

present to sell the school, although I have said certain things in the opinion I have delivered which I think may be a guide to the parties in regard to the future. The fifth question is conditional, and I do not think it ought to be answered at all. We are not asked to answer the sixth and seventh questions.

LORD KINNEAR and LORD JOHNSTON concurred.

LORD M'LAREN was absent.

The Court answered the first and second questions of law in the affirmative in the circumstances as disclosed in the case, found it unnecessary to answer the remaining questions of law, and decerned.

Counsel for the First Parties—Blackburn, K. C. — Black. Agents — Macandrew, Wright, & Murray, W.S.

Counsel for the Second Parties — M'Lennan, K.C.—D. P. Fleming. Agents — Laing & Motherwell, W.S.

Thursday, January 27, 1910.

FIRST DIVISION.

(SINGLE BILLS.)

FORTH BRIDGE RAILWAY COMPANY
v. DUNFERMLINE GUILDRY.

(Reported *ante*, February 2, 1909,
46 S.L.R. 399.)

Process—Recal of Interlocutor—Interlocutor Dismissing Action as Irrelevant Recalled of Consent, and Interlocutor Finding for the Pursuers with Expenses against Defenders Pronounced.

The Court of consent and in terms of a joint-minute recalled an interlocutor dismissing an action as irrelevant, and found for the pursuers with expenses against the defenders, an intervening judgment of the House of Lords in a cognate case having meanwhile been pronounced.

The case is reported *ante ut supra*.

On 2nd February 1909 the First Division, following the decision of the Second Division in *The North British Railway Company v. Budhill Coal and Sandstone Company*, 1909 S.C. 277, 46 S.L.R. 178, held that whinstone was a mineral in the sense of section 70 of the Railways Clauses Consolidation (Scotland) Act 1845 (8 and 9 Vict. cap. 33), and affirmed the interlocutor of the Lord Ordinary (Dundas) dismissing the action.

On 15th November 1909 the House of Lords reversed the judgment of the Second Division in the *North British Railway Company v. Budhill Coal and Sandstone Company*, and held that sandstone is not a mineral in the sense of the above-mentioned section.

The parties to the present action presented a joint-minute to the First Division, craving the Court to pronounce an interlocutor

recalling the interlocutor of 2nd February 1909 and the interlocutor of the Lord Ordinary dated 4th June 1908, and declaring in terms of the first conclusion of the summons for the pursuers (reclaimers), with expenses against the defenders (respondents).

The Court pronounced an interlocutor in the terms craved.

Counsel for Pursuers — Clyde, K.C. — Cooper, K.C.—Hon. W. Watson. Agents — Robson & M'Lean, W.S.

Counsel for Defenders—Dean of Faculty (Dickson, K.C.)—Constable, K.C.—Macmillan. Agent—John Stewart, S.S.C.

Friday, February 4.

SECOND DIVISION.

[Sheriff Court at Airdrie.

DICKSON v. HYGIENIC INSTITUTE.

Contract — Breach — Reparation — Dentist — Unregistered Dentist — Negligence — Requisite Skill — Failure to Display Ordinary Skill.

An unregistered dentist, if not known to the person operated upon to be unregistered, must attain the standard of skill of the registered practitioner at the place and in the circumstances where the services are rendered; if known to be unregistered, then the skill which he professes to have.

Circumstances where held that defenders in an action had held out themselves and their employees as competent to perform dental operations with ordinary skill, and were liable in damages in respect of a grossly careless operation performed by one of their employees.

Bethia C. Dickson, 32 Commonhead Street, Airdrie, brought an action of damages in the Sheriff Court at Airdrie against the Hygienic Institute, Main Street, Coatbridge.

The pursuer averred—" (Cond. 1) . . . The defenders carry on business under the style and name of the 'Hygienic Institute' in Glasgow and elsewhere, and have a place of business in Coatbridge. They supply artificial teeth on the instalment system, and employ, *inter alios*, assistants who are not qualified 'dentists' or 'dental surgeons.' (Cond. 2) The defenders during the autumn of 1907 issued circulars to the public inviting them to purchase artificial teeth from them at the rates and under the conditions set forth in said circulars. . . . The pursuer, during the said advertising period, on 30th November 1907 entered into an arrangement with defenders whereby they undertook to extract her teeth, both in her upper and lower gums, and to supply her with a full set of false teeth set on ebonite and gold. . . ."

The pursuer further averred that she was operated on by employees of the defenders,