Argued for the third party—The statutory formalities had not been complied with and the disentail was therefore invalid—*Kermack* v. *Cadell*, July 9, 1852, 24 Sc. Jur. 609; *Baird* v. *Baird*, July 15, 1891, 18 R. 1184, 28 S.L.R. 878.

Argued for the first and second parties—The instrument of disentail was valid. The form laid down in the Entail Act of 1848 was permissive not compulsory. The deed said the same thing as the form but in different words. The phraseology used in the deed was that used in section 32 of the Act itself, and was also that used in the Statute 1685, c. 22. The deed of disentail let people know effectually that the estate had been disentailed, and that was its object. Without the irritant and resolutive clauses the prohibitory clauses were of no effect, and the estate had been admittedly relieved of the irritant and resolutive clauses by the terms of the instrument of disentail. The cases of *Kermack* and *Baird* were different from the present. They dealt with sections of the Entail Acts of 1848 and 1882 respectively, in which the word used was imperative, viz., "shall" not, as here permissive, viz., "may." The analogy therefore failed, and these cases by contrast assisted the contention of the first and second parties.

LORD TRAYNER—The objection taken to the instrument of disentail is that it does not contain all the words of the form provided by the schedule annexed to the Act of 1848. I do not think that the word omitted—the word "prohibitory"—is essential or would have been of much importance even if it had been inserted. The instrument of disentail declares the lands to be free from the conditions and provisions of the entail, and of its irritant and resolutive clauses. By the deed of entail it is "expressly provided and conditioned" that "it shall not be lawful . . . to alter . . . the taillie . . . or to burden the same." I regard these prohibitions as "conditions and provisions of the entail," and think they have been validly and competently removed by the terms of this instrument of disentail. But in any case the instrument is sufficient, seeing that it frees the lands from the irritant and resolutive clauses, without which the prohibitory clauses, at least in a question with a singular successor, would be of no effect. I am therefore of opinion that the question in law should be answered in the negative.

LORD MONCREIFF and the LORD JUSTICE-CLERK concurred.

LORD YOUNG was absent.

The Court answered the question in the negative.

Counsel for the First and Second Parties—Spens. Agents—W. & J. Cook, W.S.

Counsel for the Third Party—Chree. Agent—F. J. Martin, W.S.

Tuesday, February 16.

FIRST DIVISION.

[Sheriff-Substitute at Alloa.

RANKINE *v.* THE ALLOA COAL COMPANY, LIMITED.

(*Ante* July 16, 1903, 40 S.L.R. 828.)

Master and Servant — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 2—*Notice—Want of Notice—"Mistake or other Reasonable Cause."*

A workman in a coal mine sustained an injury on 25th October 1901, but gave no notice of a claim for compensation under the Workmen's Compensation Act 1897 until 24th March 1902. In an arbitration under this Act the Sheriff held, under sec. 2, that the proceedings were not maintainable inasmuch as the failure to give notice as soon as practicable had prejudiced the employers in their defence, and was not attributable to mistake or other reasonable cause. He found in fact that the workman had thought his injury did not come within the meaning of an accident under the Act and would not have made a claim had his recovery been as satisfactory as he expected, and that he had not regarded his injury as so serious as his doctor's advice should have led him to believe. In a case stated for appeal, *held* that the want of notice was attributable to mistake.

This was a case stated for appeal by the Sheriff-Substitute at Alloa (DEAN LESLIE), in an arbitration under the Workmen's Compensation Act 1897 between William Rankine, miner, Coalsnaughton, Tillicoultry, and The Alloa Coal Company, Limited.

In the stated case the Sheriff set forth the facts admitted or proved as follows:—"The appellant is forty-four years of age, and had been employed by the respondents as a coal miner for twenty-eight years prior to 25th October 1901.

"On 25th October 1901 the appellant, while in the Sheriffyards Pit, Alloa, which is owned by the respondents, was personally injured by an accident arising out of and in the course of his employment. In endeavouring to replace a derailed hutch by means of a piece of rail as a lever, he so exerted himself by a sudden jerk that injury was caused to his heart or aorta. The immediate effect on the appellant was faintness and weakness, but he managed to walk home.

"Appellant stayed at home for three days. On the fourth day, 29th October 1901, he returned to the pit, but finding himself unable to do his usual work, he did light work, and continued at it till the 15th November 1901.

