carried out not only in accordance with the word but with the spirit of their undertaking.

LORD ADAM—This is not with me a question merely of greater or less risk of injury or loss. In my opinion these registers being the public records of the country should not be sent beyond the jurisdiction of the Court in any circumstances. That I know was the view taken by the late Lord President Inglis.

LORD M'LAREN—While I have a very high respect for the authority of the late Lord President Inglis as a lawyer, this is not a question of law but of administration, and I think that in each case the Court must judge of questions of this kind upon the facts of the case before it and independently of authority. We see that there has been a variation in practice between the two Divisions of the Court in time past; but in my opinion the use of public registers is to prove the matters of fact recorded in them. Now the register in question is necessary for the proof of the fact of a marriage, and I am satisfied with the assurance which we have received from the Solicitor of the Treasury, as the result of his inquiry at the office of the Clerk of the Central Criminal Court, that the deed will be left in the custody of the official who takes it to England, and that no attempt will be made to detain it.

LORD KINNEAR—I have very great respect for the authority upon which Lord Adam's difficulty proceeded, and also for his Lordship's own authority, but at the same time I agree with Lord M'Laren. I think it is the duty of this Court to aid the Courts in England in the administration of justice when we are asked to do so in accordance with our own forms and practice, and I agree with Lord M'Laren that if we refuse to do so on this occasion we should practically be refusing to put the records to the exact use for which they were intended, which is to prove the facts contained in them. Accordingly, the only question which occurs to my mind is, whether there is such a risk of loss or injury to the records involved in their being sent to England as to make it improper to expose them to that risk. For my own part I am satisfied with the assurance which we have received from the bar, and with the additional assurance which Mr Blackburn gave in answer to a question from the Lord President, so far as he was able to give it. I am therefore for granting the petition.

The Court pronounced this interlocutor:—

"The Lords having considered the petition and heard counsel for the petitioner, Grant authority to the Registrar-General or any officer duly authorised by him to attend in Court at the trial mentioned in the petition on 10th February curt., to exhibit the volume of Marriage Schedules for Gorbals Registration District for 1875 to the Court or to the jury before whom the cause shall be tried, the said volume to be forthwith restored to the keeping of the Registrar-General."

Counsel for the Petitioner—Blackburn. Agent—Thomas Carmichael, S.S.C.

Wednesday, February 19.

FIRST DIVISION.

HILL'S TRUSTEES *v.* KAY.

Superior and Vassal—Casualty—Composition—Blench Holding—Clause of Taxation.

By a blench disposition dated 3rd August 1805 a superior disponed certain subjects to R, "his heirs, successors, and disponees," in consideration of the payment of the sum of £9000, and bound himself to grant infeftment to "the said R and his foresaids" in the subjects "to be holden of and under me, my heirs and successors, by the said R and his foresaids in free blench farm for yearly payment of one penny Scots money on the ground of the said lands at Whitsunday yearly, if the same be asked allenarly, in lieu of the entry of heirs and successors and other casualties of superiority."

A singular successor of the superior having claimed a composition of a year's rent from a singular successor of the vassal, the vassal refused payment.

Held that as at the date of the deed composition had come to be spoken of as a casualty in the ordinary language of conveyancers, composition was included among the "other casualties of superiority" mentioned in the clause of taxation, and that consequently the vassal was not liable.

The rule which requires clauses taxing entries to be construed if possible in favour of the superior does not apply to such a clause occurring in a blench charter.

Question—Whether composition is a proper or necessary incident of a blench holding.

By blench disposition dated 3rd August 1805 the Duke of Atholl, in consideration of a price of £9000, disponed to George Ritchie, *primus*, farmer, "his heirs, successors, and disponees," the lands called the Hill of Ruthven, being part of the lands of Huntingtower. The disponer bound himself, his heirs and successors, "duly and validly to infeft and seize the said George Ritchie and his foresaids upon their own proper charges and expenses: To be holden of and under me, my heirs and successors, by the said George Ritchie and his foresaids in free blench farm for yearly payment of one penny Scots money on the ground of the said lands at Whitsunday yearly, if the same be asked allenarly, in lieu of the entry of heirs and successors and other casualties of superiority."

In 1899 the trustees of the late James Lawson Hill, W.S., were infeft as superiors

in the lands of the Hill of Ruthven, and in 1900 Jane Ritchie Kay was infeft in the *dominium utile* of the lands, having acquired them by singular title. The last-entered vassal who had paid a casualty was now dead.

In these circumstances payment of a composition, being one year's rent of the lands, was demanded by the superiors, and this demand being resisted by the vassal the present special case was presented for the opinion and judgment of the Court.

