LORD JOHNSTON—Unless we could hold that all diseases contracted by a workman in the course of his employment must be regarded as personal injuries by accident within the meaning of the Workmen's Compensation Act, I do not see how we could come to a conclusion favourable to the appellant here. But we cannot so hold —*Brintons, Limited* v. *Turvey*, [1905] A.C. 230, and *Welsh's* case, 1915 S.C. 1020, and [1916], 2 A.C. 1. One must attend to the words "within the meaning of the Workmen's Compensation Act," and that requires to be substituted "arising out of and in the course of the employment." Here I can find nothing which differentiates the case from that of any disease contracted by the workman in the course of his employment. There is nothing to justify one's saying that it arose out of the employment.

When I read the Sheriff's note I think not only that he was entitled to find on the facts as he did, but that I should have done the same. This workman finished his work at 4·30 a.m.—that was his own choice—and proceeded to the bottom of the shaft, where he arrived at 5 a.m. to be taken to the surface. There was no stated time for brushers on the night shift to leave off work; and if they did so, except only during the period of the inspection of the shaft, the practice was for them to be taken to the surface as soon as they arrived at the shaft bottom. But then this workman chose to break off work so as to bring himself to the bottom just at the time when the statutory inspection of the shaft was commencing. It was a perfectly normal thing that just at that part of the twenty-four hours delay in taking men to the surface occurred, extending often to an hour or more. The appellant could not expect to be taken to the surface immediately on his arrival at the pit bottom at that particular point of time, but must await the course of the statutory shaft inspection. He had to do so in the normal working of the mine. He caught a chill which developed into pneumonia.

It may be possible to regard the chill as accidental, and the pneumonia ensuing on the personal injury, or it may be more proper to say that the chill was both accident and injury, but it cannot be said that in either view the personal injury arose out of the employment.

I propose therefore that we answer the query in the affirmative.

LORD MACKENZIE — I am of the same opinion. The learned arbitrator has correctly stated the question for the consideration of the Court — "On the facts stated could I competently find that the deceased workman was not injured by accident arising out of and in the course of his employment?"

Now on a consideration of the facts found he has found that the workman was not entitled to compensation; and unless he was able from the facts to draw the inference that the disease was attributable to some particular event or occurrence of an unusual or unexpected character, then obviously he was quite right in the conclusion which he reached.

On the facts as found it appears to me that the pit was being worked on the particular morning in question in a perfectly normal way, and the fact that the cage took half an hour longer than usual to reach the bottom cannot be regarded as an occurrence of an unusual or unexpected character. Nor can the breakdown of the bell-wire be so regarded. That was just one of the occurrences which were to be expected in the pit, and the object of making the statutory inspection of the shaft was that such a breakdown might be repaired. Therefore unless we are to hold that it is a particular event or occurrence of an unusual or unexpected character when a man catches cold, I am unable to see how the appellant can establish a right to compensation.

LORD SKERRINGTON — I am of the same opinion.

The LORD PRESIDENT, who had not heard the case, delivered no opinion.

The Court answered the question of law in the affirmative.

Counsel for the Appellant — Moncrieff, K.C.—Scott. Agents—Weir & Macgregor, S.S.C.

Counsel for the Respondents — Watson, K.C.—M'Robert. Agents —W. & J. Burness, W.S.

Tuesday, February 22.

FIRST DIVISION.

[Sheriff Court at Glasgow.

CRONE *v.* DONALDSON LINE, LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (3)—"*Question*" *Arising under the Act* —*C.A.S.* (1913), *L, xiii*, 2.

The Workmen's Compensation Act 1906 enacts, section 1 (3)—"If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act . . . the question, if not settled by agreement, shall . . . be settled by arbitration. . . ."

The C.A.S., 1913, enacts, L, xiii, 2—"An application for the settlement of any claim for compensation under the Act shall not be made unless and until some question has arisen between the parties and such question has not been settled by agreement. The application shall state concisely the question which has arisen."

A workman wrote to his employers on 4th November 1915, alleging that he had been incapacitated by accident arising out of and in the course of his employment, and requesting a reply within the next three days as to whether they admitted liability. The employers replied on 5th November, requesting the workman to submit himself to a medical examination, and stating that they would then be in a

position to deal with his claim. The workman was examined on 9th November. Without hearing further from his employers, he instituted arbitration proceedings, in which the first deliverance was granted on 22nd November. *Held* that no question had arisen, and that the arbitration was incompetent.

