was a prostitute, but that there was no evidence that there had been any attempt at immoral practices while they were in occupation of 16 Beaumont Place; (16) that on 24th October the defenders served a summons of ejection against the pursuer, who was therein designed as Gabriel Brash *alias* James Reid, and the service copy of which is No. 16 of process; (17) that said proceedings have now been withdrawn: In these circumstances, Finds in law that the defenders having let to the pursuer under the name of James Reid the house in question, and having taken payment of a quarter's rent in advance, and having accepted the missive of let No. 21 of process and given up the keys, after which possession had been taken of the house, were not entitled at their own hand to remove the door from the house and thereby render it uninhabitable and so compel the tenants to leave the house, and that having done so they are (*First*) bound to repay the quarter's rent of £3, 10s, and are also (*Second*) liable to the pursuer in damages for their illegal actings: Assesses said damages at £25 sterling: Grants decree against the defenders for the said sums of £3, 10s., and £25 accordingly."

The defenders appealed, and argued—The contract of lease was bad, as they had been induced to enter into it by false misrepresentations and active deceit on the part of the pursuer or those acting on his behalf—*Carham* v. *Barry*, 1855, 15 C.B. 597. The pursuer's title being thus rendered void, he was thus in the position of a squatter, and the defenders were entitled to take means to remove him without a warrant—*Macdonald* v. *Watson*, July 4, 1883, 10 R. 1079, 20 S.L.R. 727. Further, the pursuer was not entitled to sue for breach of a contract which he had impetrated by fraud. To allow him to do so would enable him to take advantage of his own fraud.

Counsel for the pursuer and respondent was not called upon.

LORD JUSTICE-CLERK—This may be, as stated by the counsel for the appellants, an important case for house-agents, but I suppose that it is the first time that a house-agent has taken the law into his own hands and has defended his action on the plea that he was induced by fraud to enter into the contract of let. This plea is not to be listened to for a moment. House factors ought to make inquiries, and if they fail to do so, and subsequently discover that the tenants to whom they have let the house are not desirable, they are not at liberty at their own hand to proceed to evict them, either by force or—as in this case—by rendering the house uninhabitable.

As regards the amount of damages given, the Sheriff-Substitute who tried the case is the best judge, and I see no reason for altering his award.

LORD TRAYNER—I concur. I have a very clear opinion of the case, but I do not think it necessary to waste any further time by expressing it.

LORD MONCREIFF—I have never heard of a case in which a landlord who has entered into a written contract of lease has been allowed to eject his tenant *brevi manu* and without process of law, simply because of information which he subsequently acquired as to his tenant's character. If a landlord has been induced to enter into a lease by misrepresentation and fraud the law does not leave him helpless, for it is open to him to have the contract rescinded, and in a case of urgency a summary remedy might be given. I do not say that in the present case the actings and statements of the respondents amounted to such misrepresentation and fraud as would have warranted ejection. But there can be no doubt that the course which the landlord did take—that of summary ejection without a warrant—was wholly unjustifiable, seeing that the respondents were in possession of the house upon a title which was *ex facie* valid. I am of opinion that the interlocutor appealed against should be affirmed.

LORD YOUNG was absent.

The Court pronounced this interlocutor—

"Dismiss the appeal: Find in fact and in law in terms of the findings in fact and in law in the said interlocutor appealed against: Of new grant decree for the sums of £3, 10s. and £25, with interest thereon at the rate of £5 per centum since the date of citation."

Counsel for the Pursuers and Respondents—A. M. Anderson. Agent—Charles Garrow, Solicitor.

Counsel for the Defenders and Appellants — Jameson, K.C. — T. B. Morison. Agents— P. Morison & Son, S.S.C.

Wednesday, June 10.

SECOND DIVISION.

[Sheriff-Substitute at Hamilton.

