certificated. I think the case of *Hamilton* is conclusive of the present, but I would have reached the same result on the construction of the statute even if that decision had not been pronounced. It is unnecessary, in the view I have taken of the case, to offer any opinion on the question whether the charge made against the suspenders could have been maintained as a relevant charge under the 16th section of the Act.

LORD JUSTICE-CLERK — I concur with Lord Rutherfurd Clark, and but for the difference of opinion upon the bench I would not have expressed my views upon the case at further length.

Under section 8 of the Public-Houses Acts Amendment (Scotland) Act 1862 places which can be licensed for a distinct period of a year must plainly be places which are buildings—"inn, hotel, public-house, shop, or premises." There is therefore no doubt that no yearly licence can be granted except for a place which is really a building. The Legislature, however, very properly took into consideration the fact that occasions may occur in which it is desirable or convenient that excisable liquor should be sold in a place other than a building licensed for a year, and different in character from those specified in section 8. So, under section 6 statutory authority is given to the magistrates to grant a licence to a person who already holds a certificate for an inn, &c., for a special entertainment to be held within any "place or premises" situated within the jurisdiction.

Now, the first thing that strikes one is the distinct change in the mode of expression. The words "place or premises" are used instead of the words "inn, hotel, public-house, shop, or premises" mentioned in section 8. Now, place is a very broad expression indeed, and if there was no limitation in the statute there would be nothing to prevent a person receiving a licence under section 6 for a table put down in the pnblic street on a particular day. But the statute, for the purpose of preventing the clause being carried out in an extravagant manner, further prescribes that the magistrates must be satisfied that the accommodation provided is satisfactory. I take that as meaning the accommodation being suitable in the circumstances of the particular case, the question of suitability being left to the discretion of the magistrate. I have no doubt that the word "place" must be taken in the fullest sense of the term, and that the only restriction upon it is that the magistrates must be satisfied that the place possesses suitable accommodation in the circumstances. That being so, the question in the present case is this, Is a tent in a grass field not just such a place as is contemplated by the Act? I have no doubt that it is. The whole field might be such a place; it is entirely a question of circumstances to be determined by the magistrates according to their good sense and judgment. In most cases a whole field would not be a proper place to be licensed, the licence might be restricted to a spot under a particular tree, or a space specially marked off as suitable for the purpose. But there is, in my view, no doubt that under section 6 the magistrates have power to grant a licence whether the place licensed is a house or tent or a portion of a field.

Holding that opinion, I do not think I require to deal with section 17 at all. I do not think the case of *Hamilton* rules the present. That was a case of trafficking in excisable liquors in a public street, and there is no doubt that a person doing so could not be properly charged under section 17 of the Act. In my opinion this is quite a different kind of case; here the place in question was such a place as the magistrates might in their discretion have licensed, and as no licence was applied for, it was a breach of the statute to sell excisable liquors in a place not certificated for the sale of such.

I may further remark that this case must be decided entirely irrespective of all questions of fact raised by the complainers. The proper course for parties wishing to appeal to this Court from such a conviction upon the legal decision given by the magistrate on the facts is to obtain a case from the magistrates. Here no such case was applied for, and therefore we cannot deal with any question other than the legal question raised on the complaint itself, and upon that question my opinion is that which I have now expressed.

The Court refused the suspension.

Counsel for the Complainers—J. C. Watt. Agents—Wishart & Macnaughton, W.S.

Counsel for the Respondents—J. A. Reid. Agent—R. C. Gray, S.S.C.

COURT OF SESSION.

Tuesday, January 12.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

CLIDERO AND ANOTHER *v.* THE SCOTTISH ACCIDENT INSURANCE COMPANY, LIMITED.

Insurance — Accident — Policy — Construction — "Bodily Injury caused by violent, accidental, external, and visible means."

A person who was insured against death from "bodily injury caused by violent accidental, external, and visible means," had just risen from bed, and was in the act of pulling on his stockings, when "he felt something give way in his inside," and shortly afterwards he died. Examination showed that the colon of the deceased had fallen out of its place and become folded, which caused great distension, and the resulting pressure on the heart was so great that its action was stopped.

In an action by the deceased's representatives for the amount under the policy, *held* that the death was not the result of injury caused by violent, accidental, external, and visible means.