"From 16th November to 4th December 1901 appellant was a patient in the Royal Infirmary of Edinburgh, and from the

latter date until 26th January 1902 he rested at home.

"On 27th January 1902 appellant resumed light work until 24th February 1902, when he had to stop again owing to weakness. Finally, on 22nd October 1902 he returned to work at a light job, and has been so working since in the respondents' said pit.

"Except during these periods when the appellant was doing light work, he was totally incapacitated for work. He is now permanently incapacitated for working at his calling of a miner, but is able to do light work.

"Appellant is a strongly built and sober workman, whose heart system was probably not in a perfect condition at the time of the accident, although he was himself unaware of it. On the evening of 25th October 1901 appellant consulted Dr William Leslie, Alloa, as to his condition, and was informed that there had been a serious affection of the valve of the heart. He was then advised to stop work entirely and to rest, but no particular length of time was specified.

"If appellant had stopped working entirely and rested properly he would not be incapacitated for work to such an extent as he is at present, and might have ultimately returned to his condition at the date of the accident.

"In order to account for the presence in the pit of a stranger who was assisting him in his work, appellant, on 29th October 1901, mentioned his injury to the respondents' mine inspector. He thought his injury did not come under the sense of an accident under the Workmen's Compensation Act, and he would not have made a claim had his recovery been as satisfactory as he expected. He did not regard his injury as so serious as Dr Leslie's advice to him should have led him to take of it. In March 1902 appellant was advised by his law-agent that from the nature of the accident he was not entitled to compensation under the Workmen's Compensation Act 1897, and that he had six months in which to lodge a notice of claim. On 24th March 1902 the present claim was made in writing to respondents.

"The appellant's average weekly earnings during the twelve months previous to 25th October 1901 exceeded £2 sterling."

On these facts the Sheriff found "that notice of the accident had not been given until 24th March 1902; that the want of notice had prejudiced the respondents in their defence, and that therefore these proceedings were not maintainable. If the facts do not justify that conclusion it has to be considered whether the want of notice was occasioned by mistake or other reasonable cause. In my opinion it was not so occasioned. If the respondents were not prejudiced in their defence by want of notice, and the want of notice was occasioned by mistake or other reasonable cause, then the respondents are liable to compensate the appellant, and the amount of the award to the appellant should be £1 per week from 9th November 1901."

The questions of law for the opinion of the Court were—"(1) Whether on the facts admitted or proved the respondents were not prejudiced in their defence by want of due notice of the accident in terms of the 2nd section of the Workmen's Compensation Act 1897? (2) Whether on the facts admitted or proved the want of due notice of the accident on the part of the appellant was occasioned by mistake or other reasonable cause in the sense of the 2nd section of the Workmen's Compensation Act 1897? (3) Whether on the facts admitted or proved the appellant was entitled to compensation at the rate of £1 per week from the 9th November 1901?"

The Workmen's Compensation Act 1897, sec. 2 (1), is in these terms—"Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof, and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or in case of death within six months from the time of death: Provided always that the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not prejudiced in his defence by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake or other reasonable cause."

Argued for the appellant—On the question whether the failure to give notice as soon as practicable was attributable to mistake or reasonable cause the Sheriff had erred. The workman had made a mistake in his estimate of the extent of his injury, and further in its character, for he believed and had been advised that it did not come within the Act, and it had only recently been decided that such an accident was within the statute—*Stewart* v. *Wilsons and Clyde Coal Company, Limited*, November 14, 1902, 5 F. 120, 40 S.L.R. 80; *Boardman* v. *Scott & Whitworth* [1902], 1 K.B.43; *Fenton* v. *Thorley & Co.* [1903], App. Cas. 443.

Argued for the respondents—On the question of "mistake or reasonable cause" the Sheriff was right. The Act placed an onus on the workman, where he had failed to give notice as soon as practicable, to show the omission was through mistake or other reasonable cause, and that onus the Sheriff was satisfied that he had not discharged. "Mistake" in the Act meant some mistake in the giving of the notice. Such, for example, would be the belief that notice had been given by a friend or some-one else when it had not. It did not mean the omission to give notice altogether where, as in this case, no reasonable man could doubt that injury had been done.

LORD ADAM—I understand this unfortunately is the third appeal we have had in this case, and I hope we shall be enabled finally to dispose of the case now.