In an arbitration under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), in the Sheriff Court at Glasgow, between Andrew Crone, fireman, Glasgow, *appellant*, and Donaldson Line, Limited, *respondents*, the Sheriff-Substitute (DAVID J. MACKENZIE) dismissed the case as incompetent and stated a Case for appeal.

The Case stated—"In the petition the appellant averred that he was a marine fireman in the employment of the respondents on board the s.s. Cabotia; that on 30th September 1915 he met with an accident at sea on board said ship, arising out of and in the course of his said employment; that said ship arrived in Glasgow on 2nd November 1915, when he was discharged; that he has been incapacitated as the result of said accident; that his wages were at the rate of £6, 10s. per month, together with board valued at 11s. 8d. weekly; and that he had been paid wages by the respondents up till 2nd November 1915.

"The last article of the condescendence in said petition is as follows:—'7. The defenders, although called upon to do so, refuse or delay to pay compensation to the pursuer, and this action has been rendered necessary.'

"The first deliverance on said petition is dated 22nd November 1915.

"The case called in Court on 30th November 1915, when the respondents, while admitting liability to pay compensation to the appellant under said Act, pleaded in defence that the proceedings were premature. They lodged in process the following letters, which were admitted, at the Bar:—

"1. Letter from appellant's agent to respondents, dated 4th November 1915, which is as follows:—

"'Dear Sir,—I have been consulted by Andrew Crone, fireman, 44 Richard Street, Anderston, Glasgow, with regard to an accident which occurred to him, as already reported, while in your employment on board the s.s. "Cabotia" on 15th September last, whereby he sustained injuries to his right foot through same being scalded by steam. He is incapacitated for work, and it is not known when he may recover. For the injuries sustained he holds you liable, and has instructed me to make a claim against you (1) under the Workmen's Compensation Act 1906, and (2) at common law. I shall be glad to hear within the next three days whether you admit liability.—Yours faithfully, JOHN M. CROSTHWAITE.'

"2. Copy letter by the Shipping Federation, Limited, on behalf of the respondents, to the appellant's agent, dated 6th November 1915, which is as follows:—

"'*A. Crone ex s.s.* "*Cabotia.*"

"'Dear Sir,—Your letter of the 3rd inst., addressed to the owners of this vessel, has been handed to me. You might be good enough to ask your client to call at our office in James Watt Street, when he will be medically examined, and will then be in a position to deal with his claim.—Yours faithfully, WALTER PATTERSON, *Secretary*.'

"3. Letter by the appellant's agent to said Shipping Federation, Limited, dated 8th November 1915, which is as follows:—

"'*A. Crone—s.s.* "*Cabotia.*"

"'Dear Sir,—I have yours of 6th inst., and will ask my client to call as desired.—Yours faithfully, JOHN M. CROSTHWAITE.'

"I thereupon heard parties, and in the course of the debate it was admitted at the Bar that the appellant had presented himself for medical examination on 9th November 1915; that the appellant received or made no further communication from or to the respondents, and thereupon instituted these proceedings, in which the first deliverance was granted on 22nd November 1915.

"On 16th December 1915 I issued an award finding that in respect that it had not been shown that any question had arisen as to the respondents' liability to pay compensation to the appellant, the petition was incompetent. I therefore dismissed the same, and found no expenses due to or by either party."

The *questions of law* for the opinion of the Court were—"1. Whether the arbitrator was, in the circumstances above set forth, entitled to find that the petition was incompetent, and to dismiss the same? 2. Whether the arbitrator, in the circumstances above set forth, was entitled to find no expenses due to or by either party?"

The Sheriff-Substitute appended the following note to his award:—

Note.—"In this case the pursuer is said to have been premature in raising his action, as no question had arisen between the parties, which is a necessary preliminary to arbitration. A claim was made on 4th November last in respect of an accident which is said to have happened at sea on 30th September, the ship having reached Glasgow on 2nd November. I understand it to be admitted that there was no denial of liability by the defenders, but that the pursuer was asked to present himself for medical examination. This he did on 9th November, and nothing further was said or done by the defenders. On the 22nd November this action was raised.

"In view of the case of *Kennedy* v. *The Caledon Shipbuilding Company*, (1906) 8 F. 960, 43 S.L.R. 687, and Lord Pearson's opinion therein, which is often quoted, and is to the effect that arbitration is to be 'the last resort of persons who find themselves unable to agree,' I cannot find that there was here a question in dispute. There may have been some delay, and I think, on the mere statement of dates, that there was some delay in not at once answering the claim either one way or another from the 9th to the 22nd November. But there was no dispute as to liability or any other matter.

"I therefore think the petition must be dismissed, but in the whole circumstances I do not award expenses to either party.