William Clidero, currier, Northallerton, insured with the Scottish Accident Company, Limited, and the policy, which was dated 20th November 1883, provided— . . . "If at any time within one year from the date or during the continuance of this policy the insured has sustained any bodily injury caused by violent, accidental, external, and visible means, and the direct effect of which injury has either caused the death or permanent total disablement (as defined on the back hereof) of the insured, then the company shall be liable to pay to him or his legal representatives the full sum of one thousand pounds within a month after satisfactory proof of such death or disablement shall have been furnished to the directors of the company; provided that such death or disablement takes place within three calendar months from the date of the accident occasioning the same." The said policy also provided that "this policy shall not extend to nor cover the death or injury of the insured . . . arising from natural disease or weakness, or exhaustion consequent upon disease, or any surgical operation rendered necessary thereby, or arising from such disease, weakness, exhaustion, or surgical operation, though accelerated by accident."

On 12th October 1890 Wiliam Clidero died from an obstruction in the colon or larger intestine, caused by that intestine falling out of its place and becoming folded, and thus causing great distension, which resulted in such severe pressure on the heart that its action stopped. The widow and son of the deceased, as his trustees, sued the company for £1000 under the policy.

The pursuers averred—"On 11th October 1890 the insured, who was a corpulent man, met with an accident while in the act of pulling on one of his stockings. In the act of stooping he accidentally pressed with violence on the lower abdomen, and the strain thus caused resulted in a portion of the bowel being suddenly displaced and becoming twisted. Pain within the abdomen was felt by the deceased at the time, and distension of the abdomen immediately set in, and notwithstanding the remedies and measures applied for his relief, he died in the course of the following day. His death was due to internal injuries, proceeding from a visible external cause—the violent pressure on the lower abdomen—and unintentionally and accidentally inflicted."

The defenders averred that the deceased died from natural disease of the heart and bowels, and they pleaded, *inter alia*—"3. The death of the insured having arisen from natural disease or weakness, or exhaustion consequent upon disease (whether accelerated by accident or not), and not by violent accidental, external, and visible means, the defenders ought to be assoilzied from the conclusions of the summons, with expenses."

A proof was allowed. It was admitted that for a day or two prior to the accident the deceased was suffering from, and was being treated for, a slight attack of diarrhœa.

Dr Walton, the deceased's medical attendant, deponed—"He told me that in the act of pulling on one of his stockings he felt something give way inside, and that afterwards he had a very acute pain, which passed off and left a dull aching sensation. According to his account, he had just got out of bed and was in the act of pulling on his stocking when the accident occurred. I examined him and found that there was some obstruction of the intestines. I gave him a mixture to take and visited him again the same evening. I saw him again four or five times on Sunday, 12th October. I was with him for a considerable time on the Sunday. I was there first before eleven o'clock in the forenoon, and afterwards at three, five, eight and eleven o'clock. On the occasion of my visit at eleven o'clock in the forenoon I was accompanied by Dr Tweedie, and I found that the distension had considerably increased, and the body was cyanosed or blue. Later on in the day I examined the patient's heart, and noticed that the heart-beat was slightly displaced upwards. The apex of the heart-beat was displaced fully an inch above the nipple, whereas it should be an inch-and-a-quarter below the nipple. I saw the patient again at eleven o'clock at night, when I was again accompanied by Dr Tweedie. Dr Bartrum and Dr Wells were also there on that occasion. About eight o'clock at night we had a conference and decided to open the patient's abdomen, if we could obtain his consent. We returned at eleven o'clock for the purpose of performing that operation. The arrangements were all complete for the operation, the patient had been laid upon the table, and we were just about to begin when he suddenly expired. *By the Court*—We were going to administer ether, but none had been administered before the death occurred. *Examination continued*—Within ten minutes of the patient's death Dr Tweedie, who is a surgeon, made a *post-mortem* examination of the body. An examination of the abdominal organs was made in my presence, with the result that we found an obstruction of the bowels at the hepatic flexure of the colon, that is, just below the liver. The colon is the name given to a portion of the larger intestine. . . . What had happened in the case of the deceased was, that the hepatic flexure, which should have been beneath the liver, had fallen downwards and forwards, and the anterior body of the liver was beneath it. I remembered the account which the deceased himself had given of how the accident happened. (Q) Were the appearances which you saw consistent with the man's own account of what had happened?—(A) Yes. (Q) Supposing the deceased was engaged, as he said, in the act of stooping, how do you account for the result which occurred?—(A) I account for it in this way, that the ribs and liver being fixed points, any stooping over would thrust down the

