No. 27, is rented by George Bain Murdoch, the other appellant. Now, the way they are occupied is this—Alexander Murdoch and his family, except a daughter and the other appellant, sleep in No. 25. His son, the other appellant George Bain Murdoch, and the daughter referred to, sleep in No. 27, and the public rooms of No. 27 are used by George Bain Murdoch in his practice as a physician, but all the rest of the premises, as it appears to me, are used and occupied in common. That is the only separate occupation. The families take their meals in common. One kitchen, that of No. 25, is used for preparing these meals, there is only one servant for both families, and in every respect, except what I have stated, these premises are used in common. That being so, is that a joint occupation or is it a separate occupation? It humbly appears to me that the conclusion at which the Commissioners of Income-Tax have arrived is right, and that this is not a separate occupation but a joint occupation. I do not think it makes any difference in the matter of fact as to joint occupation that the one house belongs to the one appellant and the other house is held by a tenant. If that be so, I think that is an end to the case. But we were referred to Rules 6 and 14 of the Act of 48 Geo. III, c. 55, Sched. B, which it is said may be construed into a different determination. I do not think it necessary to read these rules at length, because I find in the case of *Campbell* v. *Inland Revenue*, 7 R. 579, that an exposition by the late Lord President Inglis of the true meaning and effect of these rules is there set forth. I entirely agree with it and cannot express it in better language. What he says is this —"What is the provision of rule 6 and what is the provision of rule 14, taking the two together? It simply comes to this, that where a dwelling-house, meaning an entire block of building, is the property of one individual, but is divided into different occupations or tenements let to different tenants, the landlord or owner of the entire block of building is to be taken as the occupier of the entire block of building, and assessed as if he occupied the whole himself." Now, this is not a case of only one owner, and it is not a case in my view and in your Lordship's view of a separation into distinct tenements, and therefore it is not one falling under rule 6. Then he goes on to say under rule 14—"But where the entire block of building is divided into tenements in the same manner as is contemplated by the 6th section"—that is, distinct tenements—"but these tenements are distinct properties belonging to different owners, then the incidence of the duty is to be upon the occupant of each separate tenement." But in my opinion, and I understand in your Lordship's, this is not a case where the dwelling-house in question is divided into distinct tenements or separate tenements, and rule 14 does not apply. For these reasons I agree with your Lordship that the determination of the Commissioners is right, and should be affirmed.

LORD M'LAREN—I concur.

LORD KINNEAR—I also concur. In this case the two houses were originally separate, and were thrown into one by the opening up of a communication, which, according to the structure of the building, cannot be closed without structural alterations. If the mode of occupation were material to the question, the building is occupied by one family with one servant. It seems to me immaterial that one of the rooms is set apart for the separate use of the son for the purposes of his profession, because the fact that one person living in family with others in one house has a separate sitting-room does not make the house in which he lives with others two houses. It still remains one house. I agree with Lord Adam that the rules relied upon do not apply, because this is not a case of one entire block of buildings separated into distinct tenements.

The Court affirmed the judgment of the Commissioners.

Counsel for the Appellants — Younger. Agents—R. & R. Denholm & Kerr, S.S.C.

Counsel for the Respondents The Inland Revenue—The Solicitor-General (Dundas, K.C.) — A. J. Young. Agent — Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Tuesday, November 22.

SECOND DIVISION.

[Sheriff Court at Airdrie.

TRAINER *v.* ROBERT ADDIE & SONS' COLLIERIES, LIMITED.

Master and Servant — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 7, sub-sec. (2), *First Schedule, sec.* 1 (*a*) — *Dependants — Wholly or in Part Dependent—Parent and Child—Mother in Reformatory at Time of Son's Death.*

In an arbitration under the Workmen's Compensation Act 1897, in which a widow, the mother of an only son who had been killed in the course of his employment, claimed compensation from his employers, it was proved that for the previous eighteen years the claimant had spent much of her time in prison, that during the four years preceding her son's death she was at liberty for only ten months, in the course of which she occasionally earned a little by outdoor work, but was otherwise entirely dependent on her son, who contributed five or six shillings a-week to her support, and that at the date of his death she was confined in an inebriate reformatory under sentence of the Sheriff for two and a-half years.

Held that the claimant at the date of her son's death was not wholly or in part dependent upon his earnings

within the meaning of the Workmen's Compensation Act 1897.

