by a slight hæmorrhage into a portion of the brain which would not produce paralysis or loss of speech, such as the pons or medulla oblongata; and he said that a post-mortem examination after 6th January might not have disclosed a slight hæmorrhage, although it would undoubtedly have shown signs of any considerable hæmorrhage. But when the medical assessor put to him the history of the case in the later stages he admitted that they were consistent only with the occurrence of a large hæmorrhage, lasting perhaps for half-an-hour, which would break down the partitions between the ventricles and other parts of the brain, thus causing death. In view of the earlier portions of the evidence it seems clear that the occurrence of any such hæmorrhage would have been ascertainable on a post-mortem examination after a notice on 6th January. The evidence therefore compels me to conclude that any delay there may have been in giving notice has not caused prejudice to the respondents in the matter of this claim."

Argued for the appellants—The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) required notice to be given as "soon as practicable." This was a question of circumstances. When death had resulted from the injury notice ought to be given immediately unless there was reasonable cause for delay, and there was no finding to that effect in the present case—*Snelling v. Norton Hill Colliery Company, Limited*, 1913, 6 B.W.C.C. 239; *Wassell v. Russell & Sons*, 1915, 8 B.W.C.C. 230, per Phillimore, L.J., at p. 234; *Burrell v. Holloway Brothers (London), Limited*, 1911, 4 B.W.C.C. 239; *Griffiths v. Atkinson*, 1912, 5 B.W.C.C. 345; *Webster v. Cohen Brothers*, 1913, 6 B.W.C.C. 92; *Egerton v. Moore*, [1912] 2 K.B. 308; *Park v. Coltness Iron Company, Limited*, 1913 S.C. 1163, 50 S.L.R. 926, 6 B.W.C.C. 892; *Ellis v. Fairfield Shipbuilding and Engineering Company, Limited*, 1913 S.C. 217, 50 S.L.R. 137; *Connolly v. Young's Paraffin Light and Mineral Oil Company, Limited*, 1894, 22 R. 80, 32 S.L.R. 61; *Grime v. Fletcher*, 1915, 8 B.W.C.C. 69. The onus was on the workman to show that the employer had suffered no prejudice—*Shearer v. Miller & Sons*, 1899, 2 F. 114, 37 S.L.R. 80; *Hayward v. Westleigh Colliery Company, Limited*, [1915] A.C. 540; *Nicholls v. Briton Ferry U.D.C.*, 1915, 8 B.W.C.C. 42; *Eydmann v. Premier Accumulator Company*, 1915, 8 B.W.C.C. 121. The defenders had suffered prejudice, because they had lost their opportunity for a post-mortem examination of the body before interment so as to enable them to ascertain the real cause of death, and after interment it was too late for them to do anything. Exhumation would not be allowed merely to get evidence in a compensation claim, especially if the situation requiring it arose from failure to do what the Act enjoined. Counsel referred on the power of the Sheriff to grant an exhumation order to *Mitchell*, 1893, 20 R. 902, 30 S.L.R. 801.

Argued for the respondent—The phrase "as soon as practicable" had received a fair and reasonable definition from the arbiter. It meant something between "as soon as possible" and "as soon as convenient"—*Smith v. Leishman & Flood*, 1915, 52 S.L.R. 471. In matters of notice under the Act the Court would not act strictly—*Ellis v. Fairfield Shipbuilding and Engineering Company, Limited (cit. sup.)*; *Eaton v. Evans*, 1911, 5 B.W.C.C. 82; *Hoare v. Arding & Hobbs*, 1911, 5 B.W.C.C. 36. The defenders had suffered no prejudice. If they disputed the medical certificate they should have asked for an exhumation order, and there was no evidence that the relatives would have objected.

LORD JUSTICE-CLERK—In this case no argument was addressed to us on the first question, and in my opinion it falls to be answered in the affirmative. On the second question three points were raised—(1) Was notice of the accident given as soon as practicable? (2) If not, was the failure excused by reasonable cause? and (3) Were the employers prejudiced in their defence by the want of notice?

The accident took place on 28th December 1914, and on the same day the respondent's husband died. The respondent on the evening of that day informed the delegate of the union of the accident and death, and left the matter of compensation in his hands to be attended to. The union officials, however, did not give notice of the accident until 6th January 1915. I am of opinion that notice of the accident was not given as soon as practicable, and that no reasonable cause for the delay has been shown. There is no satisfactory explanation given of the delay, and indeed the respondent hardly maintained before us that the notice had been given as soon as practicable. I am not prepared to accept the learned arbitrator's exposition of the words in question.

But I have found the question of prejudice attended with much more difficulty. This is a case where the death of the workman took place on the day of the accident. It seems to have been suggested that if the employers had had notice before burial they would have asked for a post-mortem examination, and that the burial prevented them from having such an examination and so prejudiced them in their defence. It was, however, as appears from the note, admitted that after the letter of 6th January the employers could have taken steps for the exhumation of Kirk's body in order to obtain a post-mortem examination. They did not do so. Applications for exhumation are in Scotland appropriate to the Sheriff Court—*Mitchell*, 20 R. 902—and any such application as the learned arbitrator refers to would probably therefore have come to depend before himself as Sheriff, and we were informed would not have been opposed. I think the admission I have referred to must be taken as meaning that effective steps could have been taken.

