beneficent institutions" was so vague as to fall within the same category as "religious" or "public" institutions, which have been held too indefinite to receive effect. I do not think that in the ordinary use of language we ever speak of "benevolent or beneficent institutions." But reading this clause as a whole, I think one is led to the conclusion that the testatrix was thinking of only one class of objects which she desired to benefit, and that she described that class by three epithets, viz., charitable, benevolent, and beneficent.

On the whole matter, therefore, I think that there is no proper distinction between this case and the case of *Hay's Trustees*, 1908 S.C. 1224, and, accordingly, that the questions will fall to be answered, the first in the affirmative, and the second in the negative.

LORD M'LAREN—My opinion in this case is the same as the opinion I delivered in *Hay's Trustees*, 1908 S.C. 1224. Of course it might be that two testators should use identical expressions in the words of gift, and yet there might be something in the context of one or other of the wills to show that the expressions were not really used in the same sense; and I have fully in view that in such circumstances no decision with regard to one will can be a binding authority for the construction of another will. But I am unable to find anything in the context of this will to distinguish it from the case we had to deal with in *Hay's Trustees*. I think that the word "beneficent" really adds nothing to the force of the word "benevolent," and that the disjunctive particle—which is used in both instances—is used to show that the two things were really, for practical purposes, synonymous; that the class to be benefited was the class of benevolent "or, if you prefer the expression, beneficent," institutions. I find nothing in the context here that throws any light on the class of objects to be benefited that would point to an interpretation of the language used different from the ordinary significance of the words. I therefore agree with your Lordship that there is here a clear designation of a class, and a class that the Court has always favoured—viz., charitable institutions—and therefore I hold that the first question falls to be answered in the affirmative.

LORD KINNEAR—I am of the same opinion. So far as this involves a question of law, I think it is covered by the doctrine laid down by the Lord Chancellor in *Weir* v. *Crum Brown*, 1908 S.C. (H.L.) 3. So far as it depends on the construction of this particular will—which, as Lord M'Laren has pointed out, must be interpreted by its own terms—I do not think that the testatrix here had in her mind three distinct and separate kinds of objects which she intended to benefit—first, charitable objects; second, benevolent objects; and third, beneficent objects; but that she had in her mind only one kind of objects—viz., charitable objects—and that the other words are merely used as exegetical of the earlier words.

LORD PEARSON—I agree.

The Court answered the first question in the affirmative, and the second question in the negative.

Counsel for the First Parties—Munro. Agents—Bryson & Grant, S.S.C.

Counsel for the Second Parties—W. T. Watson. Agents—M. J. Brown, Son, & Company, S.S.C.

Friday, February 5.

SECOND DIVISION.

[Sheriff Court at Airdrie.

ROBERT ADDIE & SONS, LIMITED *v.* COAKLEY.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, c.* 58), *Sched. II, 9—Process—Sheriff—Appeal—Competency—Recording of Agreement—Special Warrant—Judicial or Ministerial—A.S., June 26th* 1907, *secs.* 11 (1) *and* 12.

The Workmen's Compensation Act 1906, Sched. II (9), provides that when compensation is ascertained by agreement a memorandum thereof shall be sent in manner prescribed by Act of Sederunt to the sheriff-clerk, who shall, on being satisfied as to its genuineness, record the same, provided that where the recording is objected to on certain grounds the memorandum shall only be recorded, if at all, on such terms as the Sheriff thinks just. The relative Act of Sederunt provides that when the genuineness of a memorandum is disputed, or when the recording is objected to under the proviso of the schedule, a minute shall be lodged stating the grounds of such dispute or objection, and the memorandum shall thereupon be dealt with as if it were an application to the Sheriff for settlement by arbitration of the questions raised by the minute.

Held that the Sheriff, in granting special warrant to record a memorandum of agreement, the genuineness of which was disputed, was acting in a judicial and not a ministerial capacity, and that appeal by way of stated case was therefore competent.