Cunningham v. *James M'Gregor & Company*, May 14, 1901, 3 F. 775, 38 S.L.R. 574, and *Sneddon* v. *Addie & Sons' Collieries, Limited*, July 15, 1904, 41 S.L.R. 826, *distinguished.*

Opinion (*per* Lord Justice-Clerk) that the claim of a mother for compensation in respect of a son's death is different from the claim of a widow in respect of her husband's death, because a son is not liable to support his mother if either the mother is able to support herself or he is unable to support her without impoverishing himself.

Opinion (*per* Lord Moncreiff) that before a claim under the Act can be sustained "there must in the first place be total or partial incapacity on the part of the alleged dependant to support herself by working; in the second place, she must have no separate means; and in the third place, a legal claim for support must be shown to have existed at the date of the death of the husband or son, whether that claim was being implemented or evaded."

The Workmen's Compensation Act 1897, section 7, sub-section (2), *inter alia*, enacts:—"Dependants means . . . (*b*) in Scotland such of the persons entitled according to the law of Scotland to sue the employer for damages or *solatium* in respect of the death of tho workman as were wholly or in part dependent upon the earnings of the workman at the time of his death."

This was an appeal upon a stated case from the Sheriff Court of Lanarkshire at Airdrie in an arbitration under the Workmen's Compensation Act 1897, in which Mrs Margaret Docherty or Trainer, widow, residing in Kirkgate, Irvine, claimant and respondent, claimed from Robert Addie & Sons' Collieries, Limited, Bellshill, respondents and appellants, £300 as compensation in respect of the death of her son Thomas Trainer, on 2nd December 1903, by an accident while in their employment.

The facts which the Sheriff-Substitute (A. O. M. MACKENZIE) found proved were, *inter alia*, as follows:—"(4) That the applicant is fifty-five years old, and is a widow, and that the deceased Thomas Trainer was her only child, and was unmarried. (5) That at the date of the said Thomas Trainer's death the applicant was confined in the State Reformatory for Inebriates at Perth, having been sentenced in the Sheriff Court at Ayr on 15th October 1901 to detention in said reformatory for two and a-half years. (6) That since the year 1885 the applicant has spent much of her time in prison under numerous sentences for theft and other offences, and during the four years preceding her son's death she was at liberty for only about ten months in all. A list of the convictions against her is contained in the appendix. (7) That during the said four years the applicant when out of prison lodged with relatives, to whom her son made payments for her maintenance, amounting on the average to five or six shillings a-week. (8) That during the said four years the applicant occasionally earned a little by out-door work, but was otherwise entirely dependent upon her son. (9) That in August of the year in which he died the applicant's son, in conversation with a relative, indicated a wish to take up house with his mother when she came out of the reformatory."

On these facts the Sheriff-Substitute "found in law that the applicant was, in the sense of the Workmen's Compensation Act 1897, wholly dependent upon the earnings of her deceased son at the time of his death, and is entitled to compensation from the respondents in respect thereof on that footing." He therefore awarded her compensation.

The question of law submitted for the opinion of the Court was—"Was applicant dependent upon the earnings of her deceased son at the date of his death within the meaning of the Workmen's Compensation Act 1897 and if so, was she (*a*) wholly, or (*b*) partially dependent thereon?"

Argued for the appellants—The Sheriff had erred in finding in fact that the mother was dependent upon the earnings of her deceased son at the time of his death. A mother was in a different position from a wife in respect of her claim for aliment; in order to claim aliment she must be able to show (1) that she is unable to support herself, (2) that her son is able to support her without impoverishing himself. The Sheriff had not found that she was incapable of supporting herself, but on the contrary that at the time she did earn a little—*Turners Limited* v. *Whitefield*, June 17, 1904, 41 S.L.R. 631; *Sneddon* v. *Addie & Sons' Collieries, Limited*, July 15, 1904, 41 S.L.R. 826; *Rees* v. *Penrikyber Navigation Colliery Company, Limited* [1903], 1 K.B. 259; *Pryce* v. *Penrikyber Navigation Colliery Company, Limited* [1902], 1 K.B. 221. All these cases were claims by widows in respect of the death of their husbands, except that of *Rees*, which was *a fortiori* of the present case. The *punctum temporis* to be considered was the date of the workman's death, when the present claimant was not being supported by her son at all.

Argued for the respondent—*Rees* was a case of English law, which was different from Scots law, on this matter. Dependence did not necessarily imply *de facto* support, and the Act had never been so interpreted, otherwise patients in infirmaries would be debarred from claiming compensation. It was sufficient that a legal right to support existed. The matter was already concluded by the authority of *Sneddon's* case and by *Cunningham* v. *James M'Gregor & Company*, May 14, 1901, 3 F. 775, 38 S.L.R. 574, and *Legget & Sons* v. *Burke*, March 18, 1902, 4 F. 693, 39 S.L.R. 448.

