decided. But in the confusion and the refinement of distinction that exists among the cases I prefer to go back to the statute itself.

Now the statute itself does plainly imply that there is to be a causal relation between the employment and the accident—the accident is to arise out of the employment. It is no answer that it also says it is to arise in the course of the employment, which is the present case. The causal relation set up by the statute must exist between the accident and the employment itself. No one can doubt that that was the policy of the statute. This statute was enacted by Parliament for the purpose of putting on to employment a charge for compensation in respect of accidents which arose out of it; so far I have never heard it doubted that the policy of the statute was grounded upon that single fundamental fact.

I desire, in the first place, to disembarass the issue in this appeal from all reference to the case of *Espie*. I entirely agree with my noble and learned friend opposite who has just analysed it. The Act of Sederunt could not add in any respect to nor derogate from the Act of Parliament itself. The provisions of the Act of Sederunt were simply that when the Sheriff-Substitute had written a note it was to be appended to the case. But it is no function of the note to be anything else than expiscatory of what went before. If the note is expiscatory in this sense, that it shows that the findings in fact were in truth in the Sheriff-Substitute's mind really findings in law, then the Court looks at that note for the purpose, so to speak, of disentangling the facts found in the light of the explanation given. But in the present case the expiscatory note is to clear up any doubt or misapprehension as to what the Sheriff-Substitute meant as to the actual facts of this case.

I do not think the note was required. In my view the learned Sheriff-Substitute's findings, originally without the note, did mean two things. In the first place, that the place of this accident, and the furnishings and apparatus at that place, were suitable, were secure, and were safe. They meant, secondly, that this accident occurred not in consequence of anything in the place, or by reason of the man being compelled to use certain furnishings or works or ways, but solely and exclusively because he was not able to keep a grip upon the rail, and that arose, and solely arose, from his incapacity through drink. The cause of the mishap was not the employment, but was unhappily the man's intoxication. I must respectfully dissent from the view that if the workman be at his work and in his place and an accident takes place, then all the conditions of liability under the statute are satisfied, apart from the injury being self-inflicted or the accident self-caused. Secondly, I observe that in—as there nearly always is—a concurrence of causes for the production of one effect, the question, familiar and often debated, as to which, if any, is the true, the moving, the effective cause, is one of fact. And as bearing on the issue of drunkenness, the degree thereof as bringing it, or failing to bring it, up to the rank of a true, moving, and effective cause of an accident is also a question of fact. Surely it would be fair in all those cases to put the issue at least thus—Can it be said that the accident occurred to the workman exclusively by reason of his drunkenness? That I think is surely the furthest to which one could go in the interpretation of this statute. That issue being applied to the present case it is solved—solved not by reason of the note but by reason of the findings, in my judgment, because I hold it to be clear that the employment was not causally connected with the accident to this unfortunate man, but that the accident arose by his own self-indulgence, and I think it would be prostituting the Act for a purpose for which it was not intended to make the employment liable for such occurrences as in the present case.

In the course of the argument I put the illustration which I here repeat. Suppose a butler helps himself so freely to drink and becomes so intoxicated that in the course of his attendance at table he overbalances himself, falls on the floor, and is injured. Under the argument submitted the statute would make out of that a case of liability on the master for compensation. The argument has unsoundness on the face of it.

LORD SUMNER—I concur in the motion put from the Woolsack.

Their Lordships ordered that the interlocutor of the Court below be reversed; that in the interlocutor of 19th March 1921 the question of law be answered in the affirmative, and that it be remitted to the Sheriff-Substitute as arbiter to proceed with the cause; and that the respondent do pay to the appellants their costs in this House and in the Court of Session.

Counsel for Appellants—Neilson, K.C.—Dickson. Solicitors—Blackstock & Romanes, W.S., Leith—Botterell & Roche, London.

Counsel for Respondent—MacRobert, K.C.—Scott. Solicitors—Ross & Ross, S.S.C., Edinburgh — D. Graham Pole, S.S.C., London.

COURT OF SESSION.

Friday, November 4.

FIRST DIVISION.

BETT AND OTHERS (BETT'S TRUSTEES), PETITIONERS.

Trust—Nobile Officium—Advances of Capital for Maintenance of Children—Right to Aliment Out of Parent's Estate.

