there was no appearance, was altered to 16th January in the belief that the interlocutor would be signed and issued on the 8th, enabling the *Gazette* notices which had already been prepared in anticipation to appear in the *Gazette* published on that date. On the motion of counsel instructed for the hearing the Lord Ordinary granted decree of sequestration on 8th January on the footing that the notice of appearance would be withdrawn before issue of the interlocutor. On attendance at the Bill Chamber it was found, contrary to the arrangements made, that the respondent's agent had not withdrawn the notice of appearance.... On 10th January Mr Robertson deleted the notice of appearance and the interlocutor, dated and signed 8th January, was then issued and the *Gazette* notices despatched for advertisement. The petitioners' agents failed to notice that there was not sufficient time before the meeting to allow of the statutory advertisement. The notice calling said meeting of creditors failing to comply strictly with the statutory provision, the petitioners make the present application to your Lordships for an order holding the notice in the *Edinburgh* and *London Gazettes* of 11th January 1924 as equivalent to a notice in the said *Gazettes* at least six days prior to the said meeting, or otherwise to hold that sufficient intimation of the meeting was given, or alternatively for warrant to hold a new meeting of creditors on a date to be fixed by the Court."

On 19th January 1924 counsel for petitioners moved the Court to grant the prayer of the petition, and cited the cases of *Taylor*, 2 F. 1139, 37 S.L.R. 872, and *Naismith*, 1910, 1 S.L.T. 305.

The Court, without delivering opinions, appointed a new meeting of creditors to be held, and granted warrant for intimation thereof in the *Edinburgh* and *London Gazettes* in terms of the statute.

Counsel for Petitioners—Gillies. Agents—M. J. Brown, Son, & Company, S.S.C.

Wednesday, January 23.

FIRST DIVISION.

[Sheriff Court at Kilmarnock.

DUNN *v.* SCOTTISH CO-OPERATIVE WHOLESALE SOCIETY, LIMITED.

Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 8, *and Third Schedule — Incapacity Resulting from Injury — Industrial Disease and Sequelæ thereof — Incapacity Due to Disease Resulting from Industrial Disease — Disease not Included in Scheduled Sequelæ.*

On 20th January 1922 a workman obtained a certificate under section 8 (1) of the Workmen's Compensation Act 1906 that he was suffering from dermatitis—a disease scheduled under section 8 of the Act as extended by Statutory Rules and Orders 1918, No. 287—and was thereby disabled from earning full wages at the work at which he was employed. His employers agreed to pay compensation under the Act as for total incapacity, and continued to do so until 23rd June 1922, when they ceased payment on the ground that the incapacity was no longer due to the dermatitis but to a new trouble, viz., nephritis, which had by that time developed in the workman's system, and which was not scheduled as one of the *sequelæ* of dermatitis so as to bring it within the category of industrial diseases. It was found as a fact that the nephritis was in the case of this particular workman the actual consequence and result of the original dermatitis. *Held* that as the incapacity was due to a disease resulting from one of the scheduled diseases the arbitrator was right in ordering the memorandum to be recorded, the fact that the nephritis was not among the scheduled *sequelæ* of the primary ailments not being material where, as here, the arbitrator had found as a fact that the nephritis was a consequence of the industrial disease mentioned in the surgeon's certificate.

The Scottish Co-operative Wholesale Society, Limited, *appellants*, being dissatisfied with a decision of the Sheriff-Substitute of Ayrshire at Kilmarnock (ROBERTSON) in an arbitration under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) between the appellants and Robert Dunn, *respondent*, appealed by Stated Case. The respondent died after the presentation of the appeal, but his executrix was sisted in his place.

