The claim of the pursuers to vote at the election of a member for the universities of Edinburgh and St Andrews is founded on their status as graduates of one of these universities. By the Universities (Scotland) Act 1889 the Commissioners thereby appointed were empowered to make ordinances "to enable each university to admit women to graduation in one or more faculties." By the Ordinance of 1892 this power was exercised, and women have been admitted to graduation in certain faculties, the pursuers' names having been placed on the registers of the General Council of one of these universities in right of their respective degrees. It may be observed that the Universities Act 1889 does not empower the University Commissioners to admit women graduates to the franchise; and if it had been intended that the degree should carry with it the right of voting at Parliamentary elections, we should have expected to find a provision to that effect in the Act of Parliament itself. It is quite certain that the University Commissioners had no power to make any deliverance on this subject, and the same observation applies to the powers of the University Courts in the execution of the ordinance. The pursuers' claim accordingly must rest on the Representation Act of 1868 and the Universities Elections Act 1881.

The argument must be that a franchise originally conferred on graduates who were necessarily men has been extended to women graduates, not by a direct enfranchising enactment, but by the indirect effect of an Act of Parliament which does not profess to deal with political privileges, but is concerned only with academic functions, and which, in the interests of the higher education of women, authorises the admission of women to graduation. The degree itself, or rather the right to take a degree, is not even conferred by the Act of Parliament, but is made dependent, first, on the judgment of commissioners empowered to take evidence, and secondly, on the pleasure of the governing bodies of the respective universities. It is difficult to conceive that the Legislature should have conferred the power of extending the franchise by devolution to a class of persons hitherto excluded by a constitutional rule, a power which it has always kept in its own hands, and it appears to us that there is absolutely no evidence in the terms of the Universities Act 1889 that Parliament intended to extend the franchise to women, or had any question of political privileges in view, when it empowered the university authorities to admit women to graduation. We think that the Representation Act 1868 and the Universities Elections Act 1881 must be construed now, as heretofore, with reference to the political disabilities of women, and that the circumstances of the pursuers being on the university registers does not remove the disability.

In consequence of an amendment made on the record at the hearing of the case, the pursuers contend that in any event they are entitled to receive voting papers, leaving it to the candidate or his agent to object to the vote if tendered, and to the Vice-Chancellor or his deputy to dispose of the objection, all in terms of the 10th sub-section of section 2 of the Universities Elections Act 1881. It is, no doubt, true that if the registrar (taking a different view of his statutory duty) had sent the lady graduates voting papers, the votes might have been objected to and disallowed by the Vice-Chancellor.

But as our judgment on the main question is adverse to the claim of the lady graduates, it follows that no individual of the class has a cause of action for not receiving an invitation to give a vote which she could not lawfully exercise, or a title to sue for a declaratory finding that she is entitled to receive such a paper. We are therefore of opinion that the Lord Ordinary's judgment should be affirmed and the reclaiming note refused.

That is the opinion of the Court.

The Court adhered.

Counsel for the (Pursuers) Reclaimers —The Solicitor-General (Ure, K.C.)—Kennedy, K.C. — Munro — Mair. Agent — William Purves, W.S.

Counsel for the (Defenders) Respondents —The Dean of Faculty (Campbell, K.C.)— Macmillan. Agents—W. & J. Cook, W.S.

Thursday, November 21.

SECOND DIVISION.

[Sheriff Court at Glasgow.

MORTON *v.* FRENCH AND OTHERS.

Writ—Friendly Society—Execution—Signature by Mark—Privileged Document—Nomination under Friendly Societies Act Authenticated only by Mark and by Signatures of Witnesses—Friendly Societies Act 1896 (59 *and* 60 *Vict. c.* 25), *sec.* 56 (1).

The Friendly Societies Act 1896, section 56 (1), enacts—"A member of a registered society . . . may, by writing under his hand . . . nominate a person to whom any sum of money payable by the society or branch on the death of that member . . . shall be paid at his decease."

Held that in nominations under the above section no relaxations of the ordinary rules of law as to the authentication of deeds are permissible, and that accordingly a nomination authenticated only by the member's mark and the signatures of two witnesses was invalid.

The Friendly Societies Act 1896 provides as follows—section 56 (1)—"A member of a registered society (other than a benevolent society or working-men's club) or branch thereof, not being under the age of sixteen years, may, by writing under his hand, delivered at, or sent to, the registered office of the society or branch, or made in a book

kept at that office, nominate a person to whom any sum of money payable by the society or branch on the death of that member, not exceeding one hundred pounds, shall be paid at his decease."