movable part of the bowel, and in restoring himself to a straight position the bowel, instead of going back into its recess, had slipped in front of the liver, or the liver had slipped behind the bowel. That condition of matters might be produced by disease. We made a careful examination to see if there was any appearance of disease, so far as the abdominal organs were concerned, and we found none. . . . *Cross.*—(Q) How do you account for the ordinary act of pulling on his stocking having caused a displacement of the colon on this occasion, and never having done it before?—(A) He had not come under the same conditions before. (Q) Do you mean that the bowel had not been in the same condition before?—(A) It may not have been exactly in the same position, and there may not have been the same force. I did not ask Mr Clidero how he was sitting when he was pulling on his stocking. I did not think that of importance, as showing how the injury had been caused. (Q) Did he not tell you where he had been sitting, or the motion he made to pull on his stocking, or whether it was in any way usual or unusual?—(A) I am not certain; I believe he told me that he was sitting on the bed."

Dr Tweedie deponed—"I inquired what had been the cause of his illness, and Mr Clidero said that on the Saturday morning after getting up he was sitting on the edge of the bed drawing on his stockings when he felt something give way in his inside, and that immediately afterwards he had a great deal of pain and began to swell up. . . . The cause of his death was really pressure upon the heart by the great amount of distension caused by the obstruction in the bowel occurring in the way I have described. (Q) How, in your opinion, did the occurrence take place?—(A) Looking to what the deceased told me as to his being stooping at the time, I think the force conveyed through the ribs and the liver would be quite sufficient in a stout man to press the transverse part of the colon downwards, and when the man was readjusting himself the free edge of the liver had slipped behind instead of in front of it. . . . I suppose a very stout man would have to use more force to reach his foot than a thin man, and the extra amount of force would be sufficient to cause some displacement in the bowel."

Dr Bartrum deponed—"I asked him the cause of his illness, and he told me that he had been pulling on his stocking the day before and he suddenly felt something give way in his inside. He did not say anything to me about a twist."

Mrs Clidero deponed—"I remember quite well of my husband coming down stairs on the Saturday before he died, and complaining that he had felt something had given way in his inside while he was putting on his stocking."

The defenders were not represented during the illness of the deceased or at the *post mortem* examination, but they adduced medical evidence to the effect that the facts proved by the pursuers might have resulted from disease.

On 1st July 1891 the Lord Ordinary (KYLLACHY) decerned against the defenders conform to the conclusions of the summons.

"*Opinion.*—I cannot say that I have much doubt as to what my judgment in this case should be. I am of opinion that it is sufficiently proved that the deceased did not die of disease in any proper sense of that term, but that, on the contrary, he died of an accident which may quite reasonably be described as 'violent, external, and visible.' Speaking generally, I prefer the real evidence afforded by the facts as described by the deceased himself, by his family, and by the medical men who attended him—I prefer that real evidence—to the speculations and theories of the medical witnesses for the defenders. And further, if I have to choose between the medical opinions on the one side and those on the other, I confess that I prefer the testimony of the doctors who attended the deceased, who heard him describe what occurred, and who afterwards made the *post mortem* examination of his body, to the testimony of the gentlemen, however eminent, who were to-day adduced for the defenders, and who, without the least disrespect to them, had not, and could not have, the same opportunities for forming a judgment as the three gentlemen examined for the pursuer. Perhaps, when I say that, I say enough. But I may add just one or two observations which I think must have occurred to everyone who has listened to the evidence.

[*After examining the evidence*]—"I find therefore, without much difficulty (1) that the cause of death was the obstruction in the bowels; and (2) that the true cause of that obstruction was not disease, but some wrench, strain, or untoward movement caused by this gentlemen to himself on the morning in question, and which wrench or strain or untoward movement was so violent as to bring part of his intestines out of their proper place and put them in front of instead of behind the liver. That being so, I am of opinion that the pursuers are entitled to succeed, and I give them decree in terms of their summons, with expenses."

The defenders reclaimed, and argued—In order to bring the case within the class of risks covered by the policy, it was necessary that the bodily injury should be caused by some "violent, accidental, external, and visible means." The facts alleged by the pursuers excluded any of them. There was nothing accidental in what the deceased was doing, his act was intentional and it was not violent nor was it involuntary. He was doing something which he had done every day of his life before. The means was not "visible," as there was nothing in the act of the deceased apart from some latent defect of the parts from disease which could have produced the effect disclosed by *post mortem* examination. The insured's death arose from some cause outwith the risks covered by the terms of the policy, and the defenders were entitled to be exonered—

M'Kechnie's Trustees v. *Scottish Accident Insurance Company*, October 24, 1889, 17 R. 6.