The parties to the special case were (1) Mr Hill's Trustees, and (2) Thomas Smith Kay, as tutor and administrator of his daughter Jane Ritchie Kay, who was in pupilarity.

The contentions of the parties as stated in the case were as follows:—"The first parties maintain that in the circumstances above narrated, and on a sound construction of the said disposition, the composition now due in respect of the lands of Hill of Ruthven is not a payment for or in respect of the entry of heirs and successors, and is not a casualty of superiority within the meaning of the above-quoted clauses of the deed of 1805, and that the said composition is accordingly a full year's rent of the lands, subject to the usual deductions. The second party maintains that the composition now claimed by the first parties falls within the meaning of the above-quoted clauses of the disposition of 1805, and that on a sound construction of the said disposition the entry of singular successors is thereby taxed."

The questions submitted for the judgment of the Court were:—"(1) Is the composition now due by the second party to the first parties in respect of the lands of Hill of Ruthven taxed by the disposition of 1805? or (2) does it consist of the full year's rent (subject to the usual deductions) of the said lands?"

Argued for the first party—(1) Composition was not a casualty of superiority within the meaning of the disposition of 1805. In the dispositive clause "disponees" were expressly referred to, and they were thereafter included in the reference to "George Ritchie and his foresaids." But in the clause of relief from "other casualties" there was no reference to disponees, but merely to "heirs and successors." It was clearly settled that "successors" did not include singular successors—*Thomson*, May 22, 1810, F. C.; *M'Lachlan* v. *Tait*, May 14, 1823, 2 S. 303; *Hamilton* v. *Dunn*, July 16, 1853, 15 D. 925; *Magistrates of Inverkeithing* v. *Ross*, October 30, 1874, 2 R. 48, 12 S.L.R. 21. Accordingly the clause of taxation was not intended to relieve singular successors of payment of a composition. Moreover, in 1805 composition was not generally understood to be one of the casualties of superiority, and in fact it was not so considered till the decision in *Edinburgh Gaslight Company* v. *Taylor*, July 5, 1843, 5 D. 1325. It was treated as quite different from a casualty in Erskine (1st ed., 1773). ii. 5, 29, ii. 7, 7; Bell's Comm. (4th ed., 1821), i. p. 23—*Stirling* v. *Ewart*, February 14, 1842, 4 D. 684, at 715, September 4, 1844, 3 Bell's App. 128. (2) If the word were ambiguous, then the taxation clause must be read *strictissimo jure* in favour of the superior—*Straiton Estate Company* v. *Stephens*, December 16, 1880, 8 R. 299, 18 S.L.R. 187; *Morrison's Trustees* v. *Webster*, May 16, 1878, 5 R. 800, 15 S.L.R. 559. (3) A blench holding was subject to all the ordinary casualties of superiority, and composition was a proper incident of it just as of an ordinary feu—Erskine ii. 5, 29, ii. 12, 24; Bell's Conveyancing, i. 616.

Argued for the second party—(1) It was clearly intended by the terms of the disposition that the superior should not have the right to claim composition. The position of disponees was recognised all through the deed, and they were evidently included in the expression "successors" in the clause of taxation. The fact that the superior deprived himself of the means of enforcing payment of composition by abandoning the right to compel entry showed conclusively that this was the meaning of the parties. Nor was it contrary to conveyancing practice at the time to speak of composition as a casualty.—The Tenures Abolition Act 1746 (20 Geo. II. c. 50), section 13; *Cockburn Ross* v. *Governors of Heriot's Hospital*, F.C. June 6, 1815; Bell's Commentaries, 5th ed. 1826, p. 23; Ross's Lectures, 1792, p. 302; *Stirling* v. *Ewart*, February 14, 1842, 4 D. 684, at 715; *Morrison's Trustees* v. *Webster*, *cit. supra.*

LORD KINNEAR — The question in this case is whether the first party is entitled to payment of a year's rent as composition on the entry of the second party to lands held blench. It was treated in the opening speeches of counsel, and I think rightly, as depending upon the construction of the particular instrument. We have to-day heard an interesting discussion upon a more general question, but I do not think it is necessary in this case to determine whether composition is a proper or necessary incident of a blench holding irrespective of the true meaning and effect of this instrument. There is a good deal of authority for the proposition that composition is an ordinary incident of a blench, just as of a feu-farm holding, but if it had been necessary to decide that point I should have desired an opportunity for further consideration. On the question of construction I think there is no point of law raised except such as is involved in the interpretation of any legal instrument. I do not assent to the view that it is an established principle of law that "successors" cannot mean "singular successors" if the term occurs in what is called a taxing clause, or that "casualties" cannot include "composition." These are not in my opinion rules of law. The meaning of these words like that of other words may depend upon the context, and I do not think the cases founded on by the first party on the construction of particular charters are authorities for the construction of totally different instruments. The only general principle which arises is the doctrine founded on by the first party that a clause taxing entries must be construed if possible

in favour of the superior. I think that if there be such a principle it is altogether inapplicable to the construction of this particular instrument, because it is a blench disposition, and whatever may be the general doctrine as to the liabilities of a holder of land under that tenure to pay composition it is clear that the purpose of a blench charter is to give land out and out free of all annual or recurring payments.