This was an action of multiplepoinding raised in the Sheriff Court at Glasgow to determine the right to a sum of £36, 8s. due under a contract of insurance between the late Mrs Mary French and the Liverpool Victoria Legal Friendly Society. The sum was claimed by James Morton on the one hand, and James French and others, the next-of-kin of the late Mrs Mary French, upon the other. The case raised the question, *inter alia*, whether a nomination (*infra*) in favour of James Morton which bore to have been made by Mrs Mary French was valid.

The next-of-kin stated, *inter alia*, the following plea—"(1) The nomination under which the said James Morton claims, not being a writing under the hand of the said Mary French, is of no effect."

The nomination in favour of Morton was —"I, Mary French, of 57 Jamieson Street, Govanhill, Town of Glasgow, not being under the age of sixteen years, hereby revoke all previous nominations, if any, made by me, and do hereby nominate James Morton, of 32 Carfin Street, Govanhill, Town of Glasgow, to receive the money payable on my death on insurance dated 25/6/04 (5316782) (as per ordinary branch policy) in accordance with the table of assurance and rules of the above-named society in use at the date of such assurance and any alterations or amendments of the said rules.

"Signed by me in presence of two disinterested witnesses this twenty-first day of June One thousand nine hundred and five,

Signature	her Mary × French mark
(In case of a female, state if single, married, or a widow)	Widow
(The person nominating must here state what relation, if any, he or she is to the person nominated)	Friend
First Witness	William Shearer,
Address	9 Kelvingrove Street, Glasgow.
Second witness (who must be the agent or collector)	Geo. Evans,
Address	111 Allison Street, Glasgow.

"I hereby certify that the signatures of the witnesses and member are genuine, and that they are in the handwriting of the persons named, and that I was present when they attached their signatures, and that I signed my name at the same time as witness.

Signature (of agent or collector)	Geo. Evans.
District	Glasgow.
Agent	Stephen H. Payne, 143 West Regent St.
Collector's name	Geo. Evans,
Collector's address	111 Allison St., Glasgow."

The Sheriff-Substitute (DAVIDSON) held that the nomination was good, and ranked and preferred Morton to the fund *in medio*.

On appeal the Sheriff (GUTHRIE) (without recalling the Sheriff-Substitute's finding as to the nomination) upon another ground ranked and preferred the next-of-kin.

Morton appealed to the Court of Session, and argued—The nomination was good. The document was not a will or an ordinary *inter vivos* deed falling under the ordinary rules governing the authentication of deeds. It was a privileged document of the nature of an assignation valid for the special purposes of the Friendly Societies Act, one of the main objects of which was the abolition of unnecessary legal formalities, of which the subscription, &c., of a notary which was here desiderated was a typical example. It was a "writing under her hand," being authenticated by her hand in the only way her hand could authenticate, viz., by mark, and that the mark was hers could not be disputed, because two witnesses testified by their signatures to the fact that it had been adhibited by her. The Insurance Company were apparently satisfied—a matter of the utmost importance—for the nomination was nothing more nor less than a transfer, and it had been decided in *Marino's* case, L.R., 1867, 2 Ch. App. 596, that the custom of a company must be taken into account in determining what was necessary in the matter of its transfers. In England the nomination would have been good, the mark being sufficient—*Baker* v. *William Dening and Others*, 8 Adol. & Ellis, 94; Addison on Contracts (10th ed.), p. 37—and it was very undesirable that in a matter such as this the law of the two countries should differ.

Argued for the respondents—The nomination was bad. The document was either a testamentary deed, or a deed *inter vivos*, an assignation. In England such a deed had been held to be testamentary—*Baxter* [1903] P. 12. All testamentary deeds and all deeds *inter vivos*, except the limited class of documents *in re mercatoria* (to which this could in no view belong — Bell's Com. i, 342), required when the party could not write the intervention of a notary —Bell's Lectures on Conveyancing, vol. i, p. 49; Ersk., iii, 2, 7, and 8; *Stirling Stuart* v. *Stirling Crawford's Trustees and Executrix*, February 6, 1885, 12 R. 610, 22 S.L.R. 391; *Crosbie* v. *Wilson*, June 2, 1863, 1 Macph. 870; *Graham* v. *M'Leod*, November 30, 1848, 11 D. 173; Conveyancing Act 1874, sec. 41. In any case in which the ordinary law as to signature was relaxed it was expressly stated in the statute, *e.g.*, under the Marriage Notice (Scotland) Act 1878, sec. 16, subscription might be by mark. There was no such express statement in the Friendly Societies Act.