Argued for respondents—The *post mortem* examination showed the deceased to be a healthy temperate man, nor did the examination disclose any cause for death apart from the accident described by the deceased. If the deceased's account was correct—and it was fully borne out by the *post mortem* examination—then his death arose from one of the very classes of accidents which this policy must be held to cover. It was argued that the deceased's heart ought to have been examined, but this was not necessary, as an examination of the colon showed a full and sufficient cause of death, and also that the diagnosis of the medical men as to what the deceased was suffering from was correct. The refusal of the defenders to make payment was merely an attempt on their part to evade their liability—*Sinclair*, 30 L.J., Q.B. 77; *Martin* v. *The Travellers' Insurance Company*, 1; *Foster* v. *Finlayson*, 505; *Hooper*, 29 L.J. Exch. 340.

At advising—

LORD PRESIDENT—The question in this case is, whether on the evidence before us William Clidero died of a "bodily injury caused by violent, accidental, external, and visible means?" The defenders had insured him against this event, and their liability depends on this event having occurred.

Up to a certain point the facts about this very unusual death are clear enough. An obstruction occurred in the colon, causing great distension, and the resulting pressure on the heart was so great that its action stopped. To go a step further back, the obstruction in the colon was caused by that intestine having fallen out of its place and got folded.

This is the account given by the three medical men who attended the deceased, and who made a *post mortem* examination of his body, which revealed the displacement and obstruction of the colon. That the distension, which was enormous, might stop the action of the heart cannot be disputed, and this I take to have been the proximate cause of death.

It is to be observed that all that I have described is internal to the body of the deceased, and it is as to this region that I consider the evidence to bear out the pursuers' case. But the crucial question is, whether the displacement of the colon was caused by external means which were violent, accidental, and visible? I think not merely that the pursuers have not established that it was, but that this part of their case is a complete blank.

The evidence on this point consists of testimony as to statements made by the deceased during his brief illness. He spoke on the subject to, or at least in the presence of five persons, all of whom are witnesses, and he gave quite the same account on each occasion of speaking. "He told me," says Dr Walton, "that in the act of pulling on one of his stockings he felt something give way inside, and that afterwards he had a very acute pain, which passed off and left a dull aching sensation. According to his account, he had just got out of bed and was in the act of pulling on his stocking when the accident happened. (Q) Did he not tell you where he had been sitting or the motion he made to pull on his stocking, or whether it was in any way usual or unusual?—(A) I am not certain; I believe he told me that he was sitting on the bed." "I inquired," says Dr Tweedie, "what had been the cause of his illness, and Mr Clidero said that on the Saturday morning, after getting up, he was sitting on the edge of the bed drawing on his stockings when he felt something give way in his inside, and that immediately afterwards he had a great deal of pain and began to swell up." "I asked him," says Dr Bartrum, "the cause of his illness, and he told me he had been pulling on his stockings the day before, and he suddenly felt something give way in his inside. He did not say anything to me about a twist." "I remember quite well," says Mrs Clidero, "of my husband coming downstairs on the Saturday before he died, and complaining that he had felt something had given way in his inside while he was putting on his stocking." "He said," says John Clidero, referring to the same occasion as his mother, "that he had felt something give way in his inside when he was putting on his stocking."

I have now read *in extenso* the whole evidence of what took place, and in that evidence I fail to discover any description of violent, external, accidental, and visible means of causing bodily injury. The man was putting on his stockings, and he felt something give way in his inside. The only external fact is his putting on his stockings, and in that of itself there is nothing either violent or accidental. But further, there is in the evidence no hint or suggestion that any misadventure occurred incidental to the putting on the stockings (such as a slip or a fall), or that anything external befell except in accordance with the intention and by virtue of the volition of the deceased. Either therefore the movements involved in putting on the stockings caused the displacement of the colon, in which case the means causing the injury were not accidental or violent, or the two things were unconnected except in point of time.

The Lord Ordinary, however, introduces into the case what appears to be quite another element. He treats it as "certain" that in pulling on his stockings the deceased "somehow produced a certain strain or wrench or untoward movement of his body." I take it that by these words his Lordship must refer to something external, for otherwise the "external means" postulated by the policy in terms which he had just quoted would be still to seek, and he suggests no other. But if so, I must say that of "a strain or wrench or untoward movement of the body" I can discover no trace in the evidence, and this interpolation in the chain of facts of a conjecture of something like violent, external, accidental, and visible means constitutes, in my judg-

ment, a fatal flaw in the reasoning on which the interlocutor rests.