Binning v. *Easton & Sons*, January 18, 1906, 8 F. 407, 43 S.L.R. 312, *distinguished.*

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, c.* 58), *Sched. II, sec.* 9—*Memorandum of Agreement—Genuineness—Recording—Recovery of Workman before Memorandum Lodged.*

The Workmen's Compensation Act 1906, Sched. II (9), provides that when the amount of compensation has been ascertained by agreement, a memorandum thereof shall be sent to the sheriff-clerk, who shall, on being satisfied as to its genuineness, record the same.

Held that a memorandum of agreement providing for compensation to a workman "during his total incapacity for work," which accurately expressed the agreement between the parties, was genuine in the sense of the Act, though at the date it was presented for recording the workman was no longer incapacitated; and that the Sheriff had rightly granted special warrant to record it.

The Workmen's Compensation Act 1906 (6 Edw. VII, c. 58), Sched. II (9) [as applied to Scotland by section 13 of the Act], enacts—"Where the amount of compensation under this Act has been ascertained . . . by agreement, a memorandum thereof shall be sent in manner prescribed by [Act of Sederunt] . . . by any party interested to the [sheriff-clerk], who shall, subject to such [Act of Sederunt], on being satisfied as to its genuineness, record such memorandum in a special register: . . . Provided that . . . (*b*) where a workman seeks to record a memorandum of agreement, . . . and the employer . . . proves that the workman has in fact returned to work, and is earning the same wages as he did before the accident, and objects to the recording, . . . the memorandum shall only be recorded, if at all, on such terms as the [sheriff] under the circumstances may think just. . . ." By sub-section (*d*) provision is made with regard to agreements to redeem a weekly payment by a lump sum, and agreements as to the amount of compensation payable to a person under legal disability or to dependants, authorising the sheriff-clerk on certain grounds to refuse to record the memorandum, and to refer the matter to the sheriff, who shall "make such order as under the circumstances he shall think just."

The Act of Sederunt 26th June 1907 enacts, section 11 (1)—". . . The sheriff-clerk shall forthwith send a copy [of a memorandum of agreement sent to him] . . . to the party or parties interested . . . in a registered letter containing a request that he may be informed within a reasonable specified time whether the memorandum and agreement . . . are genuine or are objected to; . . . if the genuineness is disputed or the recording is objected to, he shall send a notification of the fact to the party from whom he received the memorandum, along with an intimation that the memorandum will not be recorded without a special warrant from the sheriff." Section 12—"When the genuineness of a memorandum under paragraph 9 of the Second Schedule . . . is disputed, or when an employer objects to the recording of such memorandum under sub-section (*b*) of said paragraph, or the sheriff-clerk refuses under sub-section (*d*) of said paragraph to record such memorandum, the person disputing the genuineness, or . . . the sheriff-clerk, shall lodge a minute stating clearly all the grounds for his action, and the memorandum shall thereupon be dealt with as if it were an application to the sheriff for settlement by arbitration of the questions raised by the minute."

On 29th September 1908 Patrick Coakley lodged with the Sheriff-Clerk at Airdrie a memorandum of agreement as to compensation, under the Workmen's Compensation Act 1906, between himself and Robert Addie & Sons, Limited. The memorandum was in the following terms:—"The claimant claimed compensation from the respondents in respect of personal injuries, viz., injuries to his left leg and left haunch while working in the employment of the respondents at their Rosehall Colliery, Coatbridge, on or about the tenth day of October Nineteen hundred and seven. The question in dispute was determined by agreement on the twenty-fourth day of October nineteen hundred and seven, and was as follows:—That the respondents paid to the claimant on said date the sum of thirty-one shillings and sixpence, being two weeks' compensation at the rate of fifteen shillings and ninepence weekly, and the respondents agreed, in consideration of the claimant accepting same, that the respondents should continue to pay him the sum of fifteen shillings and ninepence weekly during his total incapacity for work."