The accident to the appellant happened so long ago as 25th October 1901. He did not give notice to his employers till 24th March 1902, and founding upon that fact the respondents have maintained, and successfully maintained before the arbiter, that they were thereby prejudiced in defending the claim, and that the want of due notice was not occasioned by mistake or other reasonable cause.

On the facts the conclusion the Sheriff has come to is this—"I found that notice of the accident had not been given until 24th March 1902; that the want of notice had prejudiced the respondents in their defence, and that therefore these proceedings were not maintainable." And he goes on to say this—"If the facts do not justify that conclusion"—he really means to say if the facts do justify that conclusion—"it has to be considered whether the want of notice was occasioned by mistake or other reasonable cause."

The questions arise under the second clause of the Workmen's Compensation Act. There is no question in this case that notice was not given until nearly six months after the accident. Of course that renders the action not maintainable unless it shall appear in the proceedings that "the employer is not prejudiced in his defence by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake or other reasonable cause."

Now, there is this to be observed, that these questions, whether it was to the prejudice of the respondents, or whether the defect of proper notice was occasioned by mistake or other reasonable cause, are to appear in the course of the proceedings, and that the Sheriff sitting as arbiter shall consider the whole facts, and decide whether or not they disclose a case of prejudice, or disclose that if there was prejudice, failure to give notice was due to mistake or reasonable cause. In these circumstances the question of onus is of very little importance. The question of onus is of importance when it is a question as to who is to lead in a proof, but here we have the whole facts of the case, and it is difficult to say where the question of onus arises, and it is not of much significance. I can understand that if the question arose the onus must in a sense lie, and does lie, on the party who is, so to speak, in fault. Now, accordingly in a case where it appears notice has not been given at the time, that would require explanation on the part of the claimant why he did not give notice, and to that extent the onus would be on him. I should say that the fact of the statute requiring notice also suggests that if notice is not given that *prima facie* will be to the prejudice of the appellant. If the matter of time is not a matter of some importance, why should it be that the Act demands that notice should be given as soon as practicable? Therefore all that that suggests in the first instance is, that where there is want of notice there is a certain onus—a small onus—on the claimant, but the question of onus is, I think, of little importance here.

Now, in this particular case the first question is whether the facts show or reasonably suggest prejudice to the respondents. Now, I propose to say very little on that. The case is not put to us in a very happy way. We are told the whole history of the man and the proceedings that have taken place and the whole facts of the case. There is no specification by the Sheriff or arbiter of the facts in respect of which he arrives at the conclusion that the want of notice had prejudiced the respondents in their defence. All the facts are here, but we do not know the facts which he particularly founds upon in coming to that conclusion, and I do not think that is very satisfactory. I do not say he could not send the case to us in that shape if he chose. It is not incompetent, but it is not satisfactory.

So, again, as to whether there was mistake or reasonable cause he does not tell us the facts that he thinks show the failure to give notice was not occasioned by mistake or other reasonable cause. He leaves us to pick out the facts from the whole facts found proved by him, and that is not very satisfactory. Now, I am far from saying that it is not to be inferred from the facts of this case—the long delay, the peculiar nature of the case, namely, the kind of injury to the man, injury to the heart, more or less serious, and likely to be injured by the appellant working—I am not prepared to say that there may not have been prejudice here to the respondents in respect that they were cut off from taking certain steps provided by the statute in such a case as this. They might have had him examined. I am not prepared to say, if it had been necessary to come to a conclusion on that matter, that the respondents were not prejudiced in their defence. I do not say that in every case where an accident has occurred and a man has been injured, the mere fact that notice has not been given to the employer prejudices the employer because the employee might have been examined by a medical man. That is all a question of circumstances. But in this particular case, looking to the injury to the heart, and possibly to the prejudice to the respondents from not having had opportunity to have the man examined, and so on, I cannot say that there was no prejudice to the respondents.

