present case an offer has been made which does not take into account an interest which will accrue to the bankrupt on the death of his mother, and the question is whether that is a reasonable offer of composition. The Sheriff has held that the offer is not reasonable, because in his opinion the bankrupt's interest has vested and falls under the sequestration. I am not of opinion that the interest in question has vested, but anything said on this subject will not have any influence in the question of vesting should it hereafter arise for decision. Assuming, however, that the interest has not vested, the fact remains that the bankrupt is possessed of an asset of considerable value, and the trustee is entitled to go through all the forms permitted by the Bankruptcy Act and take his chance that before the estate is wound up this asset may fall into the sequestration. A prudent trustee would say that there was no advantage in accepting an offer of five shillings in the pound with the chance of a good estate falling in, and would, so far as he had power, elect to keep up the sequestration. That is a good reason why, if the bankrupt desires to settle by composition, he should make a reasonable contribution of the funds which will fall to him on the death of his mother. I therefore agree with your Lordship.

Lord Kinnear—I agree with your Lordships. I assume that all the proceedings have been regular, but I observe that that is merely an assumption, because Mr Morison tells us that, assuming the judgment of the Sheriff-Substitute is wrong, he still has objections of a formidable nature. I agree, however, that the decision of the Sheriff-Substitute is right, though I am not able to assent to the grounds in law upon which it is based. It is at least very doubtful whether the interest in question has vested, but without deciding that question, which is not before us, I agree with your Lordships that the bankrupt has a *spes successionis* which is certainly capable of being valued. The only condition upon which the bankrupt's right depends is his survivance of an aged and infirm lady, and that is an interest which is taken into account and valued by insurance companies every day. The question therefore is, whether it is reasonable that the creditors should be compelled to accept a small composition without taking into account an interest which is capable of being turned into money, and I agree that it is not. The case of *Reid* v. *Morison*, 20 R. 510, 30 S.L.R. 477, decided that a bankrupt could not be compelled to assign a *spes successionis*, because it was not attachable by diligence nor carried by the vesting clause of the Bankruptcy Act. But it is a very different matter to say that it is not reasonable to take such an interest into account when the bankrupt claims to put an end to the sequestration by offering to his creditors a small composition for a full discharge. I am of opinion that this is not an offer which the majority of the creditors can compel the minority to accept.

The Lord President was absent.

The Court affirmed the interlocutor of the Sheriff-Substitute.

Counsel for the Appellant—Orr—Irvine. Agent—W. J. Lewis, S.S.C.

Counsel for the Respondents—Morison. Agents—J. Mullo Weir, S.S.C.

Saturday, December 10.

SECOND DIVISION.

[Lord Low, Ordinary.

M'PHIE *v.* MAGISTRATES OF GREENOCK.

Reparation—Public Authorities Protection Act 1893 (56 *and* 57 *Vict. c.* 61), *sec.* 1 (*a*) *—Action of Damages against Public Authority for Breach of Contract to Let Town Hall.*

Held that the protection given to public authorities by the Public Authorities Protection Act 1893 did not extend to an action of damages brought by a private individual against the magistrates and town council of a burgh for breach of an alleged contract to let the town hall to him.

The Public Authorities Protection Act 1893 (56 and 57 Vict. c. 61), sec. 1, enacts — "Where after the commencement of this Act any action, prosecution, or other proceeding is commenced in the United Kingdom against any person for any act done in pursuance or execution or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such act, duty, or authority, the following provisions shall have effect:—(*a*) The action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect, or default complained of."

On 8th April 1804 an action was raised by William Cross M'Phie, public entertainment manager, 375 Eglinton Street, Glasgow, against the Provost, Magistrates, and Town Council of Greenock, in which the pursuer sought to recover damages for alleged breach of contract on the part of the defenders.

The circumstances were as follows:—By a contract, entered into by letters dated 24th and 29th July 1903, the defenders agreed to let the Town Hall of Greenock to the pursuer for the 7th, 8th, and 9th of September, for the purpose of giving public entertainments therein. On the 7th of September, however, the day fixed for the first entertainment, the defenders refused to allow the pursuer the use of the hall unless he agreed to omit a wrestling competition from the performance. The pursuer refused to do so, and accordingly the defenders would not allow him to use the hall, with the result that he was unable to give the proposed entertainments.