DAVIDSON *v.* SUMMERLEE AND MOSSEND IRON AND STEEL COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 1 (3), *Schedule I., secs.* 11 *and* 12—*Medical Examination—Refusal or Obstruction—Right to Arbitration—Agreement—Memorandum not Registered—Suspension of Compensation.*

A workman was injured in May 1901, and his employers admitted liability for compensation and made the maximum payments exigible under the Workmen's Compensation Act 1897 down to 30th September 1902. No memorandum of agreement was registered. The workman then submitted himself, at his employers' request, to a medical man of their selection, who reported that he had recovered from his injuries

and was able to do his former work The payments of compensation were then discontinued. The workman was dissatisfied with the report of his employers' medical man, but he did not submit himself, under Schedule I., section 11, of the Act, to one of the medical practitioners appointed by the Secretary of State for the purposes of the Act. He instituted arbitration proceedings in ordinary form, in which he claimed compensation in respect of his injury. In a case stated on appeal, *held* (*diss.* Lord Young) that in these circumstances (1) the workman was not entitled to have his claim dealt with in an arbitration under the Act, and (2) that so long as he refused to submit himself for examination by one of the official medical practitioners appointed under the Act his compensation fell to be suspended.

The Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), enacts, section 1 (3)—"If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act . . . or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First Schedule to this Act, be settled by arbitration, in accordance with the Second Schedule to this Act."

The First Schedule to the Act provides, section 11—"Any workman receiving weekly payments under this Act shall, if so required by the employer . . . from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, . . . but if the workman objects to an examination by that medical practitioner, or is dissatisfied by the certificate of such practitioner upon his condition when communicated to him, he may submit himself for examination to one of the medical practitioners appointed for the purposes of this Act . . . and the certificate of that medical practitioner as to the condition of the workman at the time of the examination shall be given to the employer and workman, and shall be conclusive evidence of that condition. If the workman refuses to submit himself to such examination, or in anyway obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place." Section 12—"Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act."

This was a case stated on appeal by the Sheriff-Substitute at Hamilton (DAVIDSON) in an arbitration under the Workmen's Compensation Act 1897, between William Davidson, miner, 76 Low Miller Street, Larkhall, claimant and appellant, and the Summerlee and Mossend Iron and Steel Company, Limited, coalmasters, 172 West George Street, Glasgow, respondents.

The case stated as follows, viz.—"That on 22nd May 1901 the claimant was injured while in the employment of the respondents; that the respondents admitted liability, and paid compensation at the rate of 19s. 10d. per week till 30th September 1902; that on 26th September 1902 the claimant submitted himself for examination by the respondents' medical adviser, who reported that he had so far recovered from the effects of his injury as to be quite able to do his former work; that the claimant was dissatisfied with this report, but he had not applied to be examined by one of the medical referees appointed by the Secretary of State."

The Sheriff found that the appellant was not in these circumstances entitled to have his claim decided by arbitration.

The questions of law for the opinion of the Court were—"(1) Under sub-section 11 of the first schedule appended to the Workmen's Compensation Act 1897, is a workman who has been examined by the medical adviser of his employers, and certified as able to resume his former employment, and who has declined to submit himself to the medical referee appointed by the Secretary of State, debarred from arbitration on his claim? (2) Claimant being dissatisfied with the report of the respondents' medical adviser, does his compensation fall to be suspended so long as he refuses to submit himself to a medical referee under said sub-section?"

It was stated at the bar that 19s. 10d. was the maximum weekly payment which the appellant could claim.

Argued for the appellant—Under section 1, sub-section 3, and Schedule I., section 12, of the Act, a workman was entitled to resort to arbitration in the event of any dispute as to the amount or duration of compensation, and his right to do so was unaffected by Schedule I., section 11; the latter section of the schedule merely gave the workman the option of an alternative mode of settling any dispute as to the duration of compensation. The only benefit which that section was intended to confer on the employer was to give him a right at any time to investigation as to an injured workman's condition; it merely extended the provisions of section 3 of the schedule to cases in which a dispute arose after payments had been already made. There were two examinations provided for in section 11, but the employer was only entitled to "require" one of them, and that which he was entitled to "require" was the examination referred to as "such examination" at the end of the section. Refusal or obstruction in the sense of the section could only refer to that examination with regard to which the section was imperative, and these words had no application in the case of the examination with regard to which the section was merely permissive; the contrary view would impose great hardship, because the expense of examination by a practitioner appointed under the Act fell upon the workman, as to whose condition the certificate of that practitioner was declared to be conclusive. There had been no agreement.