The want of notice does not create a bar unless the employer is prejudiced "in his defence by" such want of notice—*Cozens-Hardy, M.R.*, in *Butt v. Gellyceidrum Colliery Company*, (1909) 3 B.W.C.C. 44, at p. 49. The employers did not ask for any post-mortem examination or any order for exhumation. The respondent, by the admission, put before the Court the view that the failure to get the post-mortem examination was not due to the want of notice, but to the employers failing to take the necessary steps to obtain such an examination. In the case of *Hayward*, [1915] A.C. 540, at p. 544, Lord Loreburn said—"I think the statute really means that, looking at all the matters before him, the arbitrator must find that the employer was not prejudiced by want of notice. I do not think it means there is to be a presumption one way or another, but simply if upon all the facts before him the arbitrator is not satisfied that there was no prejudice, then the applicant fails." Then later on—"If they had said that they had been prejudiced they would have had to give reasons and to state how and why the prejudice had arisen to them and give the appellant the opportunity of showing that it could not have arisen." Lord Atkinson said (p. 546)—"The statute requires that notice should be served, and if it is not served

the party who should have served it is in default; he must excuse that default, and I think the burden of proof in the first instance rests upon him. But if he gives evidence from which it may be reasonably inferred that the employer has not been prejudiced, I think then the burden of proof is shifted from his shoulders on to the shoulders of his employer, and if the employer is in a position to prove, notwithstanding this evidence, that he is prejudiced in some particular matters he is bound to do so." Lord Parker said (p. 546)—"In acting as a Court of appeal from that decision it is absolutely impossible to set it aside unless the circumstances be such that no reasonable man could from the evidence before the arbitrator have come to that conclusion, and it appears to me, for the grounds stated by my noble friend on the Woolsack, that there was evidence which in this case would justify a reasonable man in coming to the conclusion." Lord Sumner said (p. 547)—"The finding that has to be arrived at is, of course, a finding upon all the facts proved. I do not think those facts include the mere matter of observation that the defendant does not give evidence or does not call certain witnesses whose absence is not accounted for. The learned arbitrator has to take the facts as they have been proved before him, and if it be a case in which facts are proved on both sides he has to take the totality of the facts as he finds them and then come to his conclusion."

I have in view particularly articles 9 and 10 and what is said in the note. In my opinion there was in the present case evidence on which the arbitrator was entitled to come to the conclusion at which he arrived, viz., that the appellants were not prejudiced in their defence by want of notice.

I do not think the fact that there would have been costs of the application for an exhumation order is sufficient to create prejudice in the sense of the Act. The point does not seem to have been raised before the arbitrator.

The first question admittedly falls to be answered in the affirmative, and I am of opinion that the second must also be answered in the affirmative.

**LORD DUNDAS**—The appellants' counsel stated that they offered no opposition to the first question being answered in the affirmative. As regards the second question, the first point is whether or not notice of the accident was given "as soon as practicable after the happening thereof." I have no intention of attempting to formulate a complete and universal definition of the words "as soon as practicable" for application in all cases that may arise. The task would be an exceedingly difficult one; and it is not surprising that the learned arbitrator's attempt at definition should be, as I think it is, unsatisfactory and incomplete. A sufficient and much easier task for the Court is to say whether or not a given state of facts falls within or without the words quoted. They are words of ordinary signification and must, I take it, be construed

in each case according to their natural and usual meaning. In the case before us I must say that, with all respect to the learned arbitrator, I am quite unable to hold that notice was given as soon as practicable after the accident. The delay, for which no feasible explanation is apparent, from 28th December to 6th January seems to me, in the circumstances of the case, to preclude us from so holding, and this was ultimately conceded by the respondent's counsel. But the appellants maintained an argument founded upon both of the exceptions contained in the proviso (a) to section 2 (1) of the Act. So far as regards the first of these exceptions, I can only say, again avoiding any generality of expression, that I am quite unable to affirm, looking to the facts of this case, and the unexplained delay already referred to, that the defect of notice was occasioned by any "reasonable cause." The arbitrator has made no finding upon this point, though in his note he indicates an opinion that "there was reasonable cause for not giving earlier notice." With regard to the other exception founded upon, viz., "if it is found in the proceedings . . . that the employer is not . . . prejudiced in his defence," the matter is not quite so clear. But in the most recent decision of the House of Lords—*Hayward*, [1915] A.C., 540—it was laid down by Lord Loreburn (at pp. 544, 545) that "the statute really means that looking at all the matters before him the arbitrator must find that the employer was not prejudiced by want of notice. I do not think it means there is to be a presumption one way or another, but simply if upon all the facts before him the arbitrator is not satisfied that there was no prejudice, then the applicant fails. The arbitrator in this case found that the employer was not prejudiced." There is an express finding to that effect in the case before us. It is not material to consider or determine whether, if I had been arbitrator, I should have so found, because, to quote Lord Parker's words in *Hayward's* case (at p. 546), "in acting as a Court of Appeal from that decision it is absolutely impossible to set it aside unless the circumstances be such that no reasonable man could from the evidence before the arbitrator have come to that conclusion"; and that is a proposition which I am not prepared to affirm in the present case. We must, in my judgment, answer the second question put to us in the affirmative.