A testator in his trust-disposition and settlement directed his trustees to pay to his wife in the event of her surviving him an annuity of £156, under burden of maintaining, educating, and clothing his children until they were of an age to provide for themselves. In the event of her marrying again the

annuity was to be reduced and an allowance paid to her or some other suitable person for the maintenance of the testator's children. On the death of the survivor of the testator and his wife the estate was to be divided equally among his children. Provision was made for advances to the children out of their shares to enable them to attend college or for setting them up in business, and on their attaining the age of twenty-five, out of surplus income or capital. Any advances so made were directed to be deducted from the respective children's shares in the ultimate division of the estate. The testator's wife having survived him, and her annuity having proved inadequate to maintain her and the children who were not self-supporting, the Court, in the exercise of its *nobile officium*, *authorised* the trustees to make advances out of the capital of the trust estate of a limited amount for the maintenance and education of the children.

Mrs Catherine Paterson or Bett and others, the trustees acting under the trust-disposition and settlement of Alexander Easson Bett, hotelkeeper, Milnathort, *petitioners*, presented a petition to the Court for authority to make advances at their discretion to the said Mrs Catherine Paterson or Bett out of the capital of the trust estate of an amount not exceeding £150 per annum for the maintenance and education of such children as were living in family with her and unable in whole to support themselves.

The petition set forth, *inter alia*—"By the second purpose of the said trust-disposition and settlement the testator, *inter alia*, directed his trustees to make payment to his wife the said Mrs Catherine Paterson or Bett, in the event of her surviving him, of an annuity of £156, but under this burden —'Out of said annuity she shall maintain, educate, and clothe my children suitable to their ranks until they are of an age to provide for themselves.' Said annuity was to cease in the event of her entering into a second marriage, and in that event she was to be entitled to her legal rights or a restricted annuity of £100. And the trustees were instructed in that case to pay to the truster's wife or some other suitable party an allowance for the maintenance, education, and clothing of his children.

"By the fourth purpose of the said trust-disposition and settlement it was provided as follows:—'I hereby empower my trustees, if they shall think proper and of which they shall be the sole judges, to advance to each of my children before the residue is divided, a sum not exceeding one-third of the share falling to such child, for the purpose of enabling such child to attend college or to equip them in following up some industry in which they may be interested, or to purchase a business, or in any way so as to make such child in a likely position to earn a livelihood, or in the case of daughters to make provision for their marriage outfit.'

"By the fifth purpose of said trust-disposition and settlement the trustees were directed on any one of the children attaining the age of twenty-five years to advance to him or her his or her share in the surplus income of the testator's estate and also to advance his or her share of any surplus capital that was not in the opinion of the trustees required to meet the said annuity.

"By the sixth purpose of said trust-disposition and settlement it was provided that on the death of the survivor of the testator and his said wife the trustees should divide his estate equally, share and share alike, amongst his children, and his trustees were directed to realise his estate and to make up a scheme of division thereof, and include therein all advances to his child or children, and to charge interest at 4 per cent. per annum on any advances that might have been made to any of his children, and to deduct such advance and interest from the sum falling to such child so as to make them all alike.

"By the seventh purpose of the trust-disposition and settlement it was provided, *inter alia*, that on the death of the survivor of the testator and his said wife the trustees should invest the share falling to his children who were under the age of twenty-five years and pay the same to them on arriving at that age, and it was declared that if any child should die either before or after the testator leaving lawful issue such issue should be entitled to the share their parents would have taken by survivance, and the share of any child dying without issue before the payment of his or her share should be divided among the surviving children and the lawful issue of such children as might have died leaving such issue, in equal shares *per stirpes*.

"The testator died on 26th April 1914 leaving a widow the said Mrs Catherine Paterson or Bett and six children, who are all still surviving, viz.—William, born 4th October 1899 (twenty-one years of age), a consenter to this petition, who is self-supporting and does not live at home; James, born 8th November 1902 (eighteen), who resides at home, but is nearly self-supporting; Jane, born 1st July 1905 (sixteen), residing at home with her mother, who is anxious, however, that she may be trained to enable her to earn a living; Alexander, born 20th April 1907 (fourteen); Robert, born 8th October 1909 (eleven), and Helen, born 11th March 1914 (seven), all of whom live with their mother and are at school. . . .

"The trust estate now consists of (1) heritable property of the value of about £3600, the income from which is at present low and variable, according to the amount which has to be spent on necessary repairs; (2) stocks and shares, &c., to the value of about £1900. The present year's income from the trust estate, after allowing for outgoings, but not for Mrs Bett's annuity, is estimated to be about £147.