The mere receipt of payments did not constitute an agreement of which the appellant could have recorded a memorandum, and the present arbitration was the first invocation of the Act. The Sheriff should be ordained to proceed with the arbitration, and the appellant was entitled to the maximum of compensation up to the date of the Sheriff's decision—*Steel* v. *Oakbank Oil Co.*, December 16, 1902, 5 F. 244, 40 S.L.R. 205. The following cases were referred to—*Dowds* v. *Bennie & Son*, December 19, 1902, 5 F. 268, 40 S.L.R. 239; *Ferrier* v. *Gourlay & Son*, March 18, 1902, 4 F. 711, 39 S.L.R. 453; *M'Avan* v. *Boase Spinning Co.*, July 11, 1901, 3 F. 1048, 38 S.L.R. 772.

Argued for the respondents—Section 1, sub-section 3, of the Act excluded arbitration in the present case, the question of the appellant's claim having been settled by agreement. Section 11 of Schedule I. was not a mere repetition of section 3 of the schedule; it was intended to give the employer a summary remedy without any need of arbitration—*Steel* v. *Oakbank Oil Co., cit. sup.*, Lord Adam, 5 F., at p. 248. The appellant could have recorded a memorandum of agreement proceeding upon the respondents' admission of liability and the payments following thereon—*Dunlop* v. *Rankine & Blackmore*, November 27, 1901, 4 F. 203, 39 S.L.R. 146; *Trail & Sons* v. *Cochrane*, July 19, 1901, 3 F. 1091, 38 S.L.R. 848.

At advising—

LORD JUSTICE-CLERK--The circumstances of this case which appear to be of importance are these—First, that there was no dispute between the parties originally as to the right to compensation or its amount, the respondents having agreed to pay, and having paid for some time, 19s. 10d. weekly to the appellant, being the full amount he could be entitled to under the Act; Second and Third, that on being called on to do so at a later date the appellant submitted himself for examination to the respondents' medical adviser, whose report declared him to be able to resume his former work; Fourth, that in consequence the respondents decline to pay further compensation; and Fifth, that the appellant has not applied to be examined by an official medical man nominated by the Government department under the Act, as he is entitled to do if dissatisfied with the report of the respondents' medical man.

These being the facts, the case is, as I think, a case of agreement under the Act, and that the appellant, had he chosen, could have registered a memorandum of the agreement, and so made it enforceable as long as the circumstances remained unchanged, and it could only be modified in case of partial recovery, or put an end to in case of full recovery.

The respondents claim that the case must be dealt with under section 11 of the First Schedule of the Act, and maintain that in the above circumstances they cannot be called upon to pay further compensation, the proper remedy of the appellant if dissatisfied with the report of their medical man being to submit himself to examination by one of the statutory medical officials, that official's report as to his condition being declared to be conclusive evidence as to that condition. In my opinion this contention of the respondents is sound, and has been properly given effect to by the Sheriff. The appellant was a person receiving weekly payments under the Act, and therefore sub-section 11 directly applies to his case. He is in the position of having been reported on as fit to resume work, but while dissatisfied with the report he refuses to submit himself for official examination, and is therefore in the position described at the end of the sub-section, viz., that "his right to such weekly payments shall be suspended until such examination has taken place." He is not debarred from compensation if he is in such a condition as to demand it. His rights are intact under the agreement. But he himself brings about a suspension of his right to any payments by not submitting to examination. Such examination would be conclusive in favour of his right to compensation if the medical examiner reported any continued incapacity, and the respondents could not resist payment. It is therefore no hardship that until he so submits himself his payments should be suspended. Of course if it is reported that he has completely recovered there is equally no hardship.

I am of opinion that the appellant is not entitled to demand proceedings by arbitration under the statute, and that compensation must remain suspended as long as he declines to submit himself to official examination.

I am therefore in favour of answering both questions in the affirmative.

LORD YOUNG—The questions of law presented by this stated case in an arbitration process under the Workmen's Compensation Act 1897 regard the construction and import of sec. 11 of the first schedule appended to that Act. This section applies only to workmen "receiving weekly payments under this Act" and their employers making the payments. From May 1901 till September 1902 the appellant was, as stated in the case, a workman receiving such payments from his employers, the respondents. If the relative positions of these the only parties before us were not so, sec. 11 of the first schedule could not apply to them, and they could not be interested in the questions of construction stated in the case. If, on the other hand, their relative positions were so—that is to say, if the appellant was a workman receiving, and the respondents were his employers making to him, weekly payments under the Act at the time stated in the case, the section referred to undoubtedly applies to them, so that they are legitimately interested in the Sheriff's judgment on its construction as he has stated it to us. These are the only alternatives. Taking the latter, which is that taken I think rightly by the Sheriff, it cannot signify to the question which alone is submitted to us for decision, viz., the

