statute, whether that supervening cause consists of another accident or illness or old age or imprisonment, has been considered repeatedly in various authoritative decisions. And it has been held that the supervening cause does not take away the right to compensation founded upon the partial disablement created by a previous accident the effects of which still subsist. The case of *Harwood* ([1913] 2 K.B. 158) cited for the appellant may be taken as an illustration of that type of decision. I am unable to see any distinction between the class of supervening cause which was discussed in these cases and the supervening cause, namely, market conditions of employment, which is said to have occurred in the present case. It may be that market conditions affecting employment are circumstances to which, within the meaning of sub-paragraph 3 of the First Schedule of the Act the arbitrator is entitled to have regard in assessing the actual compensation in any particular case. But in my opinion the mere fact that a supervening cause of this kind has come into operation does not eliminate the right of the injured workman to some compensation for the loss of working capacity due to a previous accident, which is to be assessed by the arbitrator with due regard to all the circumstances.

For these reasons I agree that the first question should be answered in the negative and that the other question should be dealt with as has been proposed.

LORD ORMIDALE and LORD ANDERSON did not hear the case.

The Court answered the first question in the negative, and found it unnecessary to answer the other questions.

Counsel for the Pursuer and Appellant—Mackay, K.C.—Hunter. Agents—Macpherson & Mackay, W.S.

Counsel for the Defenders and Appellants—Morton, K.C.—Russell. Agents—W. & J. Burness, W.S.

Saturday, November 4.

SECOND DIVISION.

[Sheriff Court at Glasgow.

COOK *v.* M'DOUGALL.

Bankruptcy — Sequestration — Existing Sequestration — Application for Second Sequestration in Same Court — Bankruptcy (Scotland) Act 1913 (3 *and* 4 *Geo. V, cap.* 20), *sec.* 16.

The Bankruptcy (Scotland) Act 1913, sec. 16, provides that "No sequestration shall be awarded by any court after production of evidence that a sequestration has already been awarded in another court and is still undischarged."

Held that this provision did not prevent the award of a second sequestration in the same Court in which the original sequestration had been awarded.

James Cook, merchant, Partick, Glasgow, a creditor of William M'Dougall, publisher of the *Western News* newspaper, Partick, Glasgow, to the extent required by law, *pursuer*, presented a petition in the Sheriff Court of Lanarkshire at Glasgow against the said William M'Dougall, *defender*, in which he craved the Court to award sequestration of the defender's estates.

The pursuer averred, *inter alia*—"(Cond. 4) The defender has for the year preceding the date of the presentation of this petition resided in Glasgow, or had a dwelling-place or carried on business in Glasgow, in the county of Lanark in Scotland, and is subject to the jurisdiction of the Sheriffdom of Lanarkshire, and his estates are liable to be sequestrated under the provisions of the Bankruptcy (Scotland) Act 1913."

The pursuer pleaded — "The defender being notour bankrupt within the meaning of the Bankruptcy (Scotland) Act 1913, the pursuer as a creditor of the defender to the extent required by law is entitled to have his estates sequestrated under the provisions of said statute."

On 13th July 1922 the Sheriff-Substitute (BOYD) refused the crave of the petition.

Note. — "The agent for the objector founded his objection on section 16 of the Bankruptcy (Scotland) Act 1913, and particularly the proviso (1) thereof, which enacts 'That no sequestration shall be awarded by any court after production of evidence that a sequestration has already been awarded in another court and is still undischarged.'

"It is admitted that the defender has already been sequestrated. The trustee has been discharged, but the bankrupt has not."

The pursuer appealed. It was stated at the bar that the previous sequestration had been awarded in the same Court on 3rd April 1900, that a first dividend was paid on 4th October 1900, and a final dividend on 4th February 1901.

Argued for the pursuer—Section 16 of the Bankruptcy (Scotland) Act 1913 (3 and 4 Geo. V, cap. 20) did not apply to prevent a new award of sequestration where the Court in which the new application was made was the same as that in which sequestration had previously been awarded — *Mellor* v. *Drummond*, 1919, 2 S.L.T. 68; *Abel* v. *Watt*, 1883, 11 R. 149, 21 S.L.R. 118, *per* Lord President Inglis at p. 151. The bankrupt had been carrying on trade since the previous sequestration, and a new sequestration was necessary to enable new creditors to make good their claims.