"The trustees, who are also tutors and curators to the five pupil and minor children, consider that Mrs Bett cannot be expected in the present circumstances to bring up and educate the children in a suitable manner on the said annuity of £156, and desire to make advances from capital to assist this purpose. The trustees have

no express power under the said settlement to make such an advance. They do not consider that they would be in safety in making an advance for ordinary maintenance in the method contained in the fourth purpose thereof, and even if said purpose gave them power such a course would be open to grave objections. After the lapse of several years it would be found that a considerable amount of the younger children's shares had been expended in their ordinary maintenance, while the elder children's shares would have escaped this deduction. For example, the eldest son's share would have suffered no diminution for ordinary maintenance, while that of the youngest child, who is at present only seven years old, would have been diminished by yearly deductions. A further objection would be that the one-third share of residue which the trustees are authorised to advance under said fourth purpose would in the case of a younger child be, to the extent of advances already made, unavailable for the special purposes contemplated by the testator.

"The intention of the testator, as it seems to the petitioners, was that those children who might be of an age and condition to live in family with their mother should do so free of charge against their ultimate shares, and that all his children should so far as possible receive equal benefit from his estate. Accordingly they submit respectfully that if the capital of the estate is to be made partially available for the children's maintenance, this should be done so as to make the estate and not the individual shares of particular children bear the burden. They desire authority therefore to make advances to the said Mrs Catherine Paterson or Bett for the maintenance of a family home. The effect of this would be the same as an increase in the said annuity.

"There are at present five children living in family with Mrs Bett, and the petitioners consider that in addition to said annuity an annual sum of £150 might well be required, and they desire authority to make advances up to that sum in their discretion. The income from the heritable property is liable to fall to a very low figure any year. It has already shown a deficit for one year.

"The additional sum required would tend to diminish with continued deflation of currency, successive forisfamiliation of the children, and improvement in the returns from the heritable property. It is to the ultimate interest of all concerned to keep such advances as small as possible, and the trustees have fully in view the necessity of conserving the estate. If your Lordships think proper the authority desired might be given for a limited number of years.

"There are no parties interested in the residue of the estate under the will of the testator other than the petitioner Mrs Bett and her children.

"The Trusts (Scotland) Act 1867 (30 and 31 Vict. cap. 97), sec. 7, enacts — 'The Court may from time to time, under such conditions as they see fit, authorise trustees to advance any part of the capital of a fund destined, either absolutely or contingently, to minor descendants of the truster, being beneficiaries having a vested interest in such fund, if it shall appear that the income of the fund is insufficient or not applicable to, and that such advance is necessary for, the maintenance or education of such beneficiaries or any of them, and that it is not expressly prohibited by the trust deed, and that the rights of the parties other than the heirs or representatives of such minor beneficiaries shall not be thereby prejudiced.'

"It is not clear to the petitioners, nor does it seem to have been the subject of decision, whether the above enactment authorises advances to be made otherwise than to particular beneficiaries chargeable against their shares, and accordingly the petitioners make this application alternatively under the said section and in virtue of the *nobile officium* of your Lordships' Court."

Argued for the petitioners — The minor children were entitled at common law to aliment out of the trust estate. Advances for that purpose which were repayable out of the children's shares would result in an unfair division. This would be the effect of applying the Trusts Act 1867, sec. 7. The advances should therefore be authorised by the Court in the exercise of its *nobile officium*.

LORD PRESIDENT—Mr Taylor has persuaded me that we may dispose of this petition without further procedure by way of remit or otherwise. The petition is an appeal to the *nobile officium* of the Court; and in deciding that we may use that power for the benefit of this family of young children I proceed very largely on the consideration that they are in law entitled to be alimented out of the estate of their father. The case is as urgent as the available estate is small, and what the petitioners are asking is in substance that that obligation may be given effect to, but in a way which will distribute the burden among the ultimate participants in the family estate more equitably and economically than could be done by appealing to common law rights. It is also to be observed that the powers which the law in any case has committed to the Court under the Act of 1867, although the machinery of that Act does not produce just the result which the present case seems to require, are only a little less extensive than those which we are asked to use under our *nobile officium*.

The only question is what should be the amount of the sum which we authorise to be expended, and for how many years the authority should be given. I think, having regard to the ages of the family and their circumstances, that to authorise a payment not exceeding £120 a-year for two years would meet the situation. Meanwhile the petition will remain in Court. Application can be made at any time, even within the two years; and it will be open for the petitioners in any case to apply again at the end of the two years.