construction and import of sec. 11 of the first schedule, how "the weekly payments under this Act" received by a workman from his employer came to be made and received—it being assumed that they were made and received "*under this Act*" as the necessary condition of the section in question having any application to the case or the parties any interest in its construction. Assuming, then, that the appellant being a "workman receiving weekly payments under this Act," did on 26th September 1902, being so required by his employers (the respondents), "submit himself for examination by a duly qualified medical practitioner provided and paid by the employer"—who reported (as stated in the case) "that he had so far recovered from the effects of his injury as to be quite able to do his former work," whereupon the weekly payments theretofore made were stopped by the respondents,—the question is whether or not the Sheriff's judgment in the arbitration process instituted by the appellant is sound in law. The appellant's case in the arbitration process is that in point of fact he is still disabled for work by the injuries which he sustained, and that the parties being no longer agreed he is entitled to have the difference between them determined in that process. This, which *prima facie* seems reasonable and in accord with the enactment of sec. 12 of this same first schedule, is disputed by the respondents, who contend that when an employer avails himself of the right conferred on him by sec. 11 to require a workman who is receiving from him weekly payments under the Act to submit himself for examination by a qualified medical practitioner, he thereby deprives such workman of any right conferred by sec. 12 to have his claim for the continuance or increase of the weekly payments to him decided by arbitration, or otherwise than by reference to a medical man appointed by the Secretary of State. The Sheriff has by his judgment given effect to this contention. He says—"I found that he" (the appellant) "was not, in the circumstances, entitled to have his claim decided by arbitration." I am of opinion that this is altogether erroneous, and indeed I can find nothing in sec. 11 of the schedule or in reason to support it. I have in two recent cases pointed out the obvious, in my opinion, sense and purpose of sec. 11, viz., to enable employers from time to time to ascertain for their own guidance the condition of workmen to whom they are making weekly payments under the Act, and to enable them to discontinue the payments should the workmen contumaciously refuse to submit to examination, or take proper steps to have their rights, as they maintain them, judicially determined. There is nothing in section 11 of the schedule or elsewhere in the Act which suggests the notion that a medical practitioner appointed by the Secretary of State is a referee or arbitrator to whose judgment a workman, any more than an employer, is bound to submit. It has never, so far as I know, been suggested that an employer was so bound or excluded by any medical opinion from demanding inquiry and decision by an arbitrator in an arbitration process.

There was never any dispute as to the liability of the respondents to compensate the appellant for the injury referred to as sustained by him in May 1901, or regarding the amount, until 30th September 1902. The agreement between them as to amount was, while it subsisted, implemented by the weekly payments which the respondents ended on 30th September 1902. In the argument before us we had some observations on the question whether the stated case discloses an agreement which the appellant might and ought to have had registered so as to avoid an arbitration process. The question seems to me uninteresting and without bearing on the only legal question which we can possibly decide. No question was presented to the Sheriff or to us regarding the admitted liability of the respondents to compensate the appellant for the injury he had sustained so long as he was thereby disabled from work wholly or partially. Of course, and very obviously, compensation by weekly payments may be "ended, diminished, or increased" at any time, the circumstances on which their amount and continuance depend being changeable, and section 12, schedule 1, specifies, I think, very distinctly at whose request, and how, and where, viz., "at the request either of the employer or of the workman," and "in default of agreement, by arbitration under this Act." Here there was certainly "default of agreement" with respect to the ending made by the employers at their own hand on 30th September. I do not regard this ending as a violation of any agreement between employer and workman, and there is indeed no indication of any agreement between them that the payment should be continued after 30th September, indefinitely or for any fixed period. If the respondents could not end the payments without authority, it seems clear that they could get none otherwise than by arbitration under the Act. Further, I find nothing in the Act to hinder an employer from ending or diminishing a weekly payment to a workman under the Act without first requiring him to submit himself to the examination of a medical practitioner, and without reference to the terms of the practitioner's certificate should such examination have been required and made. I have already pointed out that the very obvious and intelligible purpose of requiring the workman to submit to medical examination when required by his employer is to enable the employer to obtain information which he thinks may possibly be useful for his guidance in dealing with the workman by voluntarily continuing the weekly payment or taking steps to end or diminish it, and that to hold the medical certificate to be binding on either party as the decision of a statutory referee is quite unwarranted by any expression in the section. What seems to me to be effective and reasonable provision against the contumacious defeasance or obstruction by the workman of his employer's right to

obtain the information he desires is made by the concluding sentence of section 11:—"If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place." This sentence is of course inapplicable to the case before us, the appellant having submitted to examination by the medical man provided and paid by the respondents, who accordingly obtained from him all the information they desired or were entitled to require the appellant to aid them in obtaining.

