This was a petition presented by Crawford William Logan, heir of entail in possession of the lands of Westmarch, situated in the burgh of Paisley. The object of the petition was to have fixed and restricted the amount of the annuity and provisions granted by his predecessor in possession of the entailed estate in favour of his wife and daughters, in terms of the Aberdeen Act 1824 (5 Geo. IV, cap. 87), secs. 1 and 4, and to obtain authority to charge the entailed lands with the amount of the daughters' provisions.

On 28th April 1911 the Lord Ordinary appointed a curator *ad litem* to the three nearest heirs next in succession to the entailed estate, who were in minority, and further remitted the petition to Mr John Kinmont, S.S.C., to inquire and report.

In his report the reporter drew attention to the fact that the petitioner had produced a statement showing the free rental of the estate for the year ending Whitsunday 1910, in which was included the rent of the mansion-house. The reporter referred to *Leith*, June 10, 1862, 24 D. 1059, but stated that in the present case the house in question, although the old mansion-house of the estate, had no longer the characteristics or amenity of a mansion-house of an entailed estate, and that the petitioner did not object to the rent of the mansion-house being included in the rental of the estate for the purposes of fixing the annuity and provisions, and charging the latter by bond and disposition in security. The curator *ad litem* for the next heirs of entail, however, objected to the inclusion of the mansion-house for these purposes.

The Lord Ordinary on the Bills (LORD KINNEAR) fixed the annuity and provisions at sums calculated on the footing that the rent of the mansion-house fell to be included in the rental of the lands chargeable therewith, and authorised the petitioner to charge the entailed lands (including the mansion-house) by bond and disposition in security for the amount of the daughters' provisions.

Counsel for the Petitioner — Cowan. Agent—F. J. Martin, W.S.

Saturday, November 4.

FIRST DIVISION.

[Sheriff Court at Leith

HALVORSEN *v.* SALVESEN AND OTHERS.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, c.* 58), *sec.* 1 (1)—*Accident Arising "Out of" the Employment—Engineer Returning to Ship.*

A ship's engineer who was on shore for a legitimate purpose, in order to get back to his ship, then at anchor about 100 yards off the shore, got into a six-oared lifeboat, 27 feet in length, which he found lying at the jetty, and which in ordinary circumstances would have been manned by six men, each with an oar. It had in it its rudder but no oars. He attempted to reach the ship by paddling with the rudder, trusting to the wind and tide, which were both in his favour, carrying him towards the ship. He was carried out to sea and was drowned.

Held that the accident did not arise out of and in the course of the deceased's employment.

Jemima Sutherland or Halvorsen, 21 Prince Regent Street, Leith, for herself and as guardian of her pupil son Neil Theodore Halvorsen, claimed compensation under the Workmen's Compensation Act 1906 from J. T. Salvesen and others, shipowners, Leith, in respect of the death of her husband Theodore Halvorsen, employed as an engineer on one of the defenders' vessels.

The Sheriff-Substitute (GUY) having awarded compensation a case for appeal was stated.

The *facts* were—"On 11th July 1910 the said Theodore Halvorsen was in the employment of the appellants as second engineer on board their steamship 'Ramleh,' which was then at anchor at Leith Harbour, South Georgia, an island situated in the South Atlantic Ocean. The steamship 'Ramleh' is a 'ship,' and the said Theodore Halvorsen was a 'seaman,' within the meaning of the Merchant Shipping Acts 1894 and 1906. The said vessel arrived in said harbour early in May 1910, and shortly thereafter, while the said steamship 'Ramleh' was lying in said harbour, the said Theodore Halvorsen received an injury to his thumb by accident arising out of and in the course of his employment by its being crushed in the machinery of the ship. The injury necessitated the services of a medical man, and the appellants in implement of their duty under section 34 of the Merchant Shipping Act 1906 allowed all the seamen on board their vessels to have the services free when their ships were at Leith Harbour, South Georgia, of a medical man, Dr Cruickshanks, resident on shore there. On the afternoon of the day when the said Theodore Halvorsen met with said accident, he went ashore and was attended to by Dr Cruickshanks, whose services as a medical man were sometimes given on board ship and sometimes given at his house on shore.

"Shortly after the said Theodore Halvorsen's thumb had been attended to by the said Dr Cruickshanks, he was absent from the said harbour on another of the appellants' steamers, engaged in the capacity of chief engineer on an emergency voyage in search of a missing whaler, on which voyage he was absent for about three weeks.