On receiving intimation, Addie & Sons, by letter dated 1st October 1908, objected to registration, and lodged the following minute:—"The said Robert Addie & Sons' Collieries, Limited, object to a warrant being granted to record a memorandum of said alleged agreement in respect that the agreement under which the claimant's compensation was fixed at 15s. 9d. per week no longer subsists between the parties, said amount being payable only during the period of the claimant's total incapacity for work, which period has come to an end prior to said memorandum being presented for registration. In terms of paragraph 12 of the Act of Sederunt of 26th June 1907 this question falls to be settled by arbitration."

The case was heard before the Sheriff-Substitute (GLEGG) on 4th November 1908, who granted warrant to record the memorandum, and at the request of Addie & Sons stated a case.

The following facts were set forth as admitted or proved:—"3. Said memorandum accurately expresses the agreement entered into between the parties. 4. In the proof led by Addie & Sons, the competency of which was objected to by Coakley, his objections being reserved, it was established in the absence of proof for Coakley that . . . (*d*) at the date of the presentation of the memorandum, 29th September 1908, he was not incapacitated by reason of said accident. 5. Compensation at the rate agreed on was paid down to 17th September 1908, when payments ceased."

The Sheriff pronounced the following finding:—"I found that it is not a valid objection that Coakley was not totally incapacitated at the date of presentation of the memorandum, and that he is entitled to have said memorandum recorded, and granted warrant to record the same, with one guinea of expenses to Coakley."

The *questions of law* for the opinion of

the Court were—"1. In the above circumstances was the Sheriff-Substitute right in granting a warrant to record the said memorandum of agreement? 2. Was the admission of medical evidence on behalf of the employers of Coakley's fitness for work competent?"

Argued for the appellants—(1) It was competent to appeal from the finding of the Sheriff, as he was acting as arbiter and not as administrator in granting the warrant to record. It was quite clear that under section (9) (*b*) and (*d*) of Schedule II appended to the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) the functions discharged by the Sheriff were judicial and not administrative. It must therefore be presumed that the Sheriff in dealing with other disputes as to memoranda was acting in a judicial capacity. The Act of Sederunt, 26th June 1907, proceeded on the view that the Sheriff's functions in dealing with the genuineness of a memorandum and disposing of objections under the above subsections were the same, and provided with regard to both that the Sheriff should deal with the question as if it were an application for arbitration. The corresponding section in the Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), Schedule II (8), contained no provisions similar to the sub-sections (*b*) and (*d*) of section 9 of Schedule II appended to the Act of 1906, and the case of *Binning* v. *Easton & Sons*, January 18, 1906, 8 F. 407, 43 S.L.R. 312, which proceeded on the earlier Act, was therefore not inconsistent with the competency of the present appeal. Appeal had been held to be competent under the Act of 1897 in questions such as the present in England—*Johnston* v. *Mew, Langton, & Company*, 1907, 24 T.L.R. 175. (2) The Sheriff was wrong in granting warrant to record the memorandum. The agreement was to pay during incapacity, and therefore when incapacity ceased the agreement was at an end, and any memorandum after that time was not genuine. If the claimant had proceeded by way of arbitration he could not have got compensation for any period subsequent to the cessation of incapacity, and the Legislature could not have intended that a different result should follow the adoption of different procedure. Further, by the Act of Sederunt, sec. 9, an application for review might be made by minute, however informal. The minute here might be regarded as an application for review, and in that case the Sheriff ought not to have granted warrant to record. (3) If the memorandum was objected to on the ground that it was not genuine, it was competent to establish that ground by the medical evidence led. Counsel also referred to *William Baird & Company, Limited* v. *Dempster*, November 13, 1908, 46 S.L.R. 119.

