been no exercise of the power of apportionment as regards the other four-fifths of the fund, and that it falls to be divided equally among the other children.

LORD RUTHERFURD CLARK, LORD LEE, and the LORD JUSTICE-CLERK concurred.

The Court pronounced this interlocutor:—

"The Lords having considered the special case, and heard counsel for the parties thereon, are of opinion that the deeds therein referred to contain a valid appointment to John Mure Bowie of one-fifth of the estate held by the trustees under the antenuptial marriage-contract, and that the remaining four-fifths of said estate fall to be divided in five equal shares among the parties of the second and the parties of the third part, other than the said John Mure Bowie—that is to say, one-fifth to Mrs Marizza Bowie or Paterson; one-fifth to the trustees and assignees under the indenture and settlement on the marriage of Mrs Annetta Antonia Louisa Bowie or Edwards, wife of William Henry Edwards; one-fifth to the trustees under the marriage-contract of Mrs Elizabeth Thurburn Bowie or Hopcroft; one-fifth to Robert Thurburn Bowie; and one-fifth to Henrietta Isabella Bowie: Find the parties to the special case entitled to payment out of the funds of the said estate of the expenses incurred by them in relation to the case," &c.

Counsel for the First and Third Parties—Jameson—C. N. Johnstone. Agents—Macrae, Flett, & Rennie, W.S.

Counsel for the Second Party—Sym. Agent—William Fraser, S.S.C.

Tuesday, July 16.

FIRST DIVISION.

HAMILTONS *v.* HAMILTON'S TRUSTEES.

Proof—Secondary Evidence—Skilled Witnesses—Value of Colliery.

In an action of reduction of a *mortis causa* trust settlement and codicil, on the ground of facility and circumvention, the Court granted a warrant ordaining the defenders to allow an inspection of the plant, machinery, and working plans of certain collieries—a large share in which belonged to the trust-estate—the object being to obtain evidence of their value for the purposes of the pursuer's case.

James Hamilton, a large coalmaster in Glasgow, died on 27th August 1888, when he was seventy-five years of age, leaving a trust-disposition and settlement dated 7th April 1874, with two codicils appended dated 7th May 1877 and 18th December 1882. Under these deeds the truster provided for an equal division of the annual proceeds of the undivided residue among his whole children (three sons and three daughters), the issue of a predeceasing child to take their parents' place, and upon the dissolution of the firm of M'Culloch & Company, who owned several collieries, and of which firm the truster was the leading partner, he provided for an equal division of his realised share among his whole children.

By a codicil of 14th June 1888, and a trust-disposition and settlement of 6th July 1888, the truster reduced his daughters' provisions to a mere liferent of a sum of £5000.

The daughters, or their representatives, brought an action of reduction of the last two deeds against the sons, alleging that their father had been induced to sign them by the fraud and circumvention of one of the defenders.

The pursuers stated the value of the truster's estate at the time of his death at £120,000. The defenders stated it at £50,000.

An issue was adjusted, and the cause was set down for trial at the sittings at the close of the summer session.

The pursuers moved the Court for a warrant ordaining the defenders to allow an inspection of the plant, machinery, and working plans of the collieries by two mining engineers, "in order to estimate the value of the said plant, machinery, and collieries."

The defenders opposed the motion, urging that the pursuers would get all the information to which they were entitled from the balance-sheets of the business (some of which the defenders themselves intended to impugn), the inventory of the deceased's personal estate, and the business books of the firm. All that could be reasonably asked or was required at this stage was a general view of the value of the collieries, so as to compare the estimate made of it by the truster and his sons respectively. An inquiry of the kind asked might be competent if the deeds were reduced, but not at the present stage. In any case the working plans ought not to be put into the hands of other parties.

The Court granted the motion.

Counsel for the Pursuers—Murray. Agents—Carmichael & Miller, W.S.

Counsel for the Defenders—C. S. Dickson. Agents—Webster, Will, & Ritchie, S.S.C.

Tuesday, July 16.

SECOND DIVISION.

CREEVY *v.* HANNAY'S PATENTS COMPANY (LIMITED).

Reparation—Lead Poisoning—Factory and Workshop Act 1883 (46 *and* 47 *Vict. cap.* 53), *sec.* 3 *—White Lead.*

Held (Lord Lee *diss.*) that the provisions of the Factory and Workshop Act 1883 (46 and 47 Vict. c. 53) with regard to the manufacture of white lead applied to carbonate of lead, and did not apply to a salt of lead called white lead used as a substitute for that article, but which was in reality a sulphate of lead.

A workman employed in a factory for the manufacture of Hannay's white lead became ill with lead poisoning, and brought an action of damages against his employers.

Held (Lord Lee *diss.*) that he had failed to show that it was a white lead factory in the sense of the Factory and Workshop Act 1883, or to prove that the injuries sustained by him resulted from any neglect or failure on the part of the defenders to take proper precautions for the protection of their workmen.

James Creevy, 50 Hawthorn Street, Possil Park, Glasgow, brought an action of damages in the Sheriff Court at Glasgow against Hannay's Patents Company (Limited), 67 Great Clyde Street, Glasgow, for injury to his health caused by lead poisoning while in their employment from July 1887 to June 1888. The defenders manufactured a substance called "white lead" as a substitute for the ordinary white lead of commerce. Their product was sulphate of lead, whereas ordinary white lead is carbonate of lead.