"On his return his thumb was still requiring medical treatment, and on 11th July 1910 he went on shore for the purpose of seeing the doctor in connection therewith and having his thumb dressed. The said Theodore Halvorsen and Robert Hood, the third engineer, had been on shore on 10th July 1910 on their own private business or pleasure, namely, shoot-

ing, and had then seen Dr Cruickshanks, who asked Halvorsen when he was again coming to see him, and it was then arranged that Halvorsen should see him soon. Leith Harbour, South Georgia, has no built quay, but is only a natural harbour, which might be described as a narrow bay or creek in which ships anchor. Ships are discharged and loaded by means of small boats which go and come between them and a jetty on shore. The 'Ramleh' was anchored about 100 yards from the shore. The said Theodore Halvorsen, along with Hood, the third engineer, went on shore from the 'Ramleh' on the occasion in question in a small boat belonging to the ship, tied it to the jetty, and went to the doctor's house. The time when they went on shore was early evening, after their ordinary hours of work on board the ship were over for the day. On their arrival there the said Theodore Halvorsen called for the doctor, but was informed that he was not within the house. They—Theodore Halvorsen and his companion the third engineer—then waited for some time, hoping that Halvorsen would be able to see the doctor. While they were thus waiting the wind became very strong and very squally, and the two returned to the jetty with the object of returning to the ship. On reaching the jetty they found that the ship's boat, which they had tied to it, had been taken away to the other side of the harbour, and that the only boat which was then lying at the jetty was a lifeboat belonging to the South Georgia Whaling Company, Limited, the proprietors of the whaling station and jetty. The said lifeboat was some 27 feet in length, having in it its rudder but no oars. This boat was one which in ordinary circumstances should have been manned by six men, each with an oar.

"Halvorsen proposed to his companion that they should go without oars, and that the rudder should be used to steer the boat by paddling. The wind and tide would have carried the boat down the harbour more or less in the direction of the 'Ramleh,' although the wind was rather on the beam of the boat. The third engineer refused to take the risk, and Halvorsen then proceeded to attempt it himself and pushed the lifeboat out from the jetty and began to paddle with the rudder, which he used on the side of the boat trying to keep her on to the wind. Halvorsen failed to reach the ship and was blown out to sea and was drowned, and neither the boat nor he was seen or heard of again."

The Sheriff-Substitute further stated—"In these circumstances I held that the said Theodore Halvorsen had met his death by accident arising out of and in the course of his employment with the appellants. It was admitted that the respondent and her said pupil child were wholly dependent on the earnings of the said Theodore Halvorsen at the time of his death, and that if compensation is due to them the amount thereof is £300, and that sum I accordingly awarded as compensation."

The *questions of law* were—"1. Whether the said Theodore Halvorsen's death arose out of and in the course of his employment with the appellants within the meaning of the Workmen's Compensation Act 1906? 2. Whether the said Theodore Halvorsen's death was the result of 'accident' within the meaning of said Act?"

Counsel for the appellants having opened the case, the Court, without hearing argument, called on counsel for the respondent.

Argued for respondent—*Esto* that the deceased had adopted an unusual method of returning to his ship, the circumstances were exceptional. Both the second and third engineers were on shore, and as the weather was becoming stormy the deceased decided to return to the ship at once. He adopted the only available means, viz., the lifeboat in question, and looking to the fact that the wind and tide were favourable, and that the "Ramleh" was only 100 yards off the shore, he was justified in so doing. Moreover, the risk from which he perished, viz., going in a boat to the ship, was one specially connected with his employment—*per* Loreburn, L.C., in *Fletcher* v. *Owners of Ship "Duchess,"* [1911] A.C. 671, at p. 673—and that being so it fell within the Act—*Moore* v. *Manchester Liners*, [1910] A.C. 498. The case of *Kitchenham* v. *Owners of s.s. "Johannesburg,"* [1911] A.C. 417, was distinguishable, for in that case there was no proof as to how the accident happened.

Lord President—It would be quite useless to repeat what has been said in so many cases by the House of Lords, and especially in the very recent case of *Fletcher* v. *The Owners of the "Duchess"* ([1911] A.C. 671), which is later in date than the cases of *Moore* v. *The Manchester Liners* ([1910] A.C. 489), and *Kitchenham* ([1911] 1 K.B. 523, [1911] A.C. 417). I cannot say that I have any real difficulty in disposing of this case. I shall assume that the employment was not interrupted, and therefore that the man who was drowned was at the time acting in the course of his employment; but I am bound to say that I cannot see how the Sheriff came to the conclusion that the accident arose out of the employment. To get back to his ship he had to get back in one of the ordinary ways, and if, as in the case of *Leach* ([1911] 1 K.B. 523), which was decided on the same day as *Kitchenham's* case, the accident had happened by his tumbling off a gangway, then he would have been returning to his ship in an ordinary way and as part of his employment, and that would have been an accident arising out of the workman's employment. But the question which underlies such a situation always is, Was the danger which caused the accident a danger to which in the workman's contract with his employers he was naturally subjected? and if the danger is of that class then the accident will be considered to have arisen out of the employment. But here the workman was not returning to his ship in any ordinary way; he was returning in a most extraordinary way; he was taking, in other words, a means of transit which was no ordinary

