tract of marriage to resign, and appointed certain individuals resident in Canada to be trustees, subject to their granting an obligation to submit to the jurisdiction of the Court of Session, as is here proposed. He also points out that, so far as he knows, the Court has never yet appointed an incorporated company as trustee, although he believes that that is done in England and also in Canada.

Now in the case of *Simpson's Trustees* no opinions are given, and, speaking for myself, I wish to say that I should like to reserve my opinion as to whether what was there done was within the proper power of the Court. But assuming that it was, I think the present case goes a good deal further. After all, the whole idea of this Court having jurisdiction over a trust is to enable it to vindicate the interests of the beneficiaries if the necessity should arise. There are minor beneficiaries in existence here, because the spouses have children, and although one would be very anxious to do what the spouses wish, I have come clearly to be of opinion that the prayer of the petition cannot be granted. Even assuming *Simpson's Trustees* to be a decision which one would repeat, I think the present application if granted would go a step further, because in that case the Court appointed individual gentlemen, who not only gave an undertaking as is proposed in this case, but who, of course, if they ever were in Scotland, could at least be made subject to the power of the Court. It seems to me that an incorporated company in Canada is absolutely beyond the power of the Court, and equally obviously it will never come to Scotland. So that although I do not doubt the good faith of the company in executing and lodging in process the document referred to, that document is after all only worth the paper that it is written upon, and if the governing body of the company changed—as it will change in time to come—and if the successors of the present directors thought it convenient to disregard the obligation, there would be no possibility of this Court enforcing it. To my mind that would be enough, but I think there is also an insuperable difficulty connected with this double trust. There is no question that the Court in England would have jurisdiction to inquire into the proper administration of the English settlement, and I think that the Court in England would be surprised if, upon proceeding to inquire into the conduct of the trustees, it was told that the Court in Scotland had transferred the whole trust administration to Canada. I do not think that we should be entitled to do such a thing, and thereby hamper the Court in the other part of the United Kingdom.

Upon the whole matter, although I regret not being able to comply with the view of the trustees and of the spouses, which I have no doubt is founded upon considerations of convenience and not upon any idea of escaping from the jurisdiction of the Court, I have come to the conclusion that the petition cannot be granted.

LORD JOHNSTON—I agree. Even if the case of *Simpson's Trustees* (1907 S.C. 87) were given the fullest effect as an authority, I should consider that this application is one that for reasons peculiar to itself could not possibly be granted. But I desire to associate myself with what your Lordship has said, and to reserve my opinion as to the course taken in *Simpson's* case. Taking the case as it stands in the reports, I do not think that the question as now before us was fully before their Lordships of the other Division, and I think that the matter ought to be reconsidered if such a case again comes before the Court.

LORD PRESIDENT—LORD DUNDAS concurs.

LORD MACKENZIE did not hear the case.

LORD KINNEAR was absent.

The Court refused the prayer of the petition.

Counsel for Petitioners—Hon. W. Watson. Agents—Dundas & Wilson, C.S.

Friday, February 7.

SECOND DIVISION.

[Sheriff Court at Wigtown.

KERR *v.* RITCHIES.

Master and Servant— Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1)—"*Accident Arising out of and in the Course of the Employment*"—*Heart Failure Causing Death—Strain.*

In arbitration proceedings to recover compensation under the Workmen's Compensation Act 1906 the arbitrator found that a workman, who apparently was in the enjoyment of good health, died suddenly whilst engaged in his occupation of lifting baskets from the ground on to the top of a bruising machine; that "nothing unusual or unexpected occurred in the course of his work that afternoon until the sudden attack of illness"; that the cause of death was heart failure; and that "the strain arising from the exertion made by the deceased in repeatedly" lifting the baskets was a contributing cause of the heart failure.

Held, on the facts stated, that the arbitrator was not entitled to find that the workman had died from an accident arising out of and in the course of his employment within the meaning of the Act, because there was no particular occurrence to which death could be attributed.