The defenders averred, *inter alia*, that the Town Hall belonged to them in their corporate capacity, and that they let it in the discharge of their public duty, the rents derived from letting it forming part of the burgh revenues. They averred that the action was excluded by section 1 of the Public Authorities Protection Act 1893, in respect that the acts complained of were done by the defenders in pursuance or execution, or intended execution, of their public duty and authority.

The pursuer pleaded—"(3) The action is not barred by the Public Authorities Protection Act. In their breach of contract with the pursuer the defenders are not protected by that Act."

The defenders pleaded—"(1) The action is barred by section 1 of the Public Authorities Protection Act 1893, and the defenders are entitled to absolvitor with expenses as between agent and client."

On 29th October 1904 the Lord Ordinary Low) repelled the first plea-in-law for the defenders and allowed a proof."

Opinion.—[*After narrating the circumstances*]—"The pursuer now sues the defenders for breach of contract.

"The action was not brought until more than six months after the date when the use of the hall was refused to the pursuer, and the defenders plead that the action is thereby barred in terms of the provisions of the Public Authorities Protection Act 1893.

"The question therefore is, whether this is a case to which that Act applies,

"The defenders are undoubtedly a public authority, but that alone is not sufficient to render the statute applicable. It must also be shewn that this action is brought for an act done in pursuance or execution, or intended execution, of an Act of Parliament, or of a public duty or authority, or in respect of an alleged neglect or default in the execution of any such act, duty or authority.'

"It is not said that the defenders were acting in pursuance of any Act of Parliament, but it is contended that they were acting in the execution of a public duty. It appears that the defenders are in the habit of letting the Town Hall for meetings and entertainments, and the rent obtained forms part of the revenue of the burgh. The argument is that as the defenders are a public authority, and as they were letting the hall not with a view to private gain, but for the purpose of increasing the revenue of the burgh, they were acting in the execution of a public duty. I am unable to take that view. It seems to me that in letting the hall the defenders were not acting *qua* public authority, but as managers or trustees for the burgh, whose duty it was to administer the burgh property to the best advantage. I do not think that the management of the property of a burgh is a public duty within the meaning of the Act.

"The case might have been different if the position taken up by the defenders had been that they stopped the performance, not as the managers of the burgh property, but as Magistrates, and because in their judgment it was in the public interest that the proposed exhibition of wrestling should not be allowed to proceed. That view, however, was not suggested, the only argument being that to which I have already referred.

"I am therefore of opinion that the action is not barred by the statute, and I shall accordingly repel the first plea-in-law for the defenders and allow a proof."

The defenders reclaimed, and argued—In letting the Town Hall, and in prohibiting its use for wrestling competitions, the defenders acted in "intended execution" of a public duty, and under section 1 of the Public Authorities Protection Act 1893 no action lay against them in respect of their actings after the expiry of six months from the date of the alleged default on their part—*Spittal* v. *Corporation of Glasgow*, June 17, 1904, 41 S.L.R. 629; *The Ydun* v. *Mayor, &c. of Preston*, L.R. [1899], Probate, 326; *Ambler & Sons* v. *Bradford Corporation*, L.R. [1902], 2 Ch. 585; *Edwards* v. *Vestry of St Mary, Islington*, L.R. [1889], 22 Q.B.D. 338; *Cree* v. *Vestry of St Pancras*, L.R. [1899], 1 Q.B. 693.

Counsel for the pursuer and respondent were not called on.

LORD JUSTICE-CLERK—I think the Lord Ordinary is right. The cases referred to by Mr M'Lennan were in connection with acts done in pursuance of statutory duties. Here the question is whether or not the Corporation of Greenock acted in breach of a contract entered into with a private individual. They entered into a contract with the pursuer, as he alleges, whereby he was to have the use of the Town Hall of Greenock for certain entertainments, and it is said that they failed to implement their contract. They were under no obligation, statutory or otherwise, to have a town hall at all. If they had one they could use it as they pleased, and if they let it the profit went to the common good. They are just in the position of individuals who have halls to let, and if they let them for the purposes of public exhibitions, and afterwards have reason to think that the exhibitions are such that they are legally entitled to stop them, then if they are willing to run the risk of an action of damages they are quite entitled to do so. It is out of the question to say that in letting the Town Hall the defenders were acting in pursuance of a public duty, statutory or otherwise. I am therefore of opinion that the judgment of the Lord Ordinary should be adhered to.