LORD JUSTICE-CLERK—In this case the Sheriff, sitting as arbiter under the Workmen's Compensation Act, has found compensation due to the petitioner on the footing that she was wholly dependent on the deceased's son. Now, that is a case not

like most of those which we have had in this Court, and not like any of the cases to which we were referred in the course of the argument, because these cases—I think all except the case of *Rees*—were cases where it was a question as to a widow receiving compensation in respect of the death of her husband, she being dependent on him. Certainly there are some of these cases which are authorities for holding a woman to be dependent on her husband notwithstanding that the relief, the aid, he gave her during his lifetime was to some extent intermittent. I am not in the meantime prepared to go back on any of these cases as they have been decided. I do not think that practically they touch this case at all.

In the first place, this is a claim against a son; and the son is not liable for his mother's support at all if on the one hand she was able to support herself, or if on the other hand she was not able to support herself in whole or in part but he was unable to support her from his earnings or without impoverishing himself. In regard to the first of these points, there is nothing in this case to satisfy me that this woman was not quite able if she behaved herself to earn her own livelihood. She seems to have gone through a long course of crime—in fact to be almost a hopeless drunkard and a hopeless thief—the result being that her two last times of. confinement have been two and a half years in an inebriates home and that she is at the present moment undergoing three years' penal servitude for theft. Now, that is not a case in which it can be said, unless there was evidence of the fact to the satisfaction of the Sheriff, that she was not able to support herself, and the case as stated by the Sheriff certainly does not set out anything of the kind. It does indicate that during the short periods she was out of prison she did occasionally do work, and that is just what one expects of a person who was a thief as she was. At times she would be prowling about to see what she would steal, and at other times she was doing outdoor work. It is not said that she was doing work at times, and that on account of weakness of body and bad health she had to give it up. All that is said is—"That during the said four years the applicant occasionally earned a little by outdoor work, but was otherwise entirely dependent upon her son." I take it that that means simply this, that when she was not working and came to her son he was willing to give her a little money, as any dutiful son, however poor in circumstances, would be. That case is not one in which the Sheriff could hold in law that she was entirely dependent on her son. Further, the Act requires that she should be at the time of the death, which gives rise to the claim if there is one, dependent on the earnings of the deceased. Now, it is quite plain that she was not free at that time; she was in confinement as a consequence of her own evil practices, and not being supported by him, and nobody asking or suggesting that he should support her. She was being supported either by the local rates or by Government money. Therefore these two grounds seem to me sufficient to dispose of this claim adversely to the view expressed by the Sheriff-Substitute.

LORD YOUNG concurred.

LORD TRAYNER—I agree with your Lordships on the merits. I think that the applicant for compensation was not dependent on her son at the time of his death in whole or in part in the sense of the statute, and that she has no claim.

At the same time I do not think that the decision now to be pronounced necessarily conflicts with the decision in the cases of *Cunningham* and *Sneddon* referred to by the respondent's counsel.

LORD MONCREIFF—I should have been prepared to hold that the Sheriff's judgment was wrong if this case could not be distinguished from the two recent cases in this Division—*Cunningham* v. *M'Gregor & Company* (3 F. 775) and *Sneddon* v. *Addie & Company* (41 S.L.R. 826). But this case is altogether exceptional, and I think a little attention to the facts demonstrates that. The respondent's son died on 2nd December 1903. Now at that time the respondent was undergoing the last of a long series of sentences. She was confined in an inebriates home at Perth. she was committed on 15th October 1901, and her sentence (two and a half years) did not expire until 15th April 1904, so that at the date of the death of her son in December 1903 there were still four months of her sentence to run. Thus at that date she was in no sense dependent on her son for support. She was being supported, as she had been supported intermittently since 1874, out of public funds. By the time she came out her son had been dead four months, and her claim for support against him therefore never emerged.

I do not proceed on the ground that there is a difference in the liability of a husband and a son; it is not necessary to consider that alleged distinction. I think that before a claim of this kind can be supported there must in the first place be total or partial incapacity on the part of the alleged dependant to support herself by working; in the second place, she must have no separate means; and in the third place, a legal claim for support must be shown to have existed at the date of the death of the husband or son, whether that claim was being implemented or evaded. I think it will be found that in all the cases in which such a claim has been sustained these elements existed. In particular, they existed in the cases of *Cunningham* and *Sneddon*. In the statute the definition of dependants is "such of the persons entitled according to the law of Scotland to sue the employer for damages or *solatium* in respect of the death of the workman as were wholly or in part dependent upon the earnings of the workman at the time of his death." I agree that these words must receive a liberal construction, but I do not think we

can hold, without stretching their meaning unduly, that at the date of the death of her son the respondent was in any proper sense dependent on his earnings for support.