The Case stated—"This is an arbitration under the Workmen's Compensation Act 1906, brought in the Sheriff Court of Ayrshire at Kilmarnock at the instance of Robert Dunn, blanket finisher, 60 Titchfield Street, Galston, now deceased, in which he craved the Court to grant warrant to the Sheriff-Clerk to record a memorandum of agreement alleged to have been entered into between the claimant and the respondents on 25th February 1922, by which the respondents agreed to pay to the claimant the sum of one pound per week, with the statutory additions, in respect of total incapacity in terms of the Workmen's Compensation Act 1906, and the Workmen's Compensation (War Additions) Acts 1917 and 1919. The said memorandum of agreement proceeded on a certificate, dated 20th January 1922 by the certifying surgeon appointed under the Factory and Workshops Act 1901, that the claimant, a workman under no legal disability, was suffering from dermatitis produced by dust or liquids, a disease coming within section 8 of the Workmen's Compensation Act 1906, and was thereby disabled from earning full wages at the work at which he was employed. The respondents objected to the said memorandum of agreement being recorded and after hearing the evidence in the case and parties' agents thereon I found the following facts proved:—1. That

the claimant worked for nine years previous to the arbitration as a blanket scourer in the employment of the respondents at their mills at Galston. 2. That on 20th January 1922 he was certified by Dr Alexander W. Aird, the certifying surgeon appointed under the Factory and Workshop Act 1901, as suffering from dermatitis, produced by dust or liquids, a disease scheduled under section 8 of the Workmen's Compensation Act 1906. 3. That the respondents thereupon agreed to pay to the claimant the sum of £1 per week for total incapacity and did so down to 23rd June 1922. 4. That there was sufficient evidence apart from the aforesaid certificate that the claimant suffered from dermatitis caused by sulphur dust to which he was exposed in the course of his said employment. 5. That in December 1921 the doctor attending the claimant detected albuminuria and diagnosed nephritis. 6. That by June 1922 the claimant's dermatitis was no longer active, his skin being quiescent with a latent inflammatory condition. 7. That the claimant still suffers from dermatitis though it is not severe. 8. That from December 1921 the claimant continued to develop nephritis till it became acute and permanent. 9. That the claimant's dermatitis was severe, long-continued, and suppurating, and resulted from long-continued exposure to sulphur dust in the course of his said employment. 10. That it is possible in occasional cases for nephritis to be caused by blood poisoning resulting from absorption of toxic matter during the currency of severe suppurating long-continued dermatitis, though this is rare. 11. That the claimant's nephritis resulted from his primary ailment of dermatitis. 12. That the claimant was carefully treated and followed the treatment prescribed. 13. That in consequence of the said nephritis the claimant has been since 23rd June 1922 totally incapacitated. 14. That apart from nephritis the claimant would on account of dermatitis be disabled for employment in the process in which the dermatitis was contracted.

"Upon the foregoing facts I found the respondents liable to the claimant in compensation for total incapacity in terms of the Workmen's Compensation Act 1906, from 23rd June 1922, and granted authority to the Sheriff-Clerk to record the memorandum of agreement in terms of the prayer.

The *questions of law* for the opinion of the Court were—"1. On the facts found proved was I entitled to hold that the claimant was entitled to compensation for incapacity (*a*) caused by nephritis, or (*b*) resulting from dermatitis? 2. On the facts proved was it competent for me to grant warrant to record the said memorandum of agreement?"