Clover, Clayton, & Company v. *Hughes*, [1910] A.C. 242, 47 S.L.R. 885, *distinguished.*

This was an appeal by way of Stated Case from a decision of the Sheriff-Substitute (WATSON) at Wigtown in an arbitration

under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), between Jane Hastie or Ritchie and others, the widow and children of Thomas Ritchie, farm servant, Millisle Farm, in the parish of Sorbie and county of Wigtown, *respondents*, and William Kerr, farmer there, *appellant*.

The Case stated—"This is an arbitration in which the respondents craved the Court to award compensation in terms of the Workmen's Compensation Act 1906, in respect of the death, on 8th March 1912, of the said Thomas Ritchie, while engaged in appellant's employment at his said farm of Millisle. The case was heard before me and proof led, when the following *facts* were admitted or proved—The deceased Thomas Ritchie entered the defender's service at Millisle as a farm labourer at Whitsunday 1911 and remained there until his death on 8th March 1912. . . . On 8th March 1912, shortly after his mid-day meal, Ritchie was engaged in defender's employment feeding corn into a bruising machine in the barn at Millisle. While so engaged he had repeatedly to shove a wooden basket into a heap of corn which was lying on the floor of the barn, lift the basket filled with corn on to the top of the bruising machine, which was 4 feet 6 inches from the ground, and then tilt over the basket so as to empty the corn into the hopper of the bruising machine. It was usual to bruise 4 bags of corn at a time, each containing 5 bushels, and the bruising of the 20 bushels usually took about half-an-hour, the bruising machine being fed continuously by the corn emptied into the hopper. The deceased began the operation of feeding the bruiser about 1·30 p.m., and there were then working along with him in the barn, but at different work, the witnesses Dalziel, Lockhart, and James Ritchie (son of deceased). After the deceased had been working at the bruiser for about a quarter of an hour, the witnesses Dalziel and James Ritchie both observed that he was holding up his left hand as a signal of distress, and at the same time lying upon or leaning against a full sack of corn that was at hand. These men, along with Lockhart, at once went to the assistance of the deceased, and did what they could to revive him. His breathing was laboured and wheezy, and he never spoke nor moved from the time he was observed to be holding up his hand until he died, which was about a quarter of an hour after. In the short time during which the deceased had worked at the bruiser he lifted at least 320 lbs. of corn into the hopper, filling the basket probably 10 or 11 times, the weight of a basketful being 31 lbs. The deceased had frequently done the same work before, and nothing unusual or unexpected occurred in the course of his work that afternoon until the sudden attack of illness. The deceased was 47 years of age, and his height was something between 5 feet 6 inches and 5 feet 8 inches. He was apparently a strong and healthy man, and during the past 15 years he had never been a day off work from illness nor required any medical attendance. His master (the defender) and his fellow-workers on the farm never knew him to be the worse of drink. The cause of his death was failure of the heart. There was no post-mortem examination of the internal organs, but the body was seen by Dr Welsh about 40 minutes after death. The body was fairly well nourished, and gave no indication of any exhausting disease. A contributing cause of the failure of the heart's action was the strain arising from the exertion made by the deceased in repeatedly stooping to fill the basket with corn and then lifting it when full up to the level of his shoulders in order to feed the bruiser. On these facts, having in view the decision of the House of Lords in *Clover, Clayton, & Company*, 1910 A.C. 242, I deemed myself bound to find that the injury from which the deceased died was an injury by accident, and I further held that the accident was one arising out of and in the course of his employment with the defender. Accordingly I found the respondents entitled to compensation."

The *questions of law* for the opinion of the Court were—"(1) Whether the death of Thomas Ritchie was due to an injury by accident within the meaning of the Workmen's Compensation Act 1906. (2) Whether the death of the said Thomas Ritchie was due to an injury by accident arising out of and in the course of his employment within the meaning of said Act."