**LORD GUTHRIE**—I agree with your Lordships that the arbitrator had not evidence before him to make it competent for him to hold that notice was given in this case conform to the statute, that is, "as soon as practicable." That expression carries its own meaning with it; it has regard to the interest of both parties; in the interest of the employer it is more than "as soon as convenient," and in the interests of the workman or his representatives it is less than "as soon as possible." I also agree that the arbitrator was not entitled to find that the respondent had reasonable cause for her failure to give notice timeously.

But I think he had evidence before him entitling him to hold that the appellants were not in the sense of the statute "prejudiced" by the respondent's failure without reasonable cause to give timeous notice. I add, however, that on the arbitrator's findings in fact I would have come to the same conclusion on this point.

On the first two points, but for the respondent's responsibility for her agent's acts, I should have come to the opposite conclusion, for she put the matter into the hands of the Miners' Union on the night of her husband's death.

As explained in the arbitrator's note, the respondent's success on the third point is due to certain answers which fortunately for her were elicited from Dr Comrie, the appellants' medical witness, by the medical assessor. We are not concerned with whether the arbitrator had sufficient evidence to justify his finding in fact No. 10, which negated the appellants' only counter case, but the note shows that at all events that finding was not arrived at arbitrarily. If, as Dr Comrie deposed, a cerebral hæmorrhage sufficient to cause death (as distinguished from a slight hæmorrhage which would only produce temporary unconsciousness) had occurred, and had been the cause of death, in accordance with the case put forward by the appellants, a post-mortem examination, even after the date of the notice, would have either established or negated the appellants' contention. It is significant that no proposal was made by the appellants for such an examination, although one must assume that they took steps at once to obtain their medical adviser's views. I therefore agree with your Lordships that in the sense of the statute the appellants have not been prejudiced in their defence—that is to say, have not been prevented or hindered by the respondent's failure to give timeous notice—from averring and proving their answer to the respondent's claim.

The Court found it unnecessary to answer the first question, and answered the second question of law in the affirmative.

Counsel for the Pursuer and Respondent—Watt, K.C.—D. R. Scott. Agents—Macbeth, MacBain, Currie, & Company, S.S.C.

Counsel for the Defenders and Appellants—Horne, K.C.—J. Walker. Agents—Wallace & Begg, W.S.

Tuesday, January 11.

FIRST DIVISION.

[Lord Cullen, Ordinary.]

CALEDONIAN RAILWAY COMPANY  
v. NORTH BRITISH RAILWAY  
COMPANY.

*Statute—Construction—Railway—"Cost of Land"—"Purchase-Money of Land"—"Permanent-Way Material"—Caledonian Railway (Grangemouth Harbour) Act 1876 (39 and 40 Vict. cap. xlviii), sec. 25—Caledonian Railway Act 1897 (60 and 61 Vict. cap. cxviii), sec. 12.*

For the purpose of fixing the tolls to be paid by one company to another, the Caledonian Railway (Grangemouth Harbour) Act 1876, section 25, enacted—" . . . the cost of the lines of rails and sidings which may be hereafter formed by the company shall only include the expense of the rails, chairs, and other permanent-way material, and of laying down the same on the surface, together with the purchase-money of any land which may have been or may be acquired by the company for the purposes hereof and compensation for any damage to adjoining lands. . . ." A subsequent Act, 1897, in section 12, for the same purpose, referred to "interest upon the cost of such works (including the cost of land) calculated at the rate and in the manner provided by" section 25 of the 1876 Act.

Held that "cost of land" in the 1897 Act meant the "purchase-money" of the 1876 Act, and that that term did not include the expenses of acquisition; that "permanent-way material" did not include ballast.

The Caledonian Railway (Grangemouth Harbour) Act 1876 (39 and 40 Vict. cap. xlviii), section 25, enacts—[The North British Railway Company] "shall have right in perpetuity to run over and use all lines of rails and sidings already formed, or which may hereafter be formed, by the [Caledonian] Company, for connecting the company's Grangemouth Branch Railway with the existing harbour, docks, timber basins, and quays at Grangemouth, and with the wet dock, timber basin, and quays authorised by this Act, including the railway authorised by the Act of 1873, and therein called Railway No. 16, and the turn-tables and other appliances at the said docks, timber basins, and quays (all which works and conveniences shall be maintained by the company), upon payment to the company of the sums hereinafter mentioned, unless the said companies otherwise agree, that is to say . . . in so far as such works and conveniences (including the said Railway No. 16) shall be formed after the date of the passing of this Act, upon payment in each year of a share of the interest, at the rate of 7 per centum per annum upon the cost thereof (excepting the cost of cranes, in respect of which dues are leviable under this