The history of the tenure is given by Craig, who points out that grants in free blench were originally given as rewards for military services, but that in his time, when commercial ideas had already begun to encroach upon the rigidity of the feudal system, landowners in want of money found it convenient to sell for a more considerable price to be immediately paid down rather than for an annual payment of a feu-duty. He accordingly proceeds to point out that it is hardly a proper feudal holding, because it is the characteristic of feu holding that the vassal shall render services or prestations to the superior, whereas the vassal in blench holding is free from all such obligations and is required to do nothing more than to acknowledge the superiority. There is therefore no presumption in the case of a blench holding that a taxation of entries cannot be intended to cover the composition exigible on the entry of a singular successor because of the improbability of the superior surrendering claims that are common to all feu-contracts; the presumption is rather the other way. But the question is not one of principle, but what is the fair construction of the present instrument.

The deed begins by narrating the payment of the sum of £9000 as the price of the land, and then the land is disponed to "George Ritchie, his heirs, successors, and disponees." It is conceded, and the concession could not be withheld, that this is a grant in favour of the original disponee, his heirs, successors, and disponees, and accordingly the grant thus begins by recognising the position of persons who may hold by a singular title. Then the deed goes on to oblige the superior to grant infeftment to "the said George Ritchie and his foresaids;" and again it is conceded that by the expression "foresaids" it is meant that the superior must give infeftment to George Ritchie, his heirs and successors, including such as may hold by singular title. The *tenendas* clause bears that the superior is to infeft "the said George Ritchie and his foresaids upon their own proper charges and expenses, to be holden by the said George Ritchie and his foresaids in free blench farm for yearly payment of one penny Scots money on the ground of the said lands." Here again "foresaids" includes singular successors." And then the clause goes on, "in lieu of the entry of heirs and successors and other casualties of superiority." It appears to me to be plain, on the ordinary principles of construction, that "successors" in this last part necessarily embraces all the persons who are included in the term "foresaids" in the first part, and that the payment is to be made in lieu of the entry of heirs or singular successors. I can see no reason for confining it to heritable succession. It is said that there is a departure from the form of language followed before, because instead of "George Ritchie and his foresaids" there is the new phrase "heirs and successors," and that therefore there is room for a different construction of successors in the two cases. But the alteration in the phraseology is only the necessary and grammatical consequence of what the granter is doing at this stage, because he is not speaking of the particular vassal but of the liability attaching to vassals generally, and he says in substance, "I relieve George Ritchie and his foresaids—that is, his heirs and his singular successors—of the liabilities generally attaching to these two classes of successors respectively." There is nothing in this alteration to throw any doubt on the plain meaning of the deed. But apart from that we must read on to the end of the sentence and see what is meant by "other casualties of superiority." I see no reason to doubt that the expression is wide enough to cover composition. I quite assent to the proposition that composition is not strictly a feudal casualty, because it is not a right arising from the tenure, and founded either in the feudal constitutions or in the special stipulations contained in the charter by which the fee is constituted, but is really the price paid by a purchaser for the privilege of entry which the superior has not undertaken to give by the terms of his original grant. But notwithstanding that distinction the claim is of the same nature as a casualty, since it is a claim arising from custom and occurring at uncertain intervals, and it is certainly a money claim to which the superior looks as part of his return from the feu. It is therefore not to be wondered at that it came to be called a casualty in the ordinary language of conveyancers, and the only real question as to the force of the term is, whether at the date of the deed in question it had obtained that meaning. I think Mr Sandeman's answer on that point is conclusive, when he shows that Mr Walter Ross had already called it so in his Lectures, which were delivered twenty-five years before the date of the deed, and there is nothing singular in finding that conveyancers of the generation trained by Mr Ross use the term in the sense in which it was used by him.

I have therefore little difficulty in holding that the plain meaning of the charter is that the lands are conveyed for payment of a sum down in full of all claims, and the only remaining payment to the superior is of one penny Scots if he asks for it. Accordingly I think we should answer the first question in the affirmative and the second in the negative.

The LORD PRESIDENT and LORD M'LAREN concurred.

LORD ADAM was absent.

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

Counsel for the First Parties—Constable. Agents—J. L. Hill & Co., Solicitors.