Argued for the defender and respondent—The case of *Mellor* v. *Drummond* (*cit. sup.*) was not well decided. The section in question was perfectly plain in its terms and expressly prohibited a second sequestration. An existing sequestration had always been recognised as a bar to a subsequent sequestration—*Young* v. *Buckel*, 1864, 2 Macph. 1077; *Goetze* v. *Aders*, 1874, 2 R. 150, 12 S.L.R. 121. The second sequestration could not attach anything—*Bank of Scotland* v. *Youde*, 1908, 15 S.L.T. 847; Goudy on Bankruptcy (4th ed.), p. 126. The protection afforded by the pursuer's reading of the section would be illusory, because the bankrupt while still

undischarged could avoid all risk by stepping into another jurisdiction.

LORD JUSTICE-CLERK—This is an appeal from a decision of Sheriff-Substitute Boyd refusing sequestration of the respondent's estates. The petition is in common form, and it is based upon a debt of some £433. The Sheriff-Substitute has refused the prayer of the petition, and whatever may be said against his note it cannot be alleged that it is a tedious one. He makes perfectly clear the ground upon which he proceeded. He holds that section 16 of the Bankruptcy (Scotland) Act 1913 applies to the case. He quotes the provision of the section "That no sequestration shall be awarded by any court after production of evidence that a sequestration has already been awarded in another court and is still undischarged;" and adds—"It is admitted that the defender has already been sequestrated. The trustee has been discharged, but the bankrupt has not."

I think the learned Sheriff-Substitute must have overlooked words in the section which in my opinion are governing words, viz., the words "in another court." The object of the section, it seems to me, was to prevent competing sequestrations in different courts. Here it is a matter of admission by the respondent's counsel that the previous sequestration was awarded by the same Court. I think that that ends the matter, and that the section on the confession of the respondent has no application.

We were referred to the case of *Mellor* ((1919) 2 S.L.T. 68) decided by Lord Blackburn in the Outer House. For myself I agree with the result at which Lord Blackburn arrived in that case and the grounds upon which he reached it. I may further add that that decision appears to me to be consistent with principle and practice. It is consistent with principle, because, as Lord Hunter pointed out in the course of the discussion, a new award of sequestration is the only way in which the new creditors of the respondent—who has been trading apparently for twenty years since his last sequestration—can obtain a ranking. It is also consistent with practice, because it appears, so far as the text-books show, that such a sequestration should be awarded if circumstances warrant. Here I am of opinion that it was perfectly competent for the Sheriff-Substitute if he thought fit to grant sequestration, and that he was in error in thinking that he was precluded from reaching that conclusion by the terms of section 16. I accordingly think his judgment ought to be recalled and the case remitted to the Sheriff-Substitute to award sequestration.

LORD HUNTER—I am of the same opinion. The only ground upon which the Sheriff-Substitute proceeds is this, that under section 16 it is incompetent for him to grant sequestration because a sequestration has already been granted and the bankrupt is undischarged. When the terms of section 16 are examined, it is clear that they afford no warrant for that view of the Sheriff-Substitute, unless it be the case that the first sequestration has been granted "in another Court." Here, however, we have been informed, and the respondent admits, that the first sequestration was in the same Court as is asked to grant the second sequestration.

On the facts it appears that the first sequestration was granted on 3rd April 1900, a first dividend was paid on 4th October 1900, and a final dividend was paid on 4th February 1901. The trustee has been discharged but the bankrupt has not been discharged, and he has apparently been incurring debt since the date of the trustee's discharge. Under those circumstances I cannot help thinking that there is no good reason for a second sequestration not being granted. The second sequestration will enable the creditors who have got claims against the debtor incurred subsequent to the date of the first sequestration to claim in the second sequestration.

I do not think that an absolute rule can be laid down as regards the right of a creditor to a second sequestration if a sequestration is already in existence, although he may have acquired his claim since the date of the first sequestration. There may be cases where it is inexpedient to grant a second sequestration, but, on the face of the facts here, I think the expediency was all the other way. No doubt it is perfectly true, as was contended by Mr Gilchrist, that sequestration is a universal diligence; that the effect of an award of sequestration is that there is a transfer to the trustee of the whole of the property in which the bankrupt is vested; and that there is also, subject to certain exceptions, a transfer of everything he may acquire during the existence of the sequestration. The parties who alone can take benefit in the sequestration are the creditors who have claims as at the date of the sequestration.

