ruary 14, 1905, 7 F. 485, 42 S.L.R. 365, where breach of a rule had been held not to bar the widow of a miner from claiming compensation. Reference was also made to *M'Lauchlan* v. *Anderson*, February 1, 1911, *supra*, p. 349.

Counsel for the respondents were not called on.

LORD JUSTICE-CLERK—In this case it cannot possibly be said that the Sheriff-Substitute had no reasonable grounds for holding that the accident did not arise out of and in the course of the workman's employment. This is a totally different case from that of the *Glasgow Coal Company* v. *Sneddon*, 7 F. 485, which has been cited to us, because here we have a breach of a rule and in direct connection with the breach the accident happens. The workman had finished his work for the day when he saw a pony-driver proceeding to draw three hutches to the pit bottom, and he jumped on the rearmost hutch for the purpose of getting a ride. The driver did not notice him as his lamp had gone out, and on the way to the pit bottom he was knocked off the hutch by his head coming in contact with two crowns which were considerably below the ordinary pit level. It was one of the special rules of the pit that miners were forbidden to ride on the hutches, and of this the workman was well aware. In this state of the facts, although it may be said that the workman was in the course of his employment while in the act of leaving his work, I have no doubt that the accident did not arise out of his employment in the sense of the Act.

LORD ARDWALL—I am of the same opinion. Undoubtedly while a man is going to or coming from his work he is still in the course of his employment, but it is quite another question whether the accident in this case can be said to have arisen "out of the employment." I am of opinion it did not, but, on the contrary, that it happened in consequence of something which the appellant did, purely for his own ease or pleasure, and in direct and flagrant breach of rules which the employers had enacted under statutory authority for the protection alike of their workmen and themselves. In these circumstances I am satisfied that the result at which the Sheriff-Substitute has arrived is right.

LORD MACKENZIE—In this case the arbiter has found that the accident did not arise out of and in the course of the employment of the appellant. Before this Court can interfere with that decision we must be satisfied that there was no evidence on which he could reasonably reach this conclusion. In this case I think that not only was there evidence on which the arbiter could reach that conclusion, but the facts plainly show it was the proper conclusion to reach. It is not every breach of rules which places a workman outside the sphere of his employment. In each case that is a question of circumstances, and the arbiter has so regarded it. Here I think the accident did not arise "out of," although it may have arisen "in the course of" the workman's employment. The accident was due to an unfortunate act of the workman himself. For purposes of his own, instead of walking to the pit bottom as he should have done, he got on a hutch, with the result, that on the way his head came into contact with two crowns which were below the ordinary pit level. In these circumstances I think the Sheriff-Substitute has reached the proper conclusion.

LORD DUNDAS was absent, and LORD SALVESEN was sitting in the Lands Valuation Appeal Court.

The Court answered the first and second questions of law in the affirmative, and affirmed the dismissal of the claim by the arbitrator.

Counsel for Appellant—J. A. Christie. Agents—St Clair Swanson & Manson, W.S.

Counsel for Respondents—Horne, K.C.—Strain. Agents—W. & J. Burness, W.S.

Tuesday, February 7.

SECOND DIVISION.

(SINGLE BILLS.)

MACKENDRICK *v.* NATIONAL UNION OF DOCK LABOURERS OF GREAT BRITAIN AND IRELAND.

(Reported *ante*, November 1, 1910, at p. 17.)

Expenses — Appeal to House of Lords — Withdrawal of Appeal — Respondent's Additional Expenses Prior to Withdrawal.

Where a cause had been disposed of on a reclaiming note and the pursuer found entitled to expenses, *held* that the Court had no power to award additional expenses incurred by the pursuer in consequence of an appeal to the House of Lords having been taken by the unsuccessful defenders and afterwards withdrawn.

The case is reported *ante ut supra*.

Alexander Brownlie Mackendrick, writer, Glasgow, sued the National Union of Dock Labourers in Great Britain and Ireland for £425, 5s. 1d., being the amount of certain accounts for professional work.

On 1st November 1910 the Second Division found, *inter alia*, that the defenders were liable in payment of the accounts sued for in so far as the same were properly charged, remitted the same to the Auditor of Court to tax and report, and found the pursuer entitled to expenses, both in the Outer and Inner House, so far as not already disposed of by a previous interlocutor.