Argued for the respondent—(1) Under the corresponding provision of the Act of 1897, Schedule II (8), there was no appeal—*Binning* v. *Easton & Sons, cit.* That provision differed from section 9 of the second schedule to the Act of 1906 only in the omission of the provisos. The provisos could not competently change the character of the functions discharged by the Sheriff under the section from ministerial to judicial. If that change (with the consequence of making appeal competent) was not effected by the Act, it could not be brought about by Act of Sederunt. Further, there was nothing in the Act of Sederunt to infer that appeal was competent. The Sheriff was merely directed to go into the merits of the questions raised in certain cases. (2) In any event the Sheriff was right in granting warrant to record the memorandum. If the memorandum accurately represented the agreement made by the parties, it was genuine and must be recorded. Schedule II 9 (*b*) dealt specially with the case where a workman sought to have an agreement recorded when he had returned to work and was earning the same wages as before the accident. It was therefore to be presumed that the fact that the workman had recovered was not a valid objection to the recording. (3) In that view the second question did not arise. The evidence was irrelevant.

At advising—

The opinion of the Court was delivered by

LORD LOW—On 10th October 1907 the respondent Coakley, while in the employment of the appellants Addie & Sons, received certain injuries, and by agreement between the parties, dated 24th October 1907, the amount of compensation to which he was entitled under the Workmen's Compensation Act 1906 was fixed at 15s. 9d. weekly "during his total incapacity."

On 29th September 1908 Coakley lodged with the Sheriff-Clerk a memorandum of the agreement for registration. The procedure to be followed in such circumstances is regulated by the 11th section of the Act of Sederunt of 26th June 1907, which provides that when a memorandum of an agreement is sent to the Sheriff-Clerk for registration he shall forthwith send a copy to the party or parties interested other than the party from whom he received the memorandum, in a registered letter containing a request that he may be informed whether the memorandum and agreement set forth therein are genuine or are objected to, and if the genuineness is disputed or the recording is objected to, "he shall send a notification of the fact to the party from whom he received the memorandum, along with an intimation that the memorandum will not be recorded without a special warrant from the Sheriff."

When Addie & Sons received from the Sheriff-Clerk a copy of the memorandum they intimated to him by letter, dated 1st October 1908, that they objected to the memorandum being recorded on the ground that it was not genuine. The result was that the memorandum could not be recorded without a special warrant from the Sheriff.

The procedure before the Sheriff is regulated by section 12 of the Act of Sederunt. It is provided by that section that when the genuineness of a memorandum is dis-

puted, or when objections to the recording of a memorandum of the kind specified in sub-sections (*b*) and (*d*) of paragraph 9 of the second schedule to the Act are taken, the person disputing the genuineness or taking the objection "shall lodge a minute stating clearly all the grounds for his action, and the memorandum shall thereupon be dealt with as if it were an application to the Sheriff for settlement by arbitration of the questions raised by the minute."

In accordance with these provisions Addie & Sons lodged a minute in which they stated that the ground upon which they objected to the memorandum being recorded was "that the agreement under which the claimant's compensation was fixed at 15s. 9d. per week no longer subsists between the parties, said amount being payable only during the period of the claimant's total incapacity for work, which period has come to an end prior to the said memorandum being presented for registration." Then the minute concluded with these words—"In terms of paragraph 12 of the Act of Sederunt of 26th June 1907, this question falls to be settled by arbitration."

The Sheriff-Substitute allowed Addie & Sons to lead evidence, by which he states that it was, *inter alia*, established that at the date of the presentation of the memorandum (29th September 1908) Coakley was not incapacitated by reason of the accident.

The Sheriff-Substitute, however, found that it was not a valid objection to registration of the memorandum that Coakley was not totally incapacitated at the date when it was presented, and accordingly he granted warrant to record the memorandum.

The first question stated in this case is whether the Sheriff-Substitute was right in granting warrant to record the memorandum, but before considering that question it is necessary to dispose of a preliminary point which was raised by the respondent, for whom it was argued that the decision of the Sheriff-Substitute upon the question whether or not the memorandum should be recorded was merely a ministerial act, and not the decree of an arbitrator or judge, and was therefore not subject to appeal to any extent or in any form.

