as if he were himself the principal. Now if a party to a case gets, as mandatary for his opponent, a person who could himself be sued in our Courts and against whom a decree can be executed by registration, he has got all that he can legitimately ask for. It is satisfactory that in so deciding we do not differ from the Lord Ordinary, because in his Lordship's opinion he says that, as the acceptance of a person resident in England as a mandatary would alter the existing practice the alteration should be made by a judgment of the Inner House. For these reasons I think we ought to hold that the mandatary proposed is sufficient; no personal objection is taken to him—only that he is resident in England—and that objection does not appear to me to be well founded.

LORD KINNEAR—I agree. There is no question as to the general rule that foreigners suing in the Courts of this country must sist a mandatary, who shall be not only responsible for costs but also for the proper conduct of the case. I assent to the proposition of the defenders that the mandatary must be a person against whom the decrees of the Court shall be enforceable as readily and easily as if the litigant were resident in Scotland. Before the Judgments Extension Act 1868 that rule excluded an Englishman, because the judgments of this Court were not enforceable directly in England. The Judgments Extension Act, however, put a person resident in England in the same position as a person resident in Scotland, in this respect, that the decrees of this Court are enforceable against him as effectually as if he resided in Scotland. In the case of *Lawson's Trustees* it was held that it was unnecessary for a party resident in England to sist a mandatary in suing an action in this Court. It is argued that it is undesirable to permit a foreigner suing to sist as mandatary a person resident in England, because the effect would be to give the other party to the litigation an inferior security for his costs in the action. That was also the argument in *Lawson's Trustees*; and it was precisely because the Court held that the security was not inferior, and that the residence of the pursuer in England made no difference to the defender, that they refused to order a mandatary to be sisted. I assent to the view that, whatever the general rule may be, sisting of a mandatary remains a question for the discretion of the Court in every case. There are, however, no circumstances suggested in the present case for treating it as exceptional.

LORD ADAM was absent.

The Court pronounced this interlocutor:—

"Recal the interlocutor and decern: Find the defenders liable to the pursuer in expenses since the date of the interlocutor reclaimed against; and remit the account thereof to the Auditor to tax, and to report to the Lord Ordinary; and remit to his Lordship to sist the mandatary proposed for the pursuer, and to proceed, with power to decern for the taxed amount of said expenses."

Counsel for the Pursuer and Reclaimer — Wilson, K.C. — Sanderson. Agents — Wishart & Sanderson, W.S.

Counsel for the Defenders and Respondents — Clyde, K.C. — Lyon Mackenzie. Agents — Bonar, Hunter, & Johnstone, W.S.

Tuesday, February 17.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

DUNLOP PNEUMATIC TYRE COMPANY, LIMITED *v.* NEW LAMB TYRE COMPANY, LIMITED.

Expenses—Patent—Infringement of Patent—Certificate as to Validity—Expenses as Between Agent and Client—Patents, Designs, and Trade-Marks Act 1883 (46 *and* 47 *Vict. c.* 57), *sec.* 31.

Held that the pursuers in an action for infringement of their patent, who had previously in the High Court of Justice in England obtained a final judgment and a certificate under section 31 of the Patents, Designs, and Trade-Marks Act 1883, were entitled to expenses as between agent and client in terms of that section, although the validity of their patent had not been disputed by the defenders.

By section 31 of the Patents, Designs, and Trade Marks Act 1883 (46 and 47 Vict. cap. 57) it is provided that "In an action for infringement of a patent the Court or a judge may certify that the validity of the patent came in question; and if the Court or judge so certifies, then in any subsequent action for infringement the plaintiff in that action on obtaining a final order or judgment in his favour shall have his full costs, charges, and expenses as between solicitor and client, unless the Court or judge trying the action certifies that he ought not to have the same."

In an action brought in the High Court of Justice in England at the instance of the Dunlop Pneumatic Tyre Company, Limited, against Henry Casswell, a certificate of the validity of certain letters patent was granted by Mr Justice Kekewich on 19th February 1886 under and in terms of sec. 31 of the Patents, Designs, and Trade Marks Act 1883. In 1901 the Dunlop Pneumatic Tyre Company, Limited, brought an action in the Court of Session against the New Lamb Tyre Company, Limited, in which they craved interdict against that company infringing the same letters patent.

The defenders did not dispute the validity of the pursuers' patent, but maintained that there had been no infringement.

The Lord Ordinary (KINCAIRNEY), after a proof, granted interdict as craved, and found the pursuers entitled to expenses.

The defenders reclaimed.