LORD JUSTICE-CLERK—I think that the document founded on in this case is not one which can receive effect. In my opinion it is not legally signed and authenticated. I am satisfied that this is a case in which no relaxation can be allowed of the rule of law as to the authentication of deeds. Our law has always been very strict in that matter, and it does not depend on custom but on distinct statutory

enactment. In certain cases where formality is not required authentication by mark has been allowed. I allude to the class of writings known as *in re mercatoria*, but we are not here dealing with a document *in re mercatoria*. It is a deed which is practically testamentary in its nature. It is a revocable deed, and one which the party who signs can set aside. It has been held in England that such a document may be testamentary in its character, and with that I agree. The only remaining question is—Does the mode of authentication fall within any special expression as to the manner of nomination contained in the Act? In some cases, *e.g.*, under section 16 of the Marriage Notice (Scotland) Act 1878, a person who is unable to write is allowed to adhibit his signature by a cross or other mark. But here the words of the statute simply are "by writing under his hand," without specifying the mode of signing. Where a relaxation in the rule as to signing is allowed, it has been specifically done by Act of Parliament. Here we have no such relaxation by the Friendly Societies Act, under which alone we are. We must therefore follow the universal rule of law, to which no exception has been made.

I propose that the first plea-in-law for James French should be upheld.

LORD STORMONTH DARLING, LORD LOW, and LORD ARDWALL concurred.

The Court sustained the first plea-in-law for the respondents.

Counsel for the Appellants—A. M. Anderson. Agent—J. S. Morton, W.S.

Counsel for the Respondents — Spens. Agents—Macpherson & Mackay, S.S.C.

Friday, November 22.

SECOND DIVISION.

[Sheriff Court at Ayr.

GRANT *v.* GLASGOW AND SOUTH-WESTERN RAILWAY COMPANY.

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 1 (1)—*Accident Arising Out of and in Course of Employment—Onus of Proof—Workman Found Killed where Probably Performing Duty.*

While it is true that a person claiming compensation under the Workmen's Compensation Act 1897 must prove that the accident in respect of which compensation is claimed arose out of and in the course of the injured party's employment, still the *onus* of proof may sometimes be shifted on to the employer who disputes the claim, especially when it is preferred by a dependant of a workman who has been killed, and whose evidence is therefore not available. If in such a case facts are proved from which the natural and reasonable inference is that the accident happened while the deceased was engaged in his employment, it falls upon the employer if he disputes the claim to prove that the contrary was the case.

Accordingly where a station policeman was found mortally injured by an engine, on a railway siding where his duties might naturally and reasonably have taken him, the Court *held*, in the absence of any facts indicating the contrary, that he had been injured in "an accident arising out of and in the course of his employment" in the sense of sec. 1, sub-sec. (1), of the Act.

Margaret Grant, widow of Thomas Steele Grant, and Isabella and Jeanie Grant, his daughters, claimed compensation under the Workmen's Compensation Act 1897 from the Glasgow and South-Western Railway Company for the death of Thomas Steele Grant.

The matter was referred to the arbitration of the Sheriff-Substitute (J. C. SHAIRP) at Ayr, who awarded compensation, and at the request of the Railway Company stated a case for appeal.

The facts proved were stated by the Sheriff-Substitute to be, *inter alia*, as follows—"(2) That the said Thomas Steele Grant, who was between sixty and seventy years of age and very deaf, after having been a guard in the employment of the said Railway Company for upwards of forty years, was some years before his death appointed by said company to assist in the guards' room at Ayr passenger station, and, on the death of an old man who acted as Ayr passenger station policeman, the duties of that old man were added to the duties of the said Thomas Steele Grant; . . . (4) that when he was injured as aforesaid he was employed by the said company as door officer and station policeman at Ayr passenger railway station, and was dressed in railway police uniform; (5) that his duties were to go to and from a bank in Ayr with cash boxes, to despatch these cash boxes to different local railway stations of the said Railway Company, to attend in the guards' room, keep stationery for passenger guards, write up these guards' train arrival books, make out returns for them to be sent to the superintendent, and to keep unauthorised persons from being on, in, or about the said passenger railway station premises, and the entrances, exits, and platforms of said passenger railway station; (6) that he was not a railway clerk; (7) that in the execution of his duty of putting unauthorised persons (there is no evidence that such persons were present on the occasion in question) off No. 1 platform at said railway station, who, on being chased by him up the said platform past the end of the station buildings, might cross the sidings at said station where the accident occurred to get away from him, he was entitled to follow these persons and see them off the Railway Company's premises, and himself to cross said sidings, including siding No. 6, or similarly to follow such persons from the loading bank shown