The earlier Bankruptcy Statutes were pretty similar in their provisions to the Bankruptcy Act of 1913, and it certainly was not unknown that a second sequestration should be granted. One of the most typical cases of a second sequestration being granted was the case of *Fisken* v. *Thomson*, (1845) 7 D. 842. In that case the question was whether creditors who had claims in a first sequestration were entitled to rank along with creditors in a second sequestration. It was held that they were, although it may be right to say that in that case Lord Jeffrey said it might be doubted whether under the 81st section of the Act 2 and 3 Vict., cap. 41, the second sequestration was competent. He, however, held it unnecessary to decide that as it was admitted by both parties to be a valid sequestration. And Lord President Boyle then said (at p. 844)—"The 81st section of the Act vests everything in the trustee for behoof of the creditors which is acquired by the bankrupt between his sequestration and his discharge; and therefore I think there is no doubt the creditors are entitled to be ranked upon those acquisitions although there may have been a second sequestration awarded against the bankrupt." But the practice, so far as I

am aware, always has been that a second sequestration should be granted. And I find that in the latest edition (the 4th) of Mr Goudy's work on Bankruptcy the learned editor (at p. 126) appends a note to the effect that "The power to award sequestration of new, though a previous one is undischarged, is of importance in cases where the bankrupt has been allowed after the first sequestration to carry on trade and acquire new estate, or where part of his original estate having been abandoned by the trustee, he has incurred new debts on the credit of it." The present is a case within the situation figured by the editor.

I see no ground whatever for the Sheriff-Substitute having refused sequestration here. In any event it is perfectly clear that the particular ground on which he did refuse it is not maintainable, and has been so decided, as your Lordship points out, quite recently by Lord Blackburn in the Outer House.

LORD ANDERSON—I agree. The purpose of the fasciculus of sections 16 to 19 inclusive of the Bankruptcy (Scotland) Act 1913 seems to me to be this—to determine the appropriate form of a sequestration, and to ensure that different processes of sequestration of the estates of the same person shall not be concurrent and competitive in different jurisdictions.

In the circumstances of this case there seems to me to be no good reason why the second process of sequestration should not be granted in the same jurisdiction. On the contrary, for considerations which your Lordships have suggested, there seem to be substantial reasons why such a second process should be granted. In my opinion the Sheriff-Substitute has misapplied the statutory provision referred to in his note. If he had awarded sequestration as craved there would not have been an award "in another court" but in the same Court. I am fortified in these views by what Lord Blackburn decided and said in the case of *Mellor* ((1919) 2 S.L.T. 68), with which I entirely agree.

LORD ORMIDALE did not hear the case.

The Court recalled the interlocutor appealed against, and remitted the case to the Sheriff-Substitute to award sequestration.

Counsel for the Pursuer and Appellant—Douglas Jamieson. Agents — Balfour & Manson, S.S.C.

Counsel for the Defender and Respondent — Gilchrist. Agents — Manson & Turner Macfarlane, W.S.

HIGH COURT OF JUSTICIARY.

Monday, November 6.

(Before the Lord Justice-General, the Lord Justice-Clerk, Lord Cullen, Lord Hunter, and Lord Anderson.)

[Police Court at Wishaw.

HEALY *v.* WRIGHT.

Justiciary Cases — Statutory Offence — Gaming and Betting—"Keeping a Gaming or Betting House" — "Conducting Gaming or Betting"—Whether Punishable as Separate Offences when Committed by the Same Individual—Burgh Police (Scotland) Act 1892 (55 *and* 56 *Vict. cap.* 55), *sec.* 407.

The Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55) enacts—Section 407 — "It shall be lawful for the chief constable or any constable of police, having good grounds for believing that any house, room, or place is kept or used as a gaming or betting house, to enter such house, room, or place, and if needful to use force for the purpose of effecting such entry, and to take into custody all persons who shall be found therein, and to seize all tables for and instruments of gaming found in such house, room, or place, and all moneys and securities for money found therein; and the owner or keeper of such gaming or betting house, or other person having the care or management thereof, and also any person who shall act in any manner in conducting such gaming or betting, shall be liable in a penalty not exceeding fifty pounds; . . . and every person found within such premises without lawful excuse shall be liable in a penalty not exceeding ten pounds. . . ."

Held by a majority of a Court of five Judges (*diss.* the Lord Justice-Clerk and Lord Hunter) that where a person was convicted of having kept a dwelling-house as a gaming or betting house, and also of having conducted gaming or betting in the said house, he was liable to be convicted of two separate offences, and to be punished by a separate penalty in respect of each of them.

Thomas Healy, commission agent, Wishaw, and Elizabeth M'Culloch or Healy, his wife, *respondents*, were charged in the Burgh Police Court at Wishaw at the instance of Alexander Law Wright, Burgh Prosecutor, *appellant*, upon a summary complaint in the following terms:—"You are charged at the instance of the complainer that during the period between 19th August and 26th November 1921, at No. 57 Wellington Street, Craigneuk, in the burgh of Motherwell and Wishaw, you, the said Thomas Healy, did keep the dwelling-house there occupied by you as a gaming or betting house, contrary to the Burgh Police (Scotland) Act 1892, section 407, whereby you are liable to a penalty not exceeding fifty pounds, and failing payment to imprisonment, in terms of section 48 of the Summary Jurisdiction (Scotland)