But on the other question that arises, whether or not, supposing there was prejudice, yet that it is excusable in respect that the want of notice was due to mistake or other reasonable cause, I think there are facts here from which the only reasonable inference is that the want of notice was the result of mistake on the part of the workman for which there was reasonable cause. Because what do we find? The man was for a long time in the employment—twenty-eight years; he received an injury; his actings prove that he did not think the injury was nearly so serious as it turned out to be. No doubt on the night of the injury he consulted Dr William Leslie, who told him of his condition, and informed him that it had had a serious

effect on the heart, and advised him to stop work entirely, and to rest, but the particular time was not told. Then we are told in point of fact, passing over the interjected passage in the case, that he, that is the appellant, thought that his injury was not the result of an accident in the sense of the Workmen's Compensation Act, that he did not regard his injury as so serious as Dr Leslie's advice to him should have led him to think it, that even if he had thought he had a legal claim at that period, the injury in itself being apparently so slight, he would not have made a claim had his recovery been as satisfactory as he expected. That was a great mistake. He made a mistake, I think, in not more implicitly following the advice of his doctor, and he made a mistake certainly in thinking his injury less serious than it was, and acting on that view did not take the rest which the doctor advised him to take. That is what we are told by the Sheriff. "He did not regard his injury as so serious as Dr Leslie's advice to him should have led him to take it." Is that a case in which it can be said that this workman delayed to give notice otherwise than by mistake and with reasonable cause? He had reasonable cause. He thought that he would be able to resume work in a limited time. He went from time to time to the pit and did light work, but that was the mistake he made. He thought his injury was not so serious as it was, and I think that was a reasonable cause for not giving notice. He said—"I have been all my life in the employment of these people. I am not going to lodge a claim against them for any light cause. I think my injuries not very serious, and for that reason I am not going to make a claim." That was his mistake. His injuries were much more serious than he thought. He might be wrong in believing that and not implicitly following the advice of his doctor, but I cannot think a man in that frame of mind, if that was his frame of mind, had not reasonable cause for not giving notice. I think the Sheriff is wrong in answering the second question as he has done, and if he is wrong in that, it necessarily follows that though he may be right on the first question, his opinion as to the first question is no bar to a claim under the statute.

In reference to the third question, I do not think that question was properly raised before us. We have no facts on which we can proceed. We are told the fact that this man has received £1 per week, the maximum which it is possible for him to have, and we are also told that he had been working during a period, doing light work and getting some wages. The Sheriff does not tell us what the amount is, or anything to enable us to come to a conclusion on that. He does tell us that the workman's weekly wages during the twelve months previous to October, the date of the accident, exceeded £2 sterling, but we are not told by how much. Therefore *ex facie* of the proceedings he may be entitled to the maximum compensation. It is evident that the pursuer's wages may have been such that he might still be entitled to the maximum when he was working light work; and I do not think there are any facts before us on which we can interfere with the Sheriff's answer to the third question.

Therefore I propose that we answer the second question to the effect that the want of notice of the accident on the part of the appellant was occasioned by mistake from reasonable cause; and also the third question to the effect that he is entitled to compensation at the rate of £1 per week from 9th November 1901.

LORD M'LAREN—Further reflections upon the procedure in this case only convince me more clearly that the views expressed by the Court at an earlier stage are in accordance with the statute; that there ought only to be one hearing before the Sheriff, and that, if possible, all questions should be disposed of at that hearing. That would follow, first because the proceedings, although coming before a Judge, are to be conducted in the manner of an arbitration, but also because of such incidental expressions in the Act as, for example, "If it is proved in the course of the proceedings that the omission to give notice was caused by" so and so. Such expressions point directly to the usual course of practice, viz., that all preliminary conditions such as notice of action or notice of claim are to be proved at the hearing of the case, where also, if necessary, evidence may be forthcoming to furnish the necessary excuses for omission. Now, coming to the consideration of this case in the way in which I think the Sheriff would naturally consider it, I think, in the first place, it is established that this was an injury resulting from an accident in the course of the workman's employment. We have already had occasion to express opinions on what is meant by an accident, and we receive further light on the subject from a judgment of the House of Lords which up to this time I have only seen reported in the *Times*. But the result of all the decisions is that you are to look rather at the injury in its effect as incapacitating a man from the performance of his work than to the physiological character of the injury. The only question is whether it is an injury resulting from accident. Two men are injured by the same calamity—it may be by the roof of a mine falling upon them, it may be by their being run down by a hutch. The one man suffers, is injured by his leg being broken; the other suffers a shock which sends the blood to the heart with such force that an injury is done to the delicate mechanism of that organ which he can never hope completely to get over. These are both injuries—and the cause of the injury is precisely the same in each case. The inference is irresistible and clear, that the one is as much an injury from the accident as the other is.