Argued for the appellants—The workman must have died of heart disease, for he was engaged in ordinary work which involved no special exertion, and there was no evidence of any unusual strain. The respondents had failed to discharge the *onus* on them of showing that the workman's death was the result of an accident arising out of and in the course of his employment—*Spence* v. *William Baird & Company, Limited*, 1912 S.C. 343, 49 S.L.R. 278; *Hawkins* v. *Powells Tillery Steam Coal Company, Limited*, [1911] 1 K.B. 988, *per* Cozens-Hardy, M.R., at p. 990; *Coe* v. *Fife Coal Company, Limited*, 1909 S.C. 393, 46 S.L.R. 328; *Martin* v. *Manchester Corporation*, March 29, 1912, 5 B.W.C.C. 259, *per* Cozens-Hardy, M.R., at p. 261; *Beaumont* v. *Underground Electric Railways Company of London, Limited*, March 11, 1912, 5 B.W.C.C. 247; *Ashley* v. *Lillieshall Company, Limited*, October 18, 1911, 5 B.W.C.C. 85; *Farmer* v. *Stafford, Allen, & Sons, Limited*, February 28, 1911, 4 B.W.C.C. 223; *Barnabas* v. *Bersham Colliery Company*, February 14, 1910, 3 B.W.C.C. 216, *affd.* November 9, 1910, 48 S.L.R. 727; *Walker* v. *Hockney Brothers*, March 25, 1909, 2 B.W.C.C. 20. *Stewart* v. *Wilsons and Clyde Coal Company, Limited*, November 14, 1902, 5 F. 120, 40 S.L.R. 80, was different, because there it was shown that the workman had suffered a severe strain.

Argued for the respondents—The arbiter had found that the workman had died of heart failure, and that a contributory cause was the stooping and lifting which his occupation necessitated. His death

was therefore due to an accident arising out of and in the course of his employment —*Clover, Clayton, & Company, Limited* v. *Hughes*, [1910] A.C. 242, 47 S.L.R. 885; *Ismay, Imrie, & Company* v. *Williamson*, [1908] A.C. 437, 46 S.L.R. 699; *Stewart* v. *Wilsons and Clyde Coal Company, Limited* (*cit.*). The present case was *a fortiori* of *Clover, Clayton, & Company, Limited* v. *Hughes* (*cit.*), because here the arbiter had found that the workman enjoyed very good health. It was not necessary to prove that there had been anything of the nature of an unusual strain—*Fenton* v. *Thorley & Company, Limited*, [1903] A.C. 443, *per* Lord Lindley at p. 456; *Borland* v. *Watson, Gow, & Company*, 1912 S.C. 15, *per* Lord Justice-Clerk (Kingsburgh) at p. 18, 49 S.L.R. 10, at p. 12. *Beaumont* v. *Underground Electric Railways Company of London Ltd.*, (*cit.*) was different, because there the cause of death was purely conjectural.

LORD DUNDAS—In this Stated Case the question which we have to decide is whether, upon the facts found, there was sufficient to justify the learned arbiter in holding that there was here personal injury by accident within the meaning of the Act. The deceased Ritchie was forty-seven years of age. He had the appearance of a strong and healthy man and seems to have been of healthy habits. He was a farm labourer employed by the defender. On 8th April 1912, shortly after his midday meal, he was engaged in his employment in feeding corn into a bruising machine in a barn. He had to shove a wooden basket into a heap of corn on the floor, lift the filled basket up four or five feet, and tilt the corn out of it into the hopper of the machine. He began the operation of feeding the bruiser about 1·30 p.m. There were three men working in the same barn, but at different work, namely, Dalziel, Lockhart, and James Ritchie, a son of the deceased. After the deceased had been working at the bruiser for about a quarter of an hour Dalziel and James Ritchie both observed that he was holding up his left hand as a signal of distress, and at the same time lying upon or leaning against a full sack of corn that was at hand. The men went to Ritchie and did what they could, but his breathing was laboured and wheezy, and he never spoke nor moved again, but died after about a quarter of an hour. The Sheriff-Substitute found in fact that the deceased had frequently done the same work before, and that nothing unusual or unexpected occurred in the course of his work that afternoon until the sudden attack of illness. The cause of death was failure of the heart. There was, perhaps unfortunately for the respondents, no post-mortem examination of the body, although a doctor saw the man after he was dead. The body was fairly well nourished and gave no indication of any exhausting disease.