The reason or purpose of the permission given to the workman to submit himself, if he pleases, for examination to one of the medical practitioners appointed for the purposes of the Act, does not occur to me unless indeed in the case of some personal objection to examination by the practitioner provided by the employer. I am, however, clearly of opinion that he is in no case bound to avail himself of the permission, and the appellant not having done so we are not required to determine the meaning and effect of the words "And the certificate of that medical practitioner as to the condition of the workman at the time of the examination shall be given to the employer and workman, and shall be conclusive evidence of that condition." Taken as mere words they might admit of a construction which would in reasonably supposable cases lead to absurd and disastrous results, but we do pay some regard to the "*Qui hæret in literâ hæret in cortice*" maxim. The Sheriff's view, accepting the argument of the respondent's counsel, is that the words being strictly adhered to make this medical man a medical referee to whom reference must be made in default of agreement by the parties. It is, however, material to observe that the employer cannot call in or refer anything to this referee. Is then he (the employer) bound by the certificate obtained from him by the workman? Suppose the certificate to be that the workman has not so far recovered from the effects of the injury as to be able to do half the work or earn half the wages he did before the injury, does the statute signify that this must be received as "conclusive evidence" of the fact—which the employer could not be allowed to contradict by any evidence—even that of the doctor who granted it, and of the workman himself? But if such certificate is not conclusive evidence against the employer, is it so against the workman? If so, the workman may well be pardoned for not calling him in. The word "evidence" is suggestive of an argument—for evidence must be laid before a tribunal having jurisdiction to decide the question of fact as to which it is evidence. I do not pursue this topic further now. The question may arise when a certificate such as I have been referring to has been obtained and produced—as evidence in an arbitration process—the question in dispute being whether, to any, and also to what, extent an injured workman had recovered his working and wage-earning capacity.

I am therefore of opinion that the process before us on appeal against the arbitrator's judgment is an arbitration process under the Workmen's Compensation Act, as the stated case which alone brings it before us expressly bears, and that the Sheriff's judgment declining to decide the appellant's claim thereby presented for his decision is erroneous in law, and ought therefore to be recalled and the case remitted to him to be inquired into and decided in ordinary course.

LORD TRAYNER—In this case the appellant has applied to the Sheriff to ascertain and fix as arbiter the weekly compensation due to him in respect of an injury sustained by him while in the employment of the respondents. The Sheriff has, as I think rightly, refused to arbitrate, but I am not sure (from the question put to us) whether he has done so on the right ground. The appellant, according to the statement of facts set forth in the case, was injured in May 1901. The respondents admitted liability for compensation under the Workmen's Compensation Act at the rate of 19s. 10d. per week, which was stated at the bar to be the maximum compensation which the appellant could claim. This compensation the respondents paid and the appellant received down to the 30th September 1902—that is, for a period of about one year and four months. I take that as being compensation paid under agreement, a memorandum of which might have been registered by the appellant if he had so desired. These facts I think are sufficient to exclude the appellant's right now to apply to have compensation fixed by arbitration, for according to my reading of the Act (sec. 1, sub-sec. 3) arbitration is only competent where compensation has not been "settled by agreement." But the question has also been raised whether the respondents were entitled to suspend payment of the agreed-on compensation, and in the circumstances stated by the Sheriff I think they were. In terms of sec. 11 of the first schedule to the Act the respondents required the appellant in September 1902 to submit himself for examination to a medical man of their selection, which the appellant did. The report by the medical man was that the appellant had so far recovered from his injuries "as to be quite able to do his former work." If that report is correct the appellant's right to compensation is at an end. He was not bound, however, by that report if he was dissatified therewith, and had the right to have his condition inquired into and reported upon by a medical practitioner appointed by the Secretary of State. But he has done nothing to obtain either examination or report from such an officer. Now, in my opinion, if the appellant refuses or unduly delays to have such an examination his right to compensation is suspended. If he refuses, the statute is precise to that effect; if he unduly delays, he is, in my opinion, obstructing the examination, because it cannot take place except at his instance. The respondents have no power to compel

the appellant to submit to such an examination, and "obstructing" the examination also results in the suspension of compensation.