Now, no question has been raised as to the serious character of this man's injuries and it seems that the Sheriff has rightly made a conditional award of the sum of £1 a-week. But then we have also to consider

in the course of the proceedings—that is, along with the merits of the case—whether the necessary preliminaries have been observed. It is the fact that notice of the accident was not given at the proper time, but the consequence of that omission as putting a bar on the right of action may be obviated in one of two ways—either by the conclusion which the Judge who heard the evidence may draw that the respondent has not been prejudiced in his defence, or it may be met by proof that, prejudice or no prejudice, the omission was not a wilful omission, but was the result of a mistake. It would be rather difficult to say whether the employer has been prejudiced, because we have no evidence on the subject before us, and we have not had the advantage of hearing the witnesses. If it had been necessary, I daresay your Lordships would have found a solution of the question; but we have the other answer, which is not so very difficult to make out—I mean that this was due to mistake. Now, the mistake, I think, was neither more nor less than this, that the appellant was not aware of the serious character of the injury which he had sustained until at or near the time when he felt it necessary as a precaution to give notice of the accident. In considering the circumstances it is perhaps right to keep in view the nature of this injury. I think it has always been traditional with the medical profession to be very careful about telling a patient whose heart is affected the whole truth about his case, because the very knowledge that he was suffering from heart affection that was incurable might be the means of aggravating his illness, and we know that medical men in certain cases are very guarded in their description of the nature and the consequences of the injuries that they are treating. Now, I gather from the Sheriff's statement that in this case the doctor—I have no doubt doing his duty in accordance with the practice of his profession—had not conveyed to the appellant's mind that he was suffering from a permanent injury, rather encouraging him to take care of himself and to make such partial recovery as was possible. Then the result was that the man, being kept quite rightly in partial ignorance of his condition, did not understand that he was seriously ill, and accordingly did not give notice as soon as he might have done had he been fully informed. If ever there was a case of honest, innocent mistake I think it would be this; and while it may be that perhaps the appellant had realised the true nature of his illness some days before he gave notice, we are not to measure this question of notice in very nice scales. The indication of the Act of Parliament is that this objection is only to be sustained when it is a substantial objection, and in the present case I think it is not, because the man was really doing his best, I think in his own interest and also in the interest of his employer, when he returned to work and did his best to try whether he was fit for work. Therefore I come to the same conclusion as your Lordship that the Sheriff here was wrong in giving effect to the objection of want of notice, and that in all the circumstances that objection is not one that ought to bar the action, but, on the contrary, that the appellant is entitled to the sum to which he would be entitled if this difficulty had not stood in the way.

LORD KINNEAR—I agree. I do not think that there is in this case any delicate question of where the onus rests, because, as your Lordship pointed out, the statute provides that the facts shall be inquired into, and we have had in this case an inquiry by the Sheriff, and we have the result of it brought before us by this statement.

Upon the first question put by the Sheriff I agree with your Lordship. I am not persuaded that there was not prejudice to the defender caused by the delay in giving notice. The Sheriff does not tell us as matter of fact in what he thinks the prejudice consisted or how it arose, but looking to the statement of facts for ourselves I agree with your Lordship that it is not possible to say that the respondents may not have been prejudiced by the delay. I do not think it is necessary to say anything more on that first question or to give any specific answer to it, because I agree with the opinion of both your Lordships on the second question. I think the facts found by the Sheriff show that the workman's delay in giving notice as soon as he practically could have given notice of the accident was occasioned by a mistake which was a reasonable cause. The ground upon which I infer—because after all it is only inference—the Sheriff has not told us specifically what his ground was—but the ground on which he seems to have come to a different conclusion is that the man was informed by his doctor of the serious nature of the injury which had happened to him. I think the mistake was that he thought he had not been so seriously injured as it ultimately turned out that he was, and thinking that he might recover rapidly, and would in the meantime be able to go on doing light work, he did not give notice of the accident, because he did not intend to make a claim against his employers. That turned out to be a mistake. He was very seriously and, I suppose, permanently injured, and the Sheriff seems to consider that his error consisted in not paying sufficient attention to the advice given by his doctor. I think that in that he committed a great mistake, but I see nothing more or worse than mistake in his believing that he was not so seriously injured as in fact he was. The Sheriff's statement as to what the doctor told the workman does not to my mind make it perfectly clear that a man who was not instructed in the science of medicine must necessarily have been impressed with the seriousness of the injury in the sense in which the Sheriff says he thinks he should have been, because what he says is, that Dr Leslie informed the man that there had been a serious affection of