That argument was rested upon the case of *Binning* v. *Easton & Sons*, 8 F. 407, in which a majority of Seven Judges held that under the Workmen's Compensation Act 1897 and relative Act of Sederunt of 3rd June 1898 the Sheriff in determining whether or not a special warrant should be granted for recording a memorandum the genuineness of which was objected to, acted only in a ministerial capacity. I am of opinion that that judgment has no application to the present case, because the provisions of the Statute of 1906 and relative Act of Sederunt are different from those of the statute of 1897 and Act of Sederunt of 1898.

The statutory provisions in regard to the recording of a memorandum are contained in paragraph 8 of the second schedule to the Act of 1897, and in paragraph 9 of the second schedule to the Act of 1906. The main enactment in both paragraphs is the same, and runs thus (I shall read the enactment as applied to Scotland, and only in so far as it applies to agreements)—"Where the amount of compensation under this Act has been ascertained . . . by agreement, a memorandum thereof shall be sent in manner prescribed by (Act of Sederunt), by any parties interested, to the (sheriff clerk), who shall, subject to such (Act of Sederunt), on being satisfied as to its genuineness, record such memorandum in a special register."

In the Act of 1897 the only proviso to that enactment was that the Sheriff might at any time rectify the register. In the Act of 1906, on the other hand, there are a number of provisos in addition to that contained in the earlier Act. Of these provisos only (*b*) and (*d*) have any bearing upon the present case. By proviso (*b*) it is provided that where a workman seeks to record a memorandum of agreement for the payment of compensation, and the employer proves that the workman has returned to work and is earning the same wages as he did before the accident, the memorandum shall only be recorded, if at all, on such terms as the Sheriff, under the circumstances, may think just.

Proviso (*d*) relates only to agreements to redeem a weekly payment by a lump sum, or as to the amount of compensation payable to a person under legal disability or to dependants, and in such cases it authorises the sheriff clerk, on certain grounds, to refuse to record the memorandum and to refer the matter to the Sheriff, "who shall in accordance with the (Act of Sederunt) make such order as under the circumstances he shall think just."

By the Act of Sederunt of 1898 it was provided (section 7 (*a*)) that upon receiving for registration a memorandum of agreement, the sheriff clerk should, if it was signed by or on behalf of all the parties interested, record it without further proof of its genuineness; but if it was not so signed he should follow the same procedure as that provided by the 11th section of the Act of Sederunt of 1907; that is to say, he was directed to send a copy of the memorandum in a registered letter to the party or parties interested, and if it was notified to him that the genuineness was disputed, to intimate to the party from whom he received the memorandum that it would not be recorded without a special warrant from the Sheriff.

So far, therefore, the provisions of the Act of Sederunt of 1898 were, as regarded an objection to the genuineness, identical with those of the Act of Sederunt of 1907, but there was this very important difference between the two Acts, that the former made no provision at all for the procedure to be adopted before the Sheriff, while the latter contains, in section 12, the very specific provision to which I have already referred.

Now the ground of judgment in the case of *Binning* may, I think, be shortly stated thus—By paragraph 8 of the second schedule

to the Act, the sheriff clerk was the person who was to be satisfied of the genuineness of the memorandum, and all that the Act of Sederunt did was to bring in the Sheriff, not as a judge, but (to adopt the language of the Lord President) as "the natural counsellor and leader of the sheriff clerk." Therefore, as the duty of the sheriff clerk under the statute was only ministerial, that of his "counsellor and leader" must be of the same nature.

It seems to me to be plain that no such course of reasoning is possible under the Act of Sederunt now in force. The 12th section deals with all the cases in which an objection to the recording of a memorandum is allowed by the statute, namely (1) if the sheriff clerk is not satisfied that the memorandum is genuine; (2) if the employer objects to the memorandum being recorded in the circumstances defined in proviso (*b*); and (3) if the sheriff clerk refuses to record the memorandum upon the grounds stated in proviso (*d*). In all these cases the Act of Sederunt enacts that the "memorandum shall be thereupon dealt with as if it were an application to the Sheriff for settlement by arbitration of the questions raised by the minute." The result, therefore, was to make the Sheriff an arbiter in a question of genuineness, instead of being merely the legal assessor of the sheriff clerk, and there was an obvious reason for the change. It is plain from the language of paragraph 9, provisos (*b*) and (*d*), of the second schedule, that objections to recording under these provisos were to be dealt with by the Sheriff as an arbiter, and it was obviously expedient, and in conformity with the general intention of the statute, which throughout favours arbitration failing agreement, that all objections which are allowed to the recording of an agreement should be dealt with in the same way and by the same tribunal.