The questions put in the case might have been better framed, but the points raised by the case are quite intelligible. I am prepared (subject to what I have said as to the effect of sec. 1, sub-sec. 3, of the Act) to answer both questions in the affirmative and to dismiss the appeal.

LORD MONCREIFF—This case is stated in a process of arbitration initiated by the appellant, the workman, for the purpose of having compensation fixed under the Act of 1897 in respect of injuries sustained by him while in the service of the respondents.

I may say at the outset that I more than doubt whether the appellant has adopted the proper course. Until shortly before the application was presented he was in receipt of weekly payments under an agreement with the respondents, the said agreement being an agreement under the Act. The weekly payments were the maximum allowed by the Act, and therefore the object of the application to the arbitrator could not have been to have the weekly payments increased. The appellant's object was to compel the respondents, who had ceased making payments, to continue to make them. His proper course was to register a memorandum of his agreement with the respondents, which would have been equivalent to a decree; and that would have put it upon the respondents to apply for review under section 12 of the first schedule.

But the same question would probably have arisen; the employers would have called upon the workman to submit himself to examination under the 11th section of the first schedule, and we should have had to consider precisely the questions which are now presented to us.

Those questions are by no means free from difficulty, and the appellant's contention on them was stated clearly and forcibly by Mr Moncrieff in his opening speech. I am of opinion, however, that the Sheriff's judgment is well founded, and that the appellant is not entitled to proceed to arbitration unless he submits himself to examination by the official medical practitioner.

This, I think, can be demonstrated. The leading purpose of the 11th section of the 1st schedule is to secure in the cases to which it applies finality as to the evidence of the workman's condition from time to time from a medical point of view. The expediency of securing such finality is apparent when it is considered that applications for review of weekly payments may have to be made not once but several times. The case to which we were referred of *Dowds* v. *Bennie*, 40 S.L.R. 239, is a good illustration of the inconvenience of allowing a proof at large in such a case, because the Sheriff who allowed the proof was in such perplexity from the conflict of medical evidence that he was obliged to call for a report from the official medical referee.

The section applies to cases like the present, in which the workman is receiving weekly payments under the Act either by agreement or as fixed by arbitration. If the workman is not willing to be examined by the medical practitioner provided by the employer, he is bound as I read it to submit himself to examination by a medical practitioner appointed for the purposes of the Act; and if he does so the certificate granted by that medical practitioner as to his condition is declared to be conclusive evidence of that condition. Much has been said of the hardship of subjecting the workman to an examination which must result in a certificate, which, if against him, is conclusive (although in the opposite case it is equally conclusive against the employer). But there is no doubt that in the case supposed, if the workman will not submit himself for examination by the employers' medical practitioner, he must submit himself for examination by the official medical practitioner under penalty of having the weekly payments suspended until the examination takes place; and if he does submit himself the section says that the certificate of that medical practitioner shall be conclusive evidence of the workman's then condition. So far I think the interpretation of the section is clear.

In this case, however, the appellant (the workman) did submit himself for examination by the employers' medical practitioner, but he was not satisfied with the certificate granted by that practitioner. In such a case the remedy, and the only remedy, provided is that if the workman is dissatisfied he may take precisely the same course as that provided for the case of his objecting to be examined by the employers' medical practitioner, viz., he may submit himself for examination to the official medical practitioner. In short, he has a right of appeal. If he appeals the certificate of the official medical practitioner is undoubtedly conclusive. But what if the workman, while expressing his dissatisfaction does not appeal? One of two views may be taken, either of which would be sufficient—either the certificate of the employers' medical practitioner must be held to be conclusive and the workman held confessed on it; or (and probably this is the better view) the workman must be held to be obstructing the operation of the section by refusing to submit himself for examination by the official medical practitioner. It would be the merest evasion of the section if the workman could stultify its provisions by submitting to examination by the employers' medical practitioner and then refusing either to be bound by the certificate or go before the official referee.

If such a course were open to the workman the employer would derive no benefit whatever from the provisions of the section; he would obtain at most a precognition as to the workman's condition, and if the appellant's argument were right would be compelled to go before the Sheriff under the 12th section and submit to a proof at large as to the workman's condition.