LORDS MACKENZIE, SKERRINGTON, and CULLEN concurred.

The Court pronounced this interlocutor—

". . . Authorise the petitioners to

make advances at their discretion to Mrs Catherine Paterson or Bett mentioned in the petition out of the capital of the trust estate of the deceased Alexander Easson Bett, hotelkeeper, Thistle Hotel, Milnathort, of an amount not exceeding one hundred and twenty pounds per annum for two years for the maintenance and education of such children as are living in family with her and unable in whole or in part to support themselves; and decern. . . ."

Counsel for Petitioners—Taylor. Agents—Bonar, Hunter, & Johnstone, W.S.

Tuesday, November 15.

SECOND DIVISION.

[Lord Blackburn, Ordinary.

WALLACE AND OTHERS *v.* TULLIS, RUSSELL & COMPANY, LIMITED.

Patent—Infringement—Validity of Patent—Specification—Defective Description—Want of Subject-matter.

In the specification of a patent "for improvements in and relating to the removing of esparto or the like from stationary digesters used in papermaking and the like," a claim was made for "the method and means for removing the digested material from digesters, which consists in subjecting the material to the action of a stream or streams of water so as to disintegrate and wash out same, substantially as herein set forth." In an action at the instance of the owners of the patent against a papermaking company for interdict and damages in respect of an alleged infringement of the patent, *held* that the claim in the specification, as that claim was stated, did not cover any principle or idea, but was limited to a claim for the method and means therein set forth of attaining a particular end by specially described apparatus and appliances; that the method of performing the invention claimed was insufficiently described in the specification; and that, accordingly, the patent was bad for want of sufficient description. *Held further*, that the defenders did not use the combination claimed by the pursuers, but a method of working substantially different from that described, and therefore did not infringe it.

Opinion per Lord Salvesen that the patent in so far as it claimed in general terms the process of removing digested materials from digesters by means of a stream of water applied at suitable pressure was bad for want of subject-matter.

William Morgan Wallace, managing director of the Carrongrove Paper Company, Limited, and others, *pursuers*, brought an action against Tullis, Russell, & Company, Limited, paper manufacturers, Markinch, Fife, *defenders*, for interdict against their infringing the patent No. 104,578, dated 18th April 1916, "for improvements in and relating to the removing of esparto or the like from stationary digesters used in papermaking and the like by using, exercising, or putting into practice, in whole or in part, without the consent or licence of the pursuers, the invention forming the subject of the said patent and described in the specification relative thereto, and against their using, exercising, or putting into practice . . . any process, method, or appliances for the removal of digested grass from stationary grass digesters constructed or applied according to the method or in the manner described in the said specification or according to any method or in any manner substantially the same therewith, or embracing in the construction thereof any of the improvements claimed by the pursuers and set forth in the said specification, or any improvements substantially the same therewith, and . . . from using the process or method of applying jets of water under pressure to disintegrate and break up the digested grass in stationary grass digesters and to wash it out of the digesters; and from further or otherwise infringing in any manner of way the rights and privileges granted by the said patent."

Conclusions for an accounting of profits or otherwise for damages followed.

The pursuers averred that they were vested in the patent and produced the complete specification relative thereto. The specification contained the following claims, *inter alia*:—"1. The method of and means for removing the digested material from digesters which consists in subjecting the material to the action of a stream or streams of water so as to disintegrate and wash out same substantially as herein set forth. 5. In the method of and means for removing the digested material from digesters as specified in claim 1, the arrangement of the nozzles for directing the disintegrating streams of water at the upper or top part of the digester with a conical or like member at the bottom substantially as and for the purposes herein set forth."

The pursuers averred, *inter alia*—"(Cond. 7) Since January 1918 the defenders have been infringing, and they are still infringing, the said letters-patent by using for the removal of digested esparto grass from their stationary grass digesters a process or method constructed or applied in a manner substantially the same as that described in the said specification. In particular, during said period they have been infringing and are still infringing said letters-patent by applying jets of water under pressure to disintegrate and break up the digested grass and wash it out of the digesters."

The defenders denied infringement, and averred, *inter alia*—"(*Ans.* 5). . . . The pursuers' said alleged letters-patent are invalid in respect (1) The alleged invention was not at the date of the alleged letters-patent the subject-matter of a grant of letters-patent within the meaning of the Patents and Designs Act 1907. The invention claimed does not show any ingenuity or any new device of general utility. The method of