In a *note* appended to his award the arbitrator, *inter alia*, stated—". . . Two minor points raised by the defence require to be first dealt with. It is true that the schedule under the heading, 'Description of Disease or Injury' couples with the great majority of enumerated diseases in each case the *sequelæ* thereof, while in a few such as dermatitis the *sequelæ* are pointedly omitted. I am of opinion that this merely means that the *sequelæ* included in the schedule are themselves certifiable with all the consequent statutory advantages to the workman. The *sequelæ* of dermatitis on the other hand are not certifiable. This distinction is probably because the *sequelæ* included in the schedule are an ascertained class, while the *sequelæ* of diseases 11, 12, 14, 16, 17-24 are not. I cannot conclude that the omission indicated either (1) that there are medically no *sequelæ* of dermatitis, or (2) that there is legally no claim for incapacity resulting from such *sequelæ*. Similarly I am of opinion that there is no obstacle to pursuer's claim in the Statutory Order 1923, No. 6, dated 2nd January 1923. For the proof satisfies the proviso. I hold, in fact, that the claimant's dermatitis resulted from long-continued exposure to sulphur dust in the industry in which he was engaged at the time of his disablement, although his dermatitis, unless nephritis be its *sequela*, has disabled him only from employment in that particular process in which the disease was contracted or other processes of a like nature. The claimant cannot have been sensitive to sulphur dust or he would have been attacked years before. The claimant's medical witnesses maintain that nephritis has resulted from blood-poisoning from severe suppurating dermatitis. The respondents' witnesses maintain that this is medically impossible, or if theoretically possible, has never been known and is not in fact the case. In these circumstances I considered it unsafe for me to attempt to decide between these two opinions and have remitted the proof to the official medical referee with the following question:—'Whether the nephritis from which the claimant has been admittedly suffering since the beginning of the year 1922 could be caused by blood poisoning resulting from severe long-continued and suppurating dermatitis?' To that question the medical referee replies thus—'It is possible in occasional cases for nephritis to be caused by blood poisoning resulting from absorption of toxic substances during the currency of severe long-continued and suppurating dermatitis, as, for example, in extensive burning by fire or scalding fluids, but it is comparatively rare in dermatitis arising from the effects of sulphur compounds.' That is the only question I asked the learned referee and I accept his reply and hold in fact accordingly. The question remaining for me is whether this is one of those rare cases. It is not possible for the respondents to maintain or even suggest that the nephritis is the cause of the dermatitis. Dr Aird's certificate that the dermatitis was caused by sulphur dust has been accepted since its date, and acted upon as correct, no appeal having been taken. The earliest diagnosis of nephritis is in December 1921 by the claimant's own doctor. By that date the claimant had repeatedly suffered from violent dermatitis, and had had it on him for five years before the proof. There is no proof that the claimant ever suffered from severe scalding or burning, and I think the scars from which Dr Alexander inferred

such an event were the scars of the severe suppurating dermatitis. The skin was covered with 'large red blotches' in September 1922. I gather from the proof that nephritis can arise from other and varied causes, but what is the use of that if none of them are proved to have been present? It is a question of proof, and there is no proof that the man's nephritis is caused by extensive burning; or such antecedent ailments as scarlet fever, &c. It remains a mere conjecture. Nor is there any ground for the suggestion that he was wrongly treated or did not follow the prescribed treatment. That seems to me not only an unfounded but an invidious suggestion. There is no justification for describing his nephritis as chronic, not acute. Since the date of the proof the claimant has died, but as this is not part of the case I have decided the claim on its present form. I find in the proof not only enough to justify me, but I think to compel me to find for the claimant, once the medical referee has resolved my doubts as to the medical possibilities of this case."

Argued for the appellants—The certificate was final as to the cause of the incapacity to which the agreement related. That incapacity having, according to the arbitrator's findings, ceased, the agreement and the certificate were of no effect. It was not competent in an application to record a memorandum of such an agreement to go beyond the certificate and raise questions of liability for compensation outside the agreement—*Bedford* v. *Cowtan & Sons, Limited*, [1916] 1 K.B. 980, *per* Cozens-Hardy, M.R., at p. 985, 9 B.W.C.C. 208; *Dulton* v. *Sneyd Bycars Company, Limited*, [1920] 1 K.B. 414, *per* Warrington, L.J., at p. 418, and Eve, J., at p. 422. Further, the *sequelæ* of dermatitis were not included in Schedule III, so that the agreement could not be extended to the incapacity caused by nephritis as one of the *sequelæ*. The memorandum therefore should not be recorded. The nephritis was a new disease breaking the claim of causation, and the arbitrator's finding that it resulted from the dermatitis was wrong in law. It could only do so in the meaning of the Act if it was an aggravation of the original trouble—*Carr* v. *Burgh of Port-Glasgow*, 1923, S.C. 844, *per* the Lord Justice-Clerk, at p. 848, and Lord Hunter, at p. 854, 60 S.L.R. 511; *Saddington* v. *Inslip Iron Company*, (1917) 10 B.W.C.C. 624; *Brown* v. *George Kent Limited*, [1913] 3 K.B. 624.