After these findings in fact the Sheriff-Substitute says—"A contributing cause of the failure of the heart's action was the strain arising from the exertion made by the deceased in repeatedly stooping to fill the basket with corn and then lifting it when full up to the level of his shoulders in order to feed the bruiser." I have some little difficulty in knowing what the Sheriff-Substitute means when he alludes to "the strain arising from the exertion." He has not up to that point alluded to any strain, and he has not told us of any violent exertion likely to have produced a strain. On the contrary, he has merely told us that this man was working in the usual routine of his not strenuous business, and that nothing unusual occurred on the occasion. I cannot help thinking that one must rather regard the phrase used as meaning "a strain which must have arisen," or "a strain which I should think probably arose," or something of that nature. At all events I cannot regard the words I have quoted as a finding in fact of any definite strain causing lesion to the heart or causing the heart to give out. The Sheriff-Substitute concludes the case by saying—"On these facts, having in view the decision of the House of Lords in *Clover, Clayton, & Company* ([1910] A.C. 242), I deemed myself bound to find that the injury from which the deceased died was an injury by accident, and I further held that the accident was one arising out of and in the course of his employment with the defender."

On a general purview of the facts I have summarised one is struck by this, that nowhere is there found any particular event or occurrence to which death can be attributed. On the contrary, one finds a course of ordinary labour (and, as I have said, not strenuous labour) being pursued until the distress signal by the man, the cause of which we do not know, was observed. There is no evidence of any lesion, and the Sheriff-Substitute expressly negatives the suggestion of any unusual or unexpected occurrence in connection with the death. I certainly have no desire to renew the attempt to create a definition of "accident" in this perplexing statute; but I think I can say negatively, with a good deal of confidence, that here we have not the elements which have been held necessary for an "accident." The learned Sheriff-Substitute has frankly stated that the reason he came to his conclusion was that he deemed himself bound by the case of *Clover, Clayton & Company*. That case seems to me to be easily distinguishable from the present, and just on the point I have mentioned. Here there is not what there was there—a definite particular occurrence to which death could be attributed and was attributed. It was held there as matter of fact that the aneurism burst just after the turning of the spanner by the man. I think the case of *Beaumont* (1912, 5 Butterworth, 247) has a good deal of resemblance to the present case. There the County Court Judge disbelieved the man, who said that he had sustained the injury to his heart on a certain particular occasion to which he deponed. There was, therefore, no particular occasion and no particular occurrence to which death could be attributed. The County Court Judge nevertheless held that he must have

suffered a strain to which his work had contributed, and that it was an accident arising out of the employment. I think that is a good deal like what the Sheriff-Substitute has done here; but the Court of Appeal had no difficulty in saying that that would not do; because it really must always be a matter of fact, or of legitimate inference from fact, whether the injury (or death) ensued from the accident with which it is said to be connected. And here, as I have said, I cannot find any particular event or occurrence of the nature of an accident.

The case of *Clover, Clayton & Company* being, as I think it is, distinguishable from the present case, the ground of the learned arbiter's decision is gone, and one has the less difficulty in differing from him when one sees that the ground upon which he proceeded is, as I think, the erroneous application of a case which he thought bound him. I must say that I consider there were no facts here from which the learned arbiter could competently find that Thomas Ritchie's death was due to injury by accident within the meaning of the Workmen's Compensation Act; and I propose to your Lordships that we should so find in answer to the questions, which are not well stated.