(See the case of *M'Donald* v. *Rowan & Company*, 23rd November 1914, in this Court.)"

Argued for the appellant—Liability to pay compensation was never admitted, and the Court was therefore bound to infer the existence of a dispute—Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), section 1 (3). *Caledon Shipbuilding and Engineering Company, Limited* v. *Kennedy*, 1906, 8 F. 960, 43 S.L.R. 687, was not in point, for in it the application for arbitration was presented before the compensation, if the employers were liable for it, became due. Further, it followed *Field* v. *Longden & Sons*, [1902] 1 K.B. 47, which did not apply, as in it the full rate of compensation under the Act was being paid when the application was brought.

Counsel for the respondents were not called upon.

LORD JOHNSTON—Apart from the statute the rule of Court which has been laid down in the Act of Sederunt, C.A.S. 1913, L, xiii, 2, is, as it seems to me, in carrying out the spirit and intention of the Act, a most salutary rule. The Act contemplated that before resorting to arbitration, which must be an expense to workmen as well as to the masters, parties should if possible agree. Now here I do not think the Act of Sederunt has been complied with. I do not think that as yet, in the sense of the statute and of the Act of Sederunt, a question has arisen, and I do not think it was possible to state it concisely, or that it has been so stated, in the application to the arbitrator.

The situation is that the accident occurred, and a letter was written on behalf of the workman intimating the claim, and saying —"I shall be glad to hear within the next three days whether you admit liability." Had that remained the only letter, if three days had elapsed and no notice been taken of it, I do not say what the workman's rights would have been. But that is not the situation here. Notice is taken of the matter, and the parties so far come together that a letter is written on behalf of the employers requesting that the workman should call for the purpose of the statutory medical examination. Now I think that that created a new situation, different from that which stood upon the letter of 4th November. I think it indicated that the employers were not taking a hostile attitude at once, but were saying, "We wish time and opportunity to see what has happened to the man," and there was nothing whatever in it to show that they were going to dispute the workman's rights either on the merits or as to the amount.

It is quite true that they did allow more than was reasonable time to elapse without giving any further reply, but I cannot see that that necessarily involves that they are to dispute anything, and the reasonable course would have been for the agent for the workman again to write to them—"You have had your medical examination, I shall be obliged by your giving me a reply to my letter, and if I do not hear within next three days I shall take proceedings."

Now that would have brought the matter to a head, and there would have been something to go to arbitration about. The agent for the workman has chosen, instead of taking that reasonable and inexpensive course, to rush his client into Court in proceedings which must necessarily, against the intention of the Legislature as evinced in the statute, cost him a good deal more than the obtaining an award of compensation itself would have done. I think that was unreasonable, and that there is not as yet, in the sense of the statute and of the Act of Sederunt, any question between the parties which can go to arbitration.

LORD MACKENZIE—I am of the same opinion. There are two questions in law stated for the opinion of the Court. Argument has been offered upon the first of these only —"Whether the arbitrator was, in the circumstances above set forth, entitled to find the petition incompetent, and to dismiss the same." In my opinion the arbitrator was justified in taking the course which he did. In coming to that conclusion I am moved by the consideration that the policy of the Act all through is to favour the settlement of claims by agreement, and it is only when that method of settlement fails that parties are entitled to have recourse to the statutory tribunal set up by the Act.

In this case, in my opinion, there could only be said to be a question if we could come to the conclusion that the workman was justified in drawing the inference from the letters and actings of those who were charged with the duty of settling this claim, that it was to be disputed. Now I find no express denial of liability, and nothing which justified the workman in implying that liability was denied. It may be that there was a delay after the medical examination in coming to terms in regard to the amount of compensation to be paid. But in my opinion it was necessary for his adviser to make sure that there was a question or dispute between the parties before he brought the matter into Court by way of a petition. And I think that the arbitrator —who may be presumed to know what is best for the conduct of business in his Court —has followed a salutary rule. I do not anticipate that that rule will work any injustice to workmen. If I thought that it would, I should be very slow to give any countenance to it, but I think it will secure that cases are not brought into Court until it is made quite clear that there are questions which, in the language of the Act of Sederunt, can be concisely stated in the application. I find no reason for supposing that any such statement was made or could have been in the present application.

LORD SKERRINGTON—It is settled that the arbitrator has no jurisdiction unless a dispute has arisen between the parties, and the only question in the present case is whether the correspondence which passed between the parties shows that the defenders did dispute liability to pay compensation. Of course in construing the correspondence, one must do so in light of the fact that for thirteen days they failed to

redeem their promise of informing the pursuer how they proposed to deal with the case in view of the medical examination.