the valve of the heart. Now that information might very well convey a different impression to different people, according as they were or were not instructed in physiology, and the statement itself was not sufficiently specific, I think, to make it perfectly clear to the man what his course ought to be, or whether he ought to consider himself so seriously injured as to be unable for work. But then the Sheriff goes on to say that the doctor told him to stop work and rest, but that no particular time was specified. Now that is somewhat vague. I by no means intend to suggest, that as a question of medical treatment Dr Leslie may not have done perfectly right, but I think it somewhat vague information on which to ground a judgment against a man's conduct in trying to go to work as soon as he did. The doctor told him to rest, he did not tell him how long to rest, and as a matter of fact he rested three days. I have no doubt it was far too short a time, and that in his own interests he ought to have rested for a longer time. But if he did not take sufficient time to rest, as he was instructed to do, I think he made a mistake in supposing that he would rapidly recover and would therefore have no serious claim for compensation. But I think that that mistake sufficiently accounts for his delay to give notice, and I cannot find on the Sheriff's statement that his delay was caused by anything but mistake. I come, therefore, to the conclusion that the bar arising from want of notice is displaced by the proof that the failure to give notice was occasioned by a reasonable mistake on the part of the workman, and that he is entitled to obtain his compensation.

As to the question of amount of compensation, I agree with your Lordship that there is nothing before us to enable us to disturb the Sheriff's decision, and that the amount ought to be £1 a-week. There is nothing to show that the amount exceeds the statutory limit, and nothing to show that the Sheriff in awarding that amount took into account considerations which he ought not to have taken into account, or omitted any consideration he was bound to take into account. We have nothing before us except the fact that he arrived at a conclusion as to the award of compensation, and that that is within the statute. I therefore see no ground on which we can interfere with the judgment on that question.

The LORD PRESIDENT was absent.

The Court answered the second question in the affirmative, and remitted the case to the Sheriff to award compensation.

Counsel for the Appellant—G. Watt, K.C. —Wilton. Agent—P. R. M'Laren, Solicitor.

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

Wednesday, February 17.

FIRST DIVISION.

[Lord Kyllachy for Lord Stormonth Darling, Ordinary.

THE STAR FIRE AND BURGLARY INSURANCE COMPANY, LIMITED, AND LIQUIDATOR *v.* JAMES OGILVIE & COMPANY.

Process—Reclaiming-Note — Competency — Order for Payment within Definite Time.

A, an alleged contributory in the winding-up of a company, was found entitled to the expenses incurred by him in certain proceedings he had taken for the removal of his name from the register, and decree for the taxed amount thereof was pronounced against the company and the liquidator. By a subsequent interlocutor the Lord Ordinary, without prejudice to the decerniture against the liquidator personally, ordained him "to hand and pay over out of the assets of the company" to the agents of A "within one week from the date hereof, the expenses decerned for in the preceding interloctuor." The liquidator reclaimed. *Held* that the reclaiming-note was competent.

Stirling Maxwell's Trustees v. *Kirkintilloch Police Commissioners*, October 16, 1883, 11 R. 1, 21 S.L.R. 1, *distinguished.*

On the 8th February 1902 Messrs James Ogilvy & Company, oil and colour manufacturers, Clayhills, Aberdeen, received a notice from Charles Gale, Accountant, Glasgow, the liquidator of the Star Fire and Burglary Insurance Company, Limited, a company incorporated under the Companies Acts 1862-1893, having its registered office at 248 West George Street, Glasgow, and in course of being wound up under the supervision of the Court. The notice called upon them to pay a call of £1 said to be due by them as members of the company. They denied that they were members of the company, and repudiated all liability. After prolonged negotiations, in the course of which it was considered necessary to prepare and print a petition for the rectification of the register, leave to proceed therewith being obtained from the Lord Ordinary (Stormonth Darling) upon the 21st February 1903, the law-agents for the liquidator wrote to the law-agents for Messrs Ogilvy & Company that the liquidator had removed their name from the register of members of the company, that he was to take no proceedings whatever against them, and that when a note was being presented about some other matter a conclusion would be added asking the Lord Ordinary's approval of the deletion of their name.

Messrs Ogilvy & Company presented a note to the Lord Ordinary in which they asked him to find "the said Star Fire and Burglary Insurance Company, Limited,