The Court adhered.

Counsel for the pursuers moved for expenses as between agent and client since the date of the Lord Ordinary's interlocutor.

The Court granted the motion and inserted in their interlocutor a finding for expenses as between agent and client.

Counsel for the Pursuers and Respondents—Clyde, K.C.—A. O. Deas. Agents—J. & J. A. Hastie, Solicitors.

Counsel for the Defenders and Reclaimers—John Wilson, K.C.—Bartholomew. Agent—William Balfour, S.S.C.

Wednesday, February 18.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

BOYCE'S EXECUTOR *v.* M'DOUGALL.

Title to Sue — Executor — Reparation — Action for Personal Injury—Actio personalis moritur cum persona.

In an action of damages brought by an executor for personal injuries caused to the deceased by the fault of the defender, the pursuer averred that the injuries suffered had caused paralysis and mental incapacity; that a *curator bonis* had been appointed, who gave instructions for raising an action against the defender, but before the action was raised the ward died in consequence of the injuries sustained; and that in consequence of the injuries considerable medical and legal expenses had been incurred.

Held (*following Bern's Executor* v. *Montrose Asylum*, June 22, 1893, 20 R. 859, 30 S.L.R. 748)—(*aff.* Lord Kincairney, Ordinary, *diss.* Lord Young)—that an executor had no title to institute such an action, and plea of no title to sue *sustained.*

In October 1901 John Alexander Boyce, as executor-dative of his mother the late Mrs Mary Ann Owens or Boyce, raised an action for £500 damages against Mrs Mary M'Dougall, wife of Daniel M'Dougall, and the said Daniel M'Dougall as his wife's curator and administrator-in-law and for any interest competent to him in the premises.

After averring that Mrs M'Dougall was proprietrix of a dwelling-house of two rooms at 5 Walker Street, Partick, Glasgow, and that Mrs Boyce was the tenant of said dwelling-house in December 1900, the pursuer stated—"(Cond. 2) On or about 18th December 1900 part of the ceiling of said house fell, and in falling it struck the said Mary Ann Owens or Boyce on the head and other parts of her person whereby she sustained the injuries after mentioned. (Cond. 3) For said occurrence the defender Mrs Mary M'Dougall was responsible. It was her duty to keep said ceiling in a safe condition, and the said Mary Ann Owens or Boyce relied, and was entitled to rely, on its being kept in such condition. Notwithstanding this the said defender allowed it to become insecure and a source of danger. . . . (Cond. 4) As a result of said ceiling falling on her the said Mrs Mary Ann Owens or Boyce sustained severe injuries. The falling plaster made an irregular contused wound on the top of her head. Her right arm and right leg were paralysed, and paresis of the muscles of phonation ensued. Shortly afterwards symptoms of insanity showed themselves, and she became insane. She did not know the members of her own family. The paralysis and the mental incapacity from which she suffered were entirely due to the fall of the said ceiling, as above condescended on. . . . (Cond. 5) On 22nd June 1901 the children of the said Mary Ann Owens or Boyce applied to the Lords of Council and Session for the appointment of a *curator bonis* to her, and their Lordships on 6th July 1901 appointed the said John Alexander Boyce to the office. . . . He having found caution in common form extracted his appointment. The *curator bonis* gave instructions for the raising of an action of damages against the defender on the grounds on which the present action is laid. Before, however, these instructions were carried out the said Mary Ann Owens or Boyce died. (Cond. 6) On 11th August 1901 the said Mary Ann Owens or Boyce, after great suffering, both bodily and mental, died in consequence of the injuries she had received when said ceiling fell on her. The pursuer is her executor-dative, conform to confirmation-dative by the Sheriff of the county of Lanark and Glasgow, dated 17th September 1901. The pursuer has confirmed to the deceased's claim for damages against the defender Mrs Mary M'Dougall for injuries sustained and outlays incurred owing to the fall of the said ceiling. (Cond. 7) After the fall of said ceiling and as a consequence thereof the said Mary Ann Owens or Boyce was put to considerable expense. Medical expenses have been incurred. The deceased was also put to expense in connection with nursing and household arrangements. Law accounts in connection with the said petition for *curator bonis* and the appointment, and the discharge of the *curator bonis*, and in connection with the obtaining of reparation for said injuries have been incurred, and will be incurred, and these accounts will be produced in the course of the process to follow hereon. The sum sued for by way of compensation and damages is fair and reasonable in view of the sufferings sustained by the deceased, and the expense and outlay incident to the injuries sustained by her in manner condescended on."