means of transit at all. I grant that a boat is a quite proper means of getting back to a ship where the ship is not moored to a quay. But a boat in that sense is such a boat as is referred to by the Lord Chancellor in the case of *Fletcher* v. *Owners of the "Duchess,"* namely, an ordinary boat. It is certainly not making use of an ordinary boat to go into one which is ordinarily meant to be propelled by oars but which has no oars, is meant to be manned by seven or eight men but has only one man in it, whose course can only be influenced by paddling with the rudder, the propulsion being effected by the wind and tide. This seems to me a case where the boat used was really no boat at all, and that the poor man by going back to his ship in that way subjected himself to a risk which was no part of his employment, and a risk which his employers never could have thought that he should be subjected to in the ordinary course of his employment. I therefore have no hesitation in saying that the first question must be answered in the negative.

LORD KINNEAR—I am of the same opinion. I think it clear that this man exposed himself to a risk which was not one of the risks of his employment at all. It was not one of the risks which his contract of employment as seaman required him to take. That he was entitled to return to his ship by means of a boat nobody disputes, but what is said is that, as the boat which was meant for the purpose was not at hand, he took a lifeboat which had no oars, and which in ordinary circumstances required to be manned by six men, each with an oar, and getting on board of her he trusted that he would be carried more or less in the direction of the ship by the force of the wind and tide, his only means of directing the boat being that he took out the rudder and used it as a paddle for steering. I cannot see that this is a risk to which he was required by his employment to expose himself

LORD JOHNSTON—I agree that this accident did not arise out of the employment of the deceased.

LORD MACKENZIE was absent.

The Court answered the first question of law in the negative, found it unnecessary to answer the second question of law, recalled the determination of the Sheriff-Substitute as arbitrator appealed against, and decerned.

Counsel for Appellants—Murray, K.C.—Jameson. Agents — Boyd, Jameson, & Young, W.S.

Counsel for Respondent — Maclennan, K.C.—Mitchell. Agent—R. H. Miller & Company, S.S.C.

Tuesday, November 7.

FIRST DIVISION.

EARL OF CAITHNESS *v.* SINCLAIR.

Succession — Fee - Simple Destination — Clause of Devolution—Validity of Clause —Public Policy.

By *mortis causa* settlement the proprietor of certain estates disponed them to his daughter and the heirs whomsoever of her body, whom failing to a series of heirs therein mentioned. The destination was a fee-simple one, but the disposition contained a clause of devolution in the following terms—"And under this condition always, that the husband of my said daughter and each of the heirs, and the husband of each of the female heirs who shall succeed to the lands before disponed under the destination herein contained, shall be obliged in all time, after they or their wives succeed to the said lands, to use and retain the surname of Buchan and the arms and designation of Buchan of Auchmacoy, and no other surname, arms, or designation; and that in case any of the said heirs shall succeed to a peerage, then when the person so succeeding or having right to succeed to my said lands shall also succeed to a peerage, they shall be bound and obliged to denude themselves of all right, title, and interest which may be competent to them in or to my said lands, and the same shall thenceforth *ipso facto* accrue and devolve upon the next heir for the time being who shall be entitled to succeed under the destination herein contained, as if the person so succeeding to a peerage were naturally dead."

On the succession opening to A, one of the heirs of provision who had already succeeded to a peerage, B, the next heir, challenged his right to take up the succession to the said estates.

Held that the clause of devolution was neither inapplicable nor invalid, and that accordingly A was excluded from the succession to the said estates.

On 15th October 1910 the Right Hon. John Sutherland, Earl of Caithness, *first party*, and the Hon. Norman Macleod Sinclair, *second party*, presented a Special Case to determine whether, on the sound construction of a clause of devolution contained in the *mortis causa* settlement granted by the late James Buchan of Auchmacoy, Aberdeenshire, the first party by his succession to the peerage was excluded from succeeding to Auchmacoy.

The *facts* were as follows—"James Buchan, Esquire, of Auchmacoy, in the county of Aberdeen, died on 28th November 1874, survived by his daughter Miss Louisa Buchan, and leaving no other issue. On 26th December 1873 Mr Buchan executed a disposition of the estate of Auchmacoy in favour of the said Miss Louisa Buchan, and the heirs whomsoever of her body,