I should have been disposed to construe the correspondence as showing that the defenders were playing with the pursuer, and that they did dispute liability; but as your Lordships take a different view as to the meaning and effect of these particular letters it would serve no good purpose for me to dissent.

The LORD PRESIDENT, who had not heard the case, delivered no opinion.

The Court answered both questions of law in the affirmative, and allowed the respondents the expenses of the appeal.

Counsel for the Appellant — Constable, K.C. — MacRobert. Agents — Gardiner & Macfie, S.S.C.

Counsel for the Respondents—Moncrieff, K.C.—Dykes. Agents—Boyd, Jameson, & Young, W.S.

Saturday, June 3.

FIRST DIVISION.

[Lord Anderson, Ordinary.

KENNEDY *v.* NORTH BRITISH WIRELESS SCHOOLS, LIMITED, AND ANOTHER.

Company—Transfer of Shares—Registration of Transfer — Right of Directors to Refuse to Register.

The directors of a company having by the articles of association power to refuse to register a transferee of shares without assigning reasons, refused to register a transferee of shares, who thereafter brought an action against the company concluding for decree that the company should be ordained to register him, or alternatively for declarator that the former owner of the shares (who was registered) held the shares in trust for him. He alleged that the directors had acted corruptly in refusing to register. Circumstances in which the Court *held* that the company was not bound to register the transferee, but *granted* decree in terms of the alternative conclusion of the summons.

Alexander Kennedy, laundryman, Castlebank, Anniesland, Glasgow, *pursuer and reclaimer*, brought an action against the North British Wireless Schools, Limited, Glasgow, and Edward Alfred Mayne, wireless telegraphy expert, c/o Cowan & Stewart, W.S., 10 Castle Street, Edinburgh, *defenders and respondents*.

In it he sought decree to have the defenders, the North British Wireless Schools, Limited, ordained "to register in their books a transfer dated 15th January 1914 by James S. Saunders, Deputy-Clerk of Session, Edinburgh, in favour of the pursuer of 1250 ordinary shares, Nos. 1251 to 2500 inclusive, of and in the undertaking called the North British Wireless Schools, Limited, presently standing in name of the said Edward Alfred Mayne in the books of the said company, and to deliver to the said pursuer a new certificate for said shares upon his paying the proper fee of 2s. 6d. therefor, or alternatively" to have it found and declared "that the defender, the said Edward Alfred Mayne, holds the said 1250 shares of and in the undertaking of the North British Wireless Schools, Limited, in trust for the pursuer, and to enable the pursuer to uplift the dividends declared and to be declared in respect of said shares" to have the said E. A. Mayne "ordained at the pursuer's expense to sign and deliver to the pursuer an irrevocable mandate or letter of authority authorising the pursuer to uplift the said dividends in respect of said shares, and that the pursuer's acknowledgment thereof shall be sufficient discharge to the said company for said dividends. . . ."

Article 19 of the *articles of association* of the North British Wireless Schools Limited provided—"Before a member shall be entitled to transfer any of his shares, he shall intimate to the secretary in writing the name and address of the proposed transferee; and in the case of a proposed sale the price *bona fide* at which he has agreed to sell. The directors may, without assigning a reason therefor, refuse to register any transfer of a share (1) where they shall be of opinion that the transfer would not be conducive to the interests of the company, (2) where the company has a lien on the share, (3) where any call on the share has not been fully paid up, or (4) where the directors shall consider the proposed transferee to be one whom it is not desirable to admit to membership."

The *facts* of the case and the *procedure* appear from the opinion of the Lord Ordinary (ANDERSON), who on 6th February 1916 assoilzied the North British Wireless Schools, Limited, from the first conclusion of the summons and granted decree in terms of the second conclusion of the summons.

Opinion.—"In September 1913 the defender Edward Alfred Mayne was on the register of the defending company, the North British Wireless Schools, Limited, as the owner of 2500 or thereby fully paid £1 shares of said company. On 24th September 1913 an action against Mayne was raised at the instance of W. Milne Guthrie, accountant, Glasgow, concluding, *inter alia*, for payment of £400, with interest and expenses. Arrestments on the dependence of said action were used in the hands of the said company and 1750 of said shares were thereby attached. Decree in absence was pronounced in said action on 23rd October 1913.

"On 20th November 1913 an action of furthcoming was raised by the said W. Milne Guthrie against the said company as arrestees, and against Mayne as common debtor, to have the said shares realised for behoof of the said W. Milne Guthrie, and on 26th November 1913 Lord Cullen in that action pronounced an interlocutor remitting to