Argued for the respondent—The certificate put the workman in the position of one injured by accident arising out of and in the course of his employment, and so long as incapacity continued he was entitled to compensation. The question of whether nephritis was a *sequela* of dermatitis had no bearing on the case. Once the certificate was obtained any results although not natural or expected, which were connected by a chain of causation with the original disease were grounds for compensation—*Corser* v. *Russell Limited*, 1921, S.C. (H.L.) 31, [1921] 1 A.C. 351, 58 S.L.R. 80; *Fanning* v. *Evans & Company, Limited*, 1923, 16 B.W.C.C. 43; *Dunham* v. *Clare*, [1902] 2 K.B. 292; *Ystradowen Colliery Company, Limited* v. *Griffiths*, [1909] 2 K.B. 533.

LORD PRESIDENT (CLYDE)—The workman who was respondent in this case died since the presentation of the appeal, but his executrix has been sisted in his place. On 20th January 1922 he obtained a certificate from a certifying surgeon appointed under the Factory and Workshop Act 1901 that he was then suffering from dermatitis produced by sulphur dust to which he had been exposed in the course of his employment as a blanket scourer, and that he was thereby disabled from earning full wages in said employment. Dermatitis is included among the diseases in the Third Schedule to the Workmen's Compensation Act 1906 by an Order of the Secretary of State under sub-section 6 of section 8 of the Act. The disease being due to the nature of the workman's employment, which had extended over a number of years prior to 20th January 1922, the certificate had the effect (under section 8 of the Workmen's Compensation Act) of placing the workman with regard to compensation in exactly the same position as if the disease had been a personal injury by accident arising out of and in the course of his employment. The employers admitted liability as for total incapacity, and paid compensation at £1 per week until 23rd June 1922. By that date the certified dermatitis had greatly abated, but there had developed in the workman's system a form of kidney trouble which (according to the findings in fact in the case) is a possible though improbable result of the suppuration connected with dermatitis. It is found as a fact in the case that this kidney trouble totally incapacitated the workman as at 23rd June 1922 and has done so ever since. It is further found that the kidney trouble was in the case of this particular workman the actual consequence and result of the original dermatitis.

The workman applied for warrant to record a memorandum of agreement for payment to him of compensation at the rate of £1 per week, being the rate paid to him between the date of obtaining the certificate of dermatitis and 23rd June 1922, when the employers ceased payment. The employers resisted the application. Their view was that inasmuch as none of the possible *sequelæ* of dermatitis is included (or rather was included at the date of the application) in the schedule—so as to bring those *sequelæ* or any of them within the category of "industrial diseases"—their agreement to pay in respect of the workman's incapacity from dermatitis fell, not because he had recovered capacity, for that admittedly he had not done, but because the only cause of his incapacity which (being scheduled to the Act) inferred liability upon them to compensate him as for an accident had ceased by 23rd June to be the operative cause of his incapacity. The question which we have to consider is whether the Sheriff was right in authorising as he did the memorandum of agreement to be recorded.