I am therefore of opinion that the Sheriff is right in holding that until the appellant

chooses to submit himself for examination the weekly payments fall to be suspended as long as he refuses, and I should therefore answer the second question in the affirmative.

As to the first question, I am of opinion, for reasons which I stated, that it is not open to the appellant to initiate an arbitration process under the 12th section, but assuming that he is, I am of opinion that he should not be allowed to proceed with it until he submits himself for examination to the official medical referee.

The Court answered the two questions of law in the affirmative, and dismissed the appeal.

Counsel for the Claimant and Appellant —Watt, K.C.—Moncrieff. Agents—Simpson & Marwick, W.S.

Counsel for the Respondents- Salvesen, K.C.—Hunter. Agents—W. & J. Burness, W.S.

Wednesday, July 8.

SECOND DIVISION.

M'KAY'S TRUSTEES *v.* GRAY.

Succession — Vesting — Express Provision as to Vesting—Respective Terms of Payment—Testament—Construction.

A testator directed his trustees to pay over to his wife, so long as she remained his widow, the income of his whole estate. He further directed that his trustees, in the event of his wife predeceasing him, or in the event of her entering into a second marriage, or on her death, in the event of h-r surviving him, should as soon as convenient, after whichever of these events should happen first, realise his estate and pay and make over the residue and remainder thereof to and among his whole children who should survive him, excluding one, equally among them, share and share alike, and that in the case of sons as they respectively attained majority, and in the case of daughters as they respectively attained majority or were married, whichever of these events should happen first, but "the said shares of said residue shall not vest until the respective terms of payment." It was also declared that if any child should die either before or after the testator leaving lawful issue, and without having acquired a vested interest in the said provision, such issue should be entitled to the share which their parent would have taken by survivance, and that the share of any child dying without leaving lawful issue should be divided among the surviving children and the lawful issue of such children as might have died leaving such issue, in equal shares, *per stirpes.*

Held that the period at which a share of the testator's estate vested in the children who survived the testator was the date at which each of them in the case of sons respectively attained majority, and in the case of daughters attained majority or were married, and that the date of vesting was not postponed till the death of the testator's widow.

Daniel M'Kay, builder, Edinburgh, died on 11th June 1890 leaving a trust-disposition and settlement dated 20th February 1885, by which he conveyed his whole estate to trustees.

By the third purpose the testator directed his trustees to pay the income and produce of his whole estate to Mrs Rebecca Trayner or M'Kay, his wife, while she remained his widow.

The fourth purpose was in the following terms:—"In the event of my wife predeceasing me, or in the event of her entering into a second marriage, or on her death, in the event of her surviving me, my trustees shall as soon as convenient, after whichever of these events shall first happen, realise the whole of my means and estate, heritable and moveable, with the exception of the tenement of houses to be conveyed to my daughter Margaret Morrison M'Kay as aforesaid, and shall make payment to my son John M'Kay, whom failing to his lawful children, equally among them, of the sum of £20 sterling, and shall pay and make over the residue and remainder of my said means and estate to and among the whole of my children who may survive me, excluding the said John M'Kay, but including the said Margaret Morrison M'Kay, equally among them, share and share alike, and that in the case of sons as they respectively attain majority, and in the case of daughters as they respectively attain majority or are married, whichever of these events shall first happen, but the said shares of said residue shall not vest until the respective terms of payment: But it is hereby declared that if any child shall die either before or after me leaving lawful issue, and without having acquired a vested interest in said provision, such issue shall be entitled to the share which their parent would have taken by survivance, and the share of any child dying without leaving lawful issue shall be divided among the surviving children and the lawful issue of such children as may have died leaving such issue, in equal shares, *per stirpes.*"

The testator was survived by his wife. She died on 25th March 1900.

The testator was also survived by eight children. One of these, Joseph M'Kay, died on 3rd March 1898 after attaining majority but without leaving issue. He left a will bequeathing all his property to the children of his sister Mrs Henrietta Mackay or Gray.

A question arose as to whether a share in the residue of the testator's estate vested in Joseph M'Kay in view of the fact that he died before the termination of the widow's liferent.

For the settlement of this question a special case was presented for the opinion and judgment of the Court.

The parties to the case were (1) Daniel