The Court pronounced the following interlocutor:—

"Answer the question of law by declaring that the applicant was not dependent upon the earnings of her deceased son at the time of his death in the sense of the Workmen's Compensation Act 1897: Therefore recal the award of the arbitrator and remit to him to dismiss the claim."

Counsel for the Claimant and Respondent — George Watt, K.C. — D. P. Fleming. Agents—Laing & Motherwell, W.S.

Counsel for the Respondents and Appellants—Salvesen, K.C.—Hunter. Agents—W. & T. Burness, W.S.

Wednesday, November 23.

SECOND DIVISION.

[Sheriff Court at Dundee.

TYLER *v.* LOGAN.

Agent and Principal—Agent's Responsibilities to Principal—Manager of Retail Branch of Wholesale Business Carried on by Dealer—Responsibility of Manager to Account for Goods under his Charge.

A wholesale dealer in Leicester carried on a branch retail business in Dundee under a local manager. The manager signed acknowledgments from time to time for parcels of goods supplied by his employer, the acknowledgments being not for specified quantities of goods but for consignments of specified values. The stock in the premises was gone over at intervals, and at each stock-taking the manager signed an acknowledgment of the cash value of the amount of stock under his charge. On a stock-taking as at 28th February 1903 a shortage of £62 was found to have arisen since the previous stock-taking, which was as at 25th October 1902. Between the dates referred to the manager had received and signed acknowledgments for goods of the value of £471.

In an action at the instance of the employer against the manager for an accounting and for payment of £62 a proof disclosed no fraud or embezzlement on the part of the defender, but the shortage was not accounted for.

Held (*diss.* Lord Young) that the defender was accountable for the stock committed to him, and that he was liable to the pursuer in payment of the sum of £62, being the amount of the shortage.

This action was raised in the Sheriff Court at Dundee by Henry Peters Tyler, shoe and leather factor, Rutland Street, Leicester, against George Logan, 186 Lochee Road, Dundee. The pursuer carried on a retail branch business for the sale of boots and shoes at 15 West Port, Dundee, where from 25th December 1899 to 3rd March 1903 the defender was employed by him as manager. The conclusions of the action were that the defender should be ordained to produce an account of his intromissions as such manager, and to pay the pursuer a sum of £62, 1s. 9d.

The pursuer averred—"(Cond. 3) The pursuer supplied the stock kept and used in the carrying on of said business at West Port. The stock as from time to time supplied was valued and each pair of boots or shoes or other article was separately priced and marked and invoiced to the defender at the retail values at which they were intended to be sold. The defender, as manager foresaid, took charge of the stock in the premises at the time of his appointment and of all further stock supplied by the pursuer from time to time and granted acknowledgments therefor, and the defender has managed the said business, including the retail selling of the stock, during the said period that he acted as manager. The acknowledgments were (not for specified quantities of boots and shoes but for goods received of value amounting to a sum specified). The servants employed in the shop were under the control of the defender, who had the engagement of and power to dismiss them. (Cond. 4) Each week the defender reported to the pursuer the amounts of the drawings from sales in said premises, and the net amount so reported, after deducting the sums paid for wages and other expenses, was paid weekly to the National Bank of Scotland, Limited, Dundee, for the credit of the pursuer at Leicester. . . . (Cond. 5) During the period of defender's managership the stock was (at intervals varying from about one to four months) regularly gone over and taken, and at each stock-taking the stock in the premises was detailed in a list and the defender signed an acknowledgment of the amount of the stock under his charge. Up to and including the stocktaking as at 25th October 1902 the defender duly and regularly accounted for his intromissions as manager foresaid. The acknowledgments were in form similar to (those given for goods received). (Cond. 6) As at said 25th October 1902 the stock on hand under the defender's charge in the shop at West Port was taken and found to amount to £978, 6s. 8d., and the defender signed an acknowledgment thereof. The next stocktaking was as at 28th February 1903, when it was found that the stock on hand amounted to £947, 12s. 9½d., leaving a shortage of £62, 1s. 9d. unaccounted for. . . . During the period from 6th December 1902 up to the said 28th February 1903 there was a large decrease in the weekly drawings (as reported by defender) in comparison with the drawings for the corresponding period in the previous year. Defender's management closed on the 4th of March 1903, and the weekly drawings for that and following weeks reverted to more than