It is undoubtedly true that in order to obtain a certificate under section 8 the workman who applies for it must satisfy the certifying surgeon that he is at the time when the certificate is granted suffering from a scheduled disease, and that if (under the schedule) any particular disease does not include its *sequelæ* and the workman at the time is suffering only from a *sequela* of a scheduled disease, then no valid certificate can be issued. If one were issued it would not be a certificate within the meaning of the Act. The workman may or may not in in such a case have a claim for compensation under sub-section (10) of section 8 of the Act, but if he has his claim will lie altogether apart from the specialties of "industrial disease." The case of *Corser* v. *Russell* (1921 S.C. (H.L.) 31, [1921] 1 A.C. 351) has no bearing upon the question arising for decision in the present case. What was there held was that a man may still be certified as suffering (within the meaning of the Act) from an industrial disease although the diseased part has been surgically removed from his body, provided the removal was itself an incident in the treatment of the disease and the man's incapacity continues. It is obvious that the mutilation of a patient's body is not what is meant by a *sequela* of the disease. But in the present case the certificate is unimpeachable, and the question relates to the employers' liability under the memorandum of agreement proposed to be recorded. The employers' argument is that their liability ceased in respect that the workman's incapacity is no longer attributable to the scheduled disease mentioned in the certificate. Now it seems to me that the true question is whether the workman's admitted incapacity "results from the injury" (First Schedule 1 (*b*)) — that is to say, from the dermatitis. The learned arbitrator has found that the affection of the kidneys resulted from the original "injury," *i.e.*, the dermatitis, and that the workman's incapacity results from the kidney trouble. This seems to establish the relation of cause and result between the dermatitis and the incapacity. If the workman had suffered from an ordinary accident, there is, I apprehend, no doubt at all that liability for his consequent incapacity would not be terminated by the circumstance that the after-consequences of the injury developed new forms, provided there did not intervene some fresh cause. The same principle applies to the after-consequences of an industrial disease even though such after-consequences are not scheduled *sequelæ* of the primary ailment.

It seems to me therefore that the learned arbitrator was right in ordering the memorandum of agreement to be recorded. The case puts to us two points for answer, of which the first raises a question whether the learned arbitrator was warranted in holding the claimant entitled to compensation. I do not see how this point arises, and I suggest it should not be answered. The second question, which is whether it was competent for him to grant warrant to record the memorandum of agreement, I think we ought to answer in the affirmative.

LORD SKERRINGTON—I agree with your Lordship. The Stated Case discloses an unbroken chain of causation between the workman's total incapacity from nephritis on the one hand, and the fictional accident of dermatitis, evidenced by the surgeon's certificate, on the other hand. The workman never recovered from the industrial disease for which he was certified. It was said, however, that one of the results of that disease—one of the links in the chain of causation — was a disease of the kidneys known as nephritis, a different disease from that mentioned in the certificate. It was further said that nephritis was not scheduled as one of the *sequelæ* of dermatitis. All that is true, but it is in my opinion irrelevant if it is proved as the arbitrator found to be the fact, that the nephritis from which the man suffered was a consequence of the industrial disease mentioned in the surgeon's certificate.

LORD CULLEN—I concur.

LORD SANDS did not hear the case.

The Court refused to answer the first question of law, and answered the second question of law in the affirmative.

Counsel for the Appellants—King Murray. Agents — J. Miller Thomson & Company, W.S.

Counsel for the Respondent—MacRobert, K.C.—D. Jamieson. Agent—T. J. Addly, Solicitor.

Saturday, February 2.

SECOND DIVISION.

[Sheriff Court at Airdrie.

M'KENNA *v.* COATBRIDGE MAGISTRATES.

Reparation—Negligence—Safety of Public —Injuries to Children—Trap—Iron Fence 20 Inches high with Blunt Projections within Public Park — Child Injured when Crossing Fence to Recover Ball.

A roadway within a public park was fenced off from an adjacent expanse of grass for a distance of 36 feet by an iron railing 20 inches high, on the top of which were blunt uprights which projected 5 inches above the top of the railing. The grass expanse could be reached without crossing the railing by going round the end of it. A boy aged ten when crossing the railing to recover a ball fell and sustained injuries. In an action of damages by the father of the boy against the municipal corporation who had the direction and control of the park, the pursuer averred that the railing was an allurement, a trap, and a danger, and that the defenders were in fault in permitting such a railing at a place where they knew that children were in the habit of playing. The Court *dismissed* the action as irrelevant.