LORD SALVESEN—I concur, though I should not have been sorry in this case if I could have reached the same conclusion as the Sheriff-Substitute. There are some observations made by Lord Kinnear in the case of *Coe* v. *Fife Coal Company* (1909 S.C. 393), which are very apposite to the facts we have here, and practically decide the matter in favour of the employer. In dealing with the various definitions of the work "accident" which have emanated from the House of Lords he says—"It seems to me that all these interpretations of the word point to some particular event or occurrence which may happen at an ascertainable time, and which is to be distinguished from the necessary and ordinary effect upon a man's constitution of the work in which he is engaged day by day. So defined, the word 'accident' seems to me to exclude the anticipated and necessary consequences of continuous labour." Now in this case the arbitrator has not found any particular event or occurrence happening at an ascertainable time which could be called an accident. What happened was that a man engaged in his ordinary work—work which was not unusually hard or difficult—suddenly died from heart disease. It would be confounding effect with cause if we were to hold that the mere circumstance that a man when doing his ordinary work suddenly dies from heart disease necessarily infers that he has met with an accident. There is nothing in the decided cases to support such a view, and there are many which are substantially indistinguishable from the present upon the facts.

If one looks at the facts found in the case of *Coe* one finds that they were very much more favourable to the claim of the workman than the facts here, although no doubt there is this distinction, that the arbitrator there had found in favour of the employer, whereas here, on what I agree with your Lordships in holding is a misreading of the *Clover, Clayton, & Company* case, he has come to an opposite conclusion. I find nothing in his findings in fact which constitutes evidence of any "unexpected personal injury resulting to the workmen in the course of his employment from any unlooked-for mishap or occurrence," to adopt the language of Lord Shand in the case of *Fenton* v. *Thorley & Company* ([1903] A.C. 443). I therefore agree with your Lordship in the result at which you have arrived.

LORD GUTHRIE—I am of the same opinion. Both parties have founded upon statements in the arbitrator's findings which they think are conclusive in their favour. The appellant founded on the statement that the deceased had frequently done the same work before and that nothing unusual or unexpected occurred in the course of his work that afternoon until the sudden attack of illness. The respondents, on the other hand, founded on the statement that a contributing cause of the failure of the heart's action was the strain arising from the exertion made by the deceased in repeatedly stooping to fill the basket with corn and then lifting it when full up to the level of his shoulders in order to feed the bruiser.

The statement founded on by the appellant I do not think can be conclusive in view of several of the cases, and in particular the case of *Fenton* ([1903] A.C. 443). In that case Lord Macnaghten criticised adversely certain opinions which had been given in a Scottish case—*Stewart* v. *Wilsons and Clyde Coal Company*—in which certain of the judges had founded on the fact that the occurrence was fortuitous, as if that were conclusive proof that the occurrence was an accident. Lord Macnaghten pointed out that that was not a good ground of judgment, and that "what the miner did in replacing the hutch he certainly did deliberately and in the ordinary course of his work. There was nothing haphazard about it." In the case of *Fenton* what the man was doing was by no means an unusual act and did not involve any unusual exertion, although it necessitated exertion greater than he might use in many parts of his work. But the result was that he ruptured himself, and the moment the act took place he called out that he had "got a tear in his inside." Now here I do not find anything similar. We do not know exactly what happened, because the man was not in view of anybody at the time, and he said nothing; when he was seen he was lying against the side of the sack. There was no post-mortem examination to ascertain the condition of matters, and it seems to me that the facts themselves do not prove that what the respondents here found upon did actually take place, namely, that there was any strain of the heart whatever.