The Lord Ordinary, indeed, in the first paragraph of his opinion presents the case as if it depended on a conflict of medical opinion as to the cause of death, and his Lordship prefers the opinion of the medical men who attended the patient and examined the body. In the view which I take, however, the radical defect of the pursuers' case lies outside the region of medical opinion altogether, and in the much simpler region of the external incidents of this unfortunate gentleman's dressing on the morning in question. But I may add that the pursuers' medical witnesses, who had heard from their patient a narrative in which, as already shown, there is no hint or suggestion of any involuntary external incident, take that narrative as they find it, their scientific theory, such as it is, rests no no other basis, and certainly does not assume any wrench, strain, or untoward movement of the body. Here is Dr Walton's examination-in-chief — "(Q) Supposing the deceased was engaged, as he said, in the act of stooping, how do you account for the result which occurred?—(A) I account for it in this way, that the ribs and liver being fixed points, any stooping over would thrust down the movable part of the bowel, and in restoring himself to a straight position the bowel, instead of going back into its own recess, had stopped in front of the liver, or the liver had slipped behind the bowel." Dr Tweedie takes quite the same view—"The force resulting from the sudden act of stooping would be enough, in my opinion, to cause such a displacement, more particularly with a stout man such as the deceased was." "I suppose," he says in another passage, "a very stout man would have to use more force to reach his foot than a thin man, and the extra amount of force would be sufficient to cause some displacement in the bowel."

Now, if this theory, which is simple if not crude, is open to the criticism that it assigns to those organs a more precarious position than experience has led the world to suppose to belong to them; it at all events has the merit of demanding no more than the proved facts of the case, those being the voluntary and intentional acts of a man putting on his stocking, with nothing violent or accidental about them. This theory, therefore, is equally destructive of the pursuers' case with the competing theory advanced by the defenders, which, with perhaps more plausibility, conjectures that the stability of the colon may have been impaired by previous internal modifications. My opinion, however, that the defenders must be assoilzied rests on the ground that to whatever the death of William Clidero was due as its ultimate cause, it was not the result of injury caused by violent, accidental, external, and visible means.

Lord Adam—There is no doubt, as your Lordship has said, that the death of Mr Clidero was caused by, as the doctors say, cardiac failure, but that again was caused by tympanitis, and the effect of tympanitis was caused by obstruction of the bowel or colon. There is no doubt about that, and the question is, whether the death so caused was caused by violent, accidental, external, and visible means.

Now, no one was present when this occurrence happened. Mr Clidero seems to have been alone, and we have only his own account of it as detailed to some five people, I think—to his wife, his son, and the three medical men. The account which he gives in those passages which your Lordhas read—I shall not read them again—to all and each of them is the same, viz., that he was doing upon that morning what he had done apparently for many years of his life before. He had got up, he was sitting at the side of the bed, and he was in the act of pulling on his stockings when he felt something, as he says, give way within; that he then felt acute pain, which afterwards passed off, but with the result, as we know, that it led to illness, and ultimately, in about thirty-six hours, to his death. These are the simple facts. As your Lordship has pointed out, in the account which Mr Clidero gives himself, he describes everything as having taken place on that morning—I mean as far as his own acts are concerned—just as on all previous mornings. He does not describe any accident, such as a fall during the time he was putting on his stockings; he does not hint at such a thing; he does not describe, and he does not hint, as one would have expected if it had happened, that there was any wrench or anything of that sort taking place; everything went on as usual, except what happened—that he felt something give way.

That being so, the question is, whether that is violence such as is within the meaning of this policy? Your Lordship has also read what the medical men—Dr Walton and Dr Tweedie—say upon that, and it is quite clear from the evidence that they say in so many words that that account, which is all we have to go upon, which was received from Mr Clidero himself, was sufficient to account for this death, viz., the simple fact that upon this occasion a stout man stooping down to pull on his stockings was sufficient to cause, and was the only cause, of his death. Now if that be so, where was the violence? I cannot persuade myself, as the Lord Ordinary has done, that upon that simple account—and it is the only account we can go upon as to the facts of the case—there was anything like violence upon this occasion. Neither do I think that it was accidental in the sense of this policy. The question, in the sense of this policy, is not whether death was the result of accident in the sense that it was a death which was not foreseen or anticipated. That is not the question. The question is, in the words of this policy, whether the means by which the injury was caused were accidental means. The death being accidental in the sense in which I have mentioned, and the means which lead to the death as accidental, are to my mind two