On 12th November 1910 the defenders presented a petition for leave to appeal to the House of Lords, and on 15th November leave to appeal was granted as craved.

On 20th January 1911 defenders' agents

intimated to pursuer's agents that their clients were not to proceed with the appeal.

Thereafter the pursuer presented a note to the Lord Justice-Clerk, in which he stated, *inter alia*, that after leave to appeal to the House of Lords had been granted, defenders' agents requested to know the names of the London solicitors who were to act for the pursuer in the appeal, in order that they might advise their London solicitors accordingly; that pursuer's agents thereupon instructed London solicitors to act for him, and advised the defenders' agents thereof; that various meetings and some correspondence took place between the London solicitors of the defenders and the London and Edinburgh solicitors of the pursuer, and that in consequence thereof pursuer had incurred legal expenses to his Edinburgh and London solicitors which could not be recovered in his account of expenses in the action at his instance against the defenders. The pursuer therefore craved the Court, "in respect of such leave to appeal to the House of Lords having been granted to [the defenders], and they having intimated that they are not to proceed with an appeal, and in consequence [the pursuer] having been put to legal expenses, to allow him to make up an account thereof, and to remit the same to the Auditor to tax and report. . . ."

On the note appearing in Single Bills, counsel for the pursuer moved that the prayer be granted.

There was no appearance for the defenders.

LORD JUSTICE-CLERK—I do not think that this note should receive effect. The condition of matters is this. The case before us has been finally disposed of by a judgment which took it entirely out of our hands. The only thing that remains to be done is to decern for expenses, and a petition for leave to appeal to the House of Lords having been granted, there can be no further proceedings in this Court. That being so, and the appeal having been dropped, we are now asked to give a decerniture allowing or modifying expenses incurred by the petitioner in connection with the appeal. I think that is out of the question, and I am clear that we have no power to do any such thing.

I may add that it is very doubtful, indeed, even if the case had proceeded, whether these expenses would have been included in the costs as they might be granted by the House of Lords.

LORD ARDWALL—I entirely concur. We have asked for authority, but counsel has frankly stated that there is no authority for the prayer of this note, and, apart from authority, it appears to me that the prayer asks us to do something which it is incompetent for us to do, viz., to deal with the expenses of an appeal to the House of Lords after we have exhausted the case so far as this Court is concerned. If the appeal had gone on these expenses would have formed part of the expenses to be dealt with by the House of Lords when the case came before them, and the fact that the appeal has not been proceeded with does not give this Court any right to deal with them.

LORD MACKENZIE—I concur.

LORD DUNDAS was absent and LORD SALVESEN was sitting in the Lands Valuation Appeal Court.

The Court refused the prayer of the note.

Counsel for the Pursuer — Macdonald. Agents—Paterson & Salmon, Solicitors.

Wednesday, February 8.

FIRST DIVISION.

[Lord Skerrington, Ordinary.

SHAW *v.* BURNS.

Reparation — Wrongous Information to Police—Malice—Averments—Relevancy.

A cellarman who had been dismissed from his employment with a firm of wine merchants brought an action of damages against the manager, in which he, *inter alia*, averred that after being fifteen years in the firm's employment his health broke down through overwork; that after his discharge from the infirmary the defender sent for him to come and see him at his office; that on his doing so the defender began to blackguard the pursuer's wife and the pursuer; that while the pursuer was in the infirmary the defender had called for the pursuer's wife, and intimated that he would require the house which the pursuer and his wife then occupied; that at a second interview with the pursuer and his wife he (the defender) expressed himself in very angry terms with the latter for having written to a friend of the head of the firm on behalf of her husband, and that he then and there dismissed him from the firm's employment; that on the pursuer asking for a certificate of character the defender refused to give him one; that on a subsequent day the pursuer, while waiting in the street for a paper, was accosted by two policemen, who informed him that a complaint had been lodged against him for threatening the firm's employees, and asked him to move on; and that his being so asked was due to the defender having informed the police that he (the pursuer) was threatening the defender's life, and was loitering about with the intention of doing the defender harm.

Held that malice had been relevantly averred.

Process—Issue—Form of Issue—Competency of Putting in Issue the Alleged Consequent Damage.

A pursuer is not entitled in every case to put in issue not only the facts which constitute the ground of action but also the alleged consequent damage, *e.g.*, where the damage alleged is an unusual consequence.