The respondents, however, maintain that the Sheriff-Substitute has so found; I agree with your Lordships that he has not so found. He has not found that there was a strain. What he has said is that a contributing cause of the failure of the heart's action was the strain arising from the exertion made by the deceased in repeatedly stooping. As Lord Dundas has pointed out, that is the first use of the word "strain"; and as I read it the Sheriff-Substitute simply means that the man was exerting himself at the time, and that the consequence of his exertion, which he had been repeatedly making, was to produce the result that unfortunately happened. If the Sheriff-Substitute had found, as the result of a post-mortem examination, that it appeared that the heart had been at that particular moment subjected to a special strain, the result might have been different. As the case stands I agree with your Lordships in holding that the Sheriff-Substitute has gone wrong, and that the case of *Clover, Clayton, & Company*, does not rule this case.

The LORD JUSTICE-CLERK was absent.

The Court pronounced this interlocutor—

"Find in answer to the questions of law therein stated that there were no facts from which the arbitrator could competently infer that the death of Thomas Ritchie was due to injury by accident within the meaning of the Workmen's Compensation Act 1906: Therefore recal the award of the arbitrator and remit to him to dismiss the claim."

Counsel for Appellant—Constable, K.C. —MacRobert. Agents—Bonar, Hunter, & Johnstone, W.S.

Counsel for Respondents—Moncrieff, K.C. —Fenton. Agents—Langlands & Mackay, W.S.

Friday, February 7.

FIRST DIVISION.

[Lord Skerrington, Ordinary.

GOODALL *v.* MEMBERS OF LICENSING COURT OF GLASGOW AND OTHERS.

Public-House — Certificate — Objection to Renewal — Validity of Mandate to Object Obtained by Solicitation.

Mandates to object to the renewal of certain licences in Glasgow were granted by certain persons with a title to object to a law agent who was the agent of the Vigilance Association, a society one of whose objects was to effect a reduction in public-house licences. The agent lodged objections in the name of these persons on the general ground that the district was overlicensed, and he appeared before the Licensing Court in support of these objections. A licence-holder, to the renewal of whose licence objection had thus been taken, was refused a renewal by the Licensing Court and also on appeal by the Licensing Appeal Court, and thereupon raised an action of reduction of these determinations. He averred that the ostensible mandates were procured by solicitation by the agent of the Vigilance Association in order to give him a colourable title to appear at the Licensing Court, that the objections were conducted in the interests and at the expense of the Vigilance Association, and were in reality the objections of the Association. He maintained that the Court had acted illegally in thus hearing an objector who had no *locus standi*.

Held that the averments were irrelevant.

Public-House — Licensing Authority — Discretion — Mode of Exercising Discretion as between Various Applicants where the Only Objection to Any is that the District is Overlicensed.

Objections were lodged by private objectors to the renewal of certain licences in a district in Glasgow. The sole ground of objection in each case was that the district was overlicensed. A licence-holder, the renewal of whose certificate had been refused by the Licensing Court, and on appeal also by the Licensing Appeal Court, raised an action of reduction of these determinations. He averred that at the Licensing Court the applicants were called in their order, that in every case to which no objection was taken a renewal was immediately granted; that in every case to which objection was taken the Court reserved judgment, and thereafter refused some and granted others. He maintained that the Court had acted arbitrarily, injudicially and illegally, because by granting at once a renewal of certificate in every case to which no objection was taken they had precluded themselves from giving judicial consideration to his application in comparison with those to which no objection was taken.

Held (*aff.* the Lord Ordinary Skerrington, *diss.* Lord Johnston) that there were no relevant averments of arbitrary and injudicial procedure, because although the procedure had been unfortunate, yet, there having been no resolution to reduce the licences by any particular number, the Licensing Court had not precluded themselves from giving judicial consideration to, or from granting, all the applications.

Public-House — Certificate — Objection on Ground of Redundancy in Licences — Title of a Neighbour to State General Objection — Licensing (Scotland) Act 1903 (3 *Edw. VII. cap.* 25), *sec.* 19.

The right given by section 19 of the Licensing (Scotland) Act 1903 to a person in the neighbourhood of a house in respect of which a certificate