quite different things. A person may do certain acts, the result of which acts may produce unforeseen consequences, and may produce what is commonly called accidental death, but the means are exactly what the man intended to use, and did use, and was prepared to use. The means were not accidental, but the result might be accidental. Now if that is so, where does the question of accident come in here? There is no evidence, as your Lordship pointed out, that anything unusual or exceptional occurred as to the means or cause of this death. The man was just doing what he meant to do, and apparently a most unfortunate and unexpected result happened—the man's death.

On these grounds I agree with your Lordship that there is nothing violent in the sense of the policy to account for this man's death. But I must confess that on reading the doctors' evidence I was surprised to find that they did not ask Mr Clidero for any further account of what took place upon that morning,—whether it was caused by any accident, such as a fall forward or backward when in the act of pulling on his stockings. None of the doctors say that; they are perfectly contented; and taking the facts upon which they go, viz., that everything was going on as usual—that it was simply a result arising from a stout man stooping forward in the ordinary act of putting on his stockings—I cannot think that that falls within the description in this policy, that death resulted from violent, accidental, external, and visible means.

LORD M'LAREN—I agree with all that your Lordship has said in your statement of the case. As we are proposing to alter the Lord Ordinary's interlocutor, it may be right that I should briefly indicate the ground of judgment, as it presents itself to my own mind.

The question, as your Lordships have pointed out, is really one, in the first place, of construction of the clause containing the conditions of the insurance. This peculiar kind of insurance defines the condition of liability as applicable to death resulting from violent, accidental, external, and visible means. Now, while in this case it appears that the immediate cause of death was stoppage of the heart, caused by the displacement of the bowel, what we have to look to is the external cause, whatever it was, which contributed towards that result. I consider that a policy of this kind is quite capable of covering the case of injuries that are self-inflicted. It is not necessary as a condition to a claim that the external cause should be either pure accident, or should result from the negligence or agency in some form of another person. But it rather appears to me that the criterion of responsibility must be that the injury has resulted from some involuntary movement on the part of the deceased. I agree with an observation made by the Dean of Faculty in his speech, that where the injury which is the cause of death is the consequence of a voluntary act, taking effect in a way that was intended, and only in that way, then that does not satisfy the condition of the policy. Such an act cannot be described as violent as well as external. The kind of self-inflicted injuries which are covered by such a word embraces such cases for instance as where a person using a tool, accidentally makes a slip and severs an artery, or where a person intending to open a window loses his balance and is thrown to the ground. In either of these illustrations, in addition to the voluntary act which the person intended to perform, there is a movement which he never intended to make, and which results from some unexplained and involuntary cause. But in this case the man's own evidence, which we have through the medium of his wife and two medical men, is, I think, quite consistent with the supposition that the internal injury which he received was the result—so far, I mean, as external means are concerned—merely of the position in which he voluntarily put his body in the act of pulling on his stocking. Now, if in consequence of the strained position which he voluntarily assumed, there occurred internal displacement from some disturbance of the equilibrium of the internal affairs of the body, that would not, in my opinion, come within the scope of this policy, and it lies with the pursuers to shew that there was some movement of an involuntary kind which may be described in a large sense as violent and accidental.

My opinion is with your Lordships that no such involuntary action as the Lord Ordinary describes in his judgment has been proved, and therefore that the ground of judgment fails, and that the defenders ought to be assoilzied.

LORD KINNEAR concurred.

The Court recalled the Lord Ordinary's interlocutor and assoilzied the defenders from the conclusions of the action.

Counsel for Pursuers—Guthrie Smith—Daniell. Agents—A. P. Purves & Aitken, W.S.

Counsel for Defenders—D.-F. Balfour, Q.C.—Jameson—Crole. Agents—J. & R. A. Robertson, S.S.C.

Wednesday, January 13.

SECOND DIVISION.

[Sheriff of Argyllshire.

M'KINVEN *v.* M'MILLAN.

Affiliation—Proof—Corroboration of Pursuer's Evidence—Semiplena probatio.

In an action of affiliation, in which the pursuer's evidence was consistent and uncontradicted, in which witnesses spoke to seeing the pursuer and defender together, but not in suspicious circumstances, and in which the defender had written a curiously expressed letter denying the paternity of the child, the Sheriff-Substitute