Counsel for the Second Party—W. Campbell, K.C.—Sandeman. Agents—Thomson, Dickson, & Shaw, W.S.

Wednesday, February 26.

SECOND DIVISION.

[Sheriff-Substitute of Lanarkshire.

DEMPSTER *v.* HUNTER & SONS.

Reparation—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 4—*Part of or Process in Trade or Business—Tailor's Workshop—"Ancillary or Incidental"—Window-Cleaning.*

A workman, who was a window-cleaner in the employment of a window-cleaning company, was sent by them to clean the windows of a tailor's workshop, which was admitted to be a factory within the meaning of the Workmen's Compensation Act 1897. While engaged in cleaning the windows he fell and was injured. He claimed compensation from the tailors as undertakers in the sense of the Act. *Held* that the work of window-cleaning in which the appellant was engaged at the time of the accident was not a part of or process in the trade or business carried on by the tailors in the factory, and that they were consequently not liable in compensation under section 4 of the Act.

Question—Whether window-cleaning could even be held to be ancillary or incidental to the business carried on in the factory.

This was a stated case on appeal from the Sheriff Court at Glasgow in an arbitration under the Workmen's Compensation Act 1897 between Hugh Dempster, 37 Lyon Street, Glasgow, claimant and appellant, and Hunter & Sons, tailors, 123 St Vincent Street, Glasgow

The following facts were stated by the Sheriff-Substitute (BOYD) to have been admitted, probation being renounced:—"(1) That the appellant is a window-cleaner and a workman in the employment of the Glasgow Window-Cleaning Company, and the respondents are tailors in Glasgow, having a workshop at 97 West Campbell Street there, which is a factory in terms of the Workmen's Compensation Act 1897; (2) That on 20th September 1901 the respondents ordered the Glasgow Window-Cleaning Company to clean the windows of their workshop, and the said company sent the appellant to do this work; (3) That while the appellant was standing on the outside sill of a window and holding by the top sash his cleaning cloth stuck on a nail at the side of the window; it required some little effort to free the cloth, and the jerk he gave it loosened his hold of the sash, and he fell and was injured."

On these facts the Sheriff-Substitute "found in law that the work in which the appellant was engaged at the time of the accident was not any part of or process in the work or business carried on by the respondents, but was merely ancillary or incidental thereto, and therefore assoilzied the respondents from the conclusions of the petition."

The question of law for the opinion of the Court was—"Whether the work of cleaning the respondents' windows, in which the appellant was engaged at the time he met with the accident, was a part of or process in the trade or business carried on by the respondents as undertakers of their factory, or whether it was merely ancillary or incidental to the said trade or business in terms of section 4 of the Act?"

Section 4 of the Workmen's Compensation Act 1897 will be found *ante*, p. 103.

Argued for the appellant — Window-cleaning was a necessary part of the work carried on by the undertakers. It was part of the process and was analogous to carting, which had been held to be part of the business of the undertakers in several cases. Light was necessary, and so the windows had to be kept in proper order—*Cooper & Company* v. *M'Govern*, November 14, 1901, 39 S.L.R. 102; *Greenhill* v. *Caledonian Railway Company*, March 13, 1900, 2 F. 736, 37 S.L.R. 524; *Bee* v. *Ovens & Sons*, January 25, 1900, 2 F. 439, 37 S.L.R. 328; *Burns* v. *North British Railway Company*, February 20, 1900, 2 F. 629, 37 S.L.R. 448. The cases of the *Dundee and Arbroath Joint-Railway Company* v. *Carlin*, May 31, 1901, 3 F. 843, 38 S.L.R. 635, and the case of *Wrigley* v. *Bagley & Wright* (1901), 1 K.B. 780, were illustrative of things incidental and ancillary to the business of the undertakers, and so outwith the section. In the present case the work in which the pursuer was engaged was part of the undertakers' business and not merely ancillary to it.

The respondents' counsel were not called upon.

LORD JUSTICE-CLERK—My only doubt in this case is as to whether the Sheriff-Substitute was right in holding that the work in which the appellant was engaged at the time of the accident was ancillary or incidental to the respondents' work or business. It seems to me that this is a case which falls absolutely outside the statute. In my opinion this is quite an extravagant claim. Apparently the same view would have been taken by Lord Moncreiff, for in his opinion in the *Dundee and Arbroath Railway* case he says—"If this claim were admitted I do not see how a claim by a glazier or gasfitter called in to repair the signal-cabin could be excluded." I think there is no ground whatever for holding that the Act applies to the present case.

LORD ADAM—I am of the same opinion. I confess that my mind has great difficulty in accepting the proposition that window-cleaning is part of the process of tailoring. I should have had great doubt in holding