I am therefore of opinion that the objection that the Sheriff did not act as arbiter, and that accordingly an appeal by way of stated case was not competent, is not well founded.

The next question is whether the Sheriff-Substitute was right in granting warrant to record the memorandum. I am of opinion that that question must be answered in the affirmative. I do not think that the appellants' objection, as stated in their minute, can be properly regarded as an objection to the genuineness of the memorandum. In my opinion, what is meant by the statute when it speaks of the memorandum being genuine is that it is true—that is to say, that it truly states that the amount of compensation under the Act has been ascertained by agreement, and correctly sets forth the terms of the agreement. That in that sense the memorandum was genuine is stated by the Sheriff-Substitute as a fact, and, indeed, is not disputed. The appellants, however, argued that seeing that the agreement was to pay compensation at the rate agreed upon only during the respondent's total incapacity for work, it came to an end when the respondent recovered from the accident and was no longer totally incapacitated for work, and therefore the memorandum was not genuine, because when it was presented for registration, the agreement of which it purported to be a memorandum no longer existed.

The argument is ingenious, but I do not think that it is sound. In the first place, the fact that the respondent was no longer totally incapacitated, or indeed incapacitated at all, when he presented the memorandum for registration, does not necessarily involve that the agreement had come to an end so that it could never again be founded upon by either party. A workman may apparently recover completely from the effects of an accident, but may subsequently, perhaps after a long lapse of time, again become totally incapacitated. In such a case he would be entitled to found upon an agreement come to when he was first disabled as settling the amount of compensation due under the Act.

Further, unless the memorandum is found not to be genuine, or the Sheriff refuses to grant warrant to record the memorandum on the grounds specified in provisos (*b*) and (*d*) of paragraph 9 of the schedule, the direction that the memorandum shall be recorded is imperative. Now I have already given my reasons for holding that the objection stated by the appellants in their minute is not an objection to the genuineness of the memorandum within the meaning of the statute, and it certainly does not fall within either proviso (*b*) or proviso (*d*). Indeed, it seems to me that proviso (*b*) by plain implication excludes the appellants' objection. That proviso necessarily proceeds upon the assumption that the workman has recovered from the effects of his accident, but it only allows an objection (which the Sheriff may or may not sustain) to registration of a memorandum, if the workman has returned to work and is earning the same wages as he did prior to the accident. The plain inference is that the mere fact that the workman has ceased to be incapacitated is not a valid objection to the recording of the memorandum.

I am therefore of opinion that the first question should be answered in the affirmative.

There is a second question put in the case, which is in the following terms—"Was the admission of medical evidence on behalf of the employers, of Coakley's fitness for work, competent?"

I do not understand the import of that question. I suppose that medical evidence was led, and that it was to the effect that the respondent had recovered from the accident; but nothing is said about medical evidence in the statement of facts. I therefore do not see precisely what the point which we are asked to decide is. The Sheriff-Substitute seems in effect to have allowed a proof before answer, because he allowed evidence to be led by the appellants, reserving the respondent's objections. While I should hesitate to say that it was incompetent to allow a proof before answer, I think that it was unnecessary and should not have been allowed, because the averments in the appellants'

minute were not relevant to support their objection to the registration of the memorandum. I am therefore of opinion that the second question is not properly raised by the facts stated, and that we should decline to answer it.

The Court answered the first question in the affirmative.

Counsel for the Appellants — Horne — Strain. Agents—W. & J. Burness, W.S.

Counsel for the Respondent—Blackburn, K.C.—J. A. Christie. Agent—E. Rolland M'Nab, S.S.C.

Saturday, February 6.

FIRST DIVISION.