LORD YOUNG—I think that this is a very clear case. The pursuer sues for damages on account of actionable breach of contract which he says has been committed by the defenders, who are the Provost, Magistrates, and Town Council of the burgh of Greenock. Now, I know of no principle or authority which could have influenced the Legislature to place public bodies in a favoured position in regard to liability for breach of contract, and consequently in

construing this statute I decline to attribute such an intention to the Legislature. Suppose that these defenders had contracted with a tradesman to put this hall into good order so that they might let it, Is the corporation exempt by Act of Parliament from paying the contract price if the tradesman does not render his account for six months after the completion of the work? If they do not pay, why should they not be liable in damages for the breach of their contract to pay? I am very clearly of opinion that the Lord Ordinary was right in repelling the first plea-in-law for the defenders, and that we should adhere to his judgment.

LORD TRAYNER—The only question raised in this reclaiming-note is whether the first plea-in-law for the defenders should be repelled or sustained. The Lord Ordinary has repelled it and allowed a proof, and I think he has acted rightly. The plea is that this action is barred by section 1 of the Public Authorities Act 1893. What is here complained of is that the defenders failed to implement the contract with the pursuer by which they let to him the Town Hall of Greenock. But the defenders were under no obligation to let the hall, and if they did so they acted, not under any public authority conferred on them, or public duty laid upon them, but merely as the persons having charge of the building. They had the hall in their hands to let or not as they pleased.

LORD MONCREIFF was absent.

The Court adhered.

Counsel for the Pursuer and Respondent—G. Watt, K.C.—R. S. Brown. Agents—Patrick & James, S.S.C.

Counsel for the Defenders and Reclaimers—Campbell, K.C.—M'Lennan. Agents—Cumming & Duff, S.S.C.

Tuesday, December 13.

FIRST DIVISION.

[Sheriff Court at Kilmarnock.

ARCHIBALD FINNIE & SON *v.* DUNCAN.

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *First Schedule* (11) *and* (12)—*Review of Weekly Payment—Injured Workman who had left United Kingdom—Obstructing Examination.*

In an application by an employer, under section 12 of the First Schedule of the Workmen's Compensation Act 1897, for review of a weekly payment to an injured workman, it appeared that the workman had gone to Australia without intimation to the employer that he was going or what his address there would be.

The Court *suspended in hoc statu* the workman's right to the weekly payment, holding that the workman was obstructing examination in the sense of section 11 of the First Schedule of the Act.

The Workmen's Compensation Act 1897 (60 and 61 Vict. c. 37), Sched. I, enacts, sec. 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 any way 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."

This was an appeal by Archibald Finnie & Son, coalmasters, Kilmarnock, petitioners and appellants, from a judgment of the Sheriff-Substitute (MACKENZIE) in an arbitration under the Workmen's Compensation Act 1897 between them and Robert Duncan, miner, 39 Kirkland Rows, Springside, Kilmarnock, respondent.

The case stated—"The respondent was injured on 6th July 1903 by accident arising out of and in the course of his employment as a miner in the service of the petitioners, and in December 1903 he underwent an operation in the Western Infirmary, Glasgow, by which the semi-lunar cartilage of his right knee was removed, that cartilage having been injured by the accident which he suffered. The petitioners paid the respondent compensation regularly at the rate of 10s. 1d. per week, being the full amount to which he was entitled under the said Act from the date of the accident to 11th April 1904. On 23rd June 1904 the petitioners presented a petition craving the Court, under paragraph 12 of the First Schedule appended to said Act, to review said weekly payments, in respect that respondent's incapacity for work terminated on or before 11th April 1904. After proof, I, on 27th July 1904, pronounced an interlocutor repelling the respondent's preliminary pleas as to the incompetency of the petition, and finding that the respondent was then able for light labouring work, at which he might be capable of earning 15s. per week, and I accordingly diminished said weekly payments from 10s. 1d. to 5s. per week until the further orders of the Court, without