[Lord Guthrie, Ordinary.

DAVIDSON *v.* SPRENGEL.

Reparation — Negligence — Landlord and Tenant—Liability of Landlord to Tenant for Accident to His Child through Gas Bracket being in Dangerous Position — House Occupied by Tenant for Six Months Prior to Accident—Volenti non fit injuria —Relevancy.

A tenant who entered into possession at Whitsunday 1907 of a tenement dwelling with a common stair raised an action against his landlord for damages in respect of the death of his pupil child. The pursuer averred that the lighting of the common stair was done by the landlord; that the lighting was by a gas bracket protruding from the stone landing; that the bracket was so near the balustrade as to be dangerous to children and females; that his daughter, aged two years and ten months, was on 24th November 1907 found on the stair enveloped in flames; that her clothing had been set on fire by the flame from said bracket; and that she died from the injuries sustained.

Held that as the tenant had been in occupation for nearly six months prior to the accident, and as the action was not derivative, the averments were irrelevant.

Opinions reserved as to the relevancy of such averments in an action at the instance of the injured wife or child of the tenant.

Mechan v. *Watson*, 1907 S.C. 25, 44 S.L.R. 28, *followed*.

Charles Roy Davidson, coachbodymaker, residing at 108 Rose Street, Edinburgh, raised an action against Richard Sprengel, the landlord of the said house, for damages for the death of pursuer's infant daughter.

The pursuer averred—"(Cond. 1) The pursuer is a coachbodymaker in the employment of Messrs Croall & Croall, coachbuilders, York Lane, Edinburgh. He resides with his wife and family at 108 Rose Street, Edinburgh. The pursuer's said house (which he first entered at Whitsunday 1907) is one of six houses, forming (with shops on the street floor) a tenement of four flats, with two houses on each of the upper three flats, to all of which access is had by a common stair. The defender is proprietor of the whole of said tenement and common stair. (Cond. 2) It was the duty of defender, as proprietor foresaid, both at common law and in terms of the Edinburgh Municipal and Police Act of 1891, to, *inter alia*, provide, fit up, maintain, and renew in said common stair all necessary lamps, brackets, and other means of lighting the said common stair. It is further, at common law, the duty of the defender as proprietor foresaid to see that the lamps or brackets supplied for the purpose of lighting said common stair are so placed, and if necessary so guarded, as to enable them to fulfil their functions without being a source of danger to persons using and having a right to use the said stair. The defender, however, culpably and negligently failed to perform this duty, and the accident after condescended on resulting in the death of pursuer's child was directly caused thereby. At the first landing in said stair the gas bracket provided by the defender for lighting the stair at that point and belonging to the defender, is placed in such a position as to be, when lit, a source of the greatest danger to persons, and particularly to females and children, using the stair. The bracket projects from the landing and passes alongside and close to the top step of the stair as it reaches the first landing. The burner of said bracket is about one and three-quarter inches above the level of said step, and is close to the stair rails. When the gas is lit the flame reaches quite close to the stair rails, and to some extent overlaps the step of the stair. No one except the defender had anything to do with the placing of the gas jets in said property. (Cond. 3) On the afternoon of Sunday, 24th November 1907, a lady friend of the pursuer's family called at his said house. As was her habit when calling, she gave a penny to each of the pursuer's three children. When one of the pursuer's said children, a girl called Mary (or Polly), aged about two years and ten months, received her penny she went out for the purpose of buying sweets at a shop in Rose Street, near the door of pursuer's house. For this purpose she had to go downstairs, and shortly afterwards the pursuer's wife, wondering why the little girl was not returning, went to the door and looked down the stair. She heard her daughter calling plaintively for her, and on going down she found the little girl enveloped in flames from the foot of her dress to her head, both clothes and hair being on fire. In point of fact the child's clothing had been set on fire by the flame of said gas jet as she passed it. Everything possible was done for the child, who was badly burned about the lower part of the body, the face and the head, and was suffering the most intense agony. A cab was got, and she was without delay taken to the