By the Factory and Workshop Act 1883 (46 and 47 Vict. c. 53) sec. 3, it is, *inter alia*, provided that a white lead factory shall not be certified to be in conformity with this Act unless the scheduled conditions—that is to say, the conditions specified in the schedule to this Act, as amended by any order of a Secretary of State under this section, and including any conditions added by any such order—have been complied with. The schedule referred to in the section before referred to is as follows:—"(1) The stacks and stoves in the factory must be efficiently ventilated. (2) There must be provided for the use of the persons employed in the factory sufficient means of frequently washing hands and feet with a sufficient supply of hot and cold water, soap, towels, and brushes. (3) There must be provided in addition, for the use of women employed in the factory, sufficient baths, with a sufficient supply of hot and cold water, soap, towels, and brushes. (4) There must be provided for the use of the persons employed in the factory (but not in any part of the factory where any work is carried on) a proper room for meals. (5) There must be provided for every person working at any tank an overall suit with head covering, and a respirator or covering for the mouth and nostrils. (6) There must be accessible to all persons employed in the factory a sufficient supply of acidulated drink."

The pursuer averred that the defenders failed to comply with the conditions required by the said statute and relative schedule under which they alone were authorised to carry on business, and that his illness was the result of the defenders' failure to observe the statutory obligations to keep their factory in a safe and satisfactory condition, and to comply with the conditions specified in the schedule annexed to said statute; or otherwise, "the defenders being engaged in the manufacture of a product similar in appearance to and of the dangerous character of white lead, failed to take such precautions as were necessary to prevent injury to those engaged in the manufacture of such product."

The pursuer pleaded—"The pursuer having been injured in his health while in defenders' employment in consequence of their violation of the conditions laid down in the schedule annexed to the statute founded on for the protection of workmen engaged in white lead manufactories, or in consequence of defenders' failure while engaged in the manufacture founded on of a product similar in appearance to and of the dangerous character of white lead as within condescended on, he is entitled to damages from them therefor."

The defenders explained that they were "a limited company who own and work several patents, and, *inter alia*, they manufacture at their works at Possil Park a white pigment by means of a patented process which is analogous in other respects to the process of smelting lead, and the product which they make of lead, though popularly known as 'white lead,' does not contain the same chemical properties as ordinary white lead. The defenders' product is a pure sulphate of lead, which is a non-poisonous salt of lead and is innocuous;" that they were "not bound to comply with the requirements of the Act in question, but that, as matter of fact, they of their own option have supplied the articles and adopted the precautions which the said Act requires;" and that "any injuries which pursuer received were the result of his own negligence in not following the medical advice and instructions he received, in not observing the precautions enjoined, and making use of the preventatives supplied, and in working while his hand was in a condition rendering him specially susceptible to lead poisoning."

The defenders pleaded—"(1) The pursuer's health not having been injured through the fault or negligence of the defenders, they are entitled to absolvitor. (2) The pursuer's injuries having been caused or materially contributed to by his own fault or negligence, the defenders are not liable to him in damages. (4) The pursuer's statements are unfounded in fact. (5) The defenders not being bound by the conditions prescribed in the Act founded on, are entitled to absolvitor."

The Sheriff-Substitute (SPENS) allowed a proof, the result of which is sufficiently set out in his note, and afterwards pronounced the following interlocutor:—Finds the pursuer was in the employment of the defenders between July 1887 and June 1888: Finds the defenders carry on business at Caledonia Works where the manufacture of a new kind of white lead, under a patent process, is carried on: Finds that while engaged in said work pursuer contracted lead poisoning: Finds, however, under reference to note, that it is not proved that said lead poisoning was due to the fault of defenders, or their foreman, or anyone for whom they are responsible: Therefore sustains the defences, and assoilzies the defenders: Finds no expenses due, and decerns.

"*Note.*—A master is bound to take all reasonable precautions for the safety of men in his employment, and where a statute in connection with the manufacture of a dangerous compound lays down certain regulations as to the way in which such manufacture is to be carried on, these regulations are presumed to be reasonable regulations, and if the master fail to observe them and injury results to one or more of those employed by him in consequence of such failure, the employer may be liable in damages to the person or persons so injured. This action is to some extent based on this theory, on the alleged ground that there has been a violation on the part of defenders of the Act 46 and 47 Vict. cap. 53. At the time of the passing of that Act in 1883 it appears from the

evidence that the white lead of commerce was carbonate of lead. The process of the defenders' manufacture is described in Dr Clark's report—copy of which is No 7 of process, and it is explained in the same gentleman's evidence. The manufacture in which the defenders are engaged is not of carbonate of lead, but of sulphate of lead. The scientific evidence establishes that the chief risk of carbonate of lead arises from its solubility, whereas sulphate of lead is almost insoluble. Dr Clark further explains that the acidulated drinks are employed for the purpose of converting carbonate of lead, if introduced into the body, into sulphate of lead. It is further clear from the evidence that certain of the requirements of the Act above referred to, set forth in the schedule, are unnecessary. I refer to that one providing that the stacks and stoves in the factory must be sufficiently ventilated. It appears from statements made that the Government Inspector of Factories does not consider that the defenders' works fall under the provisions of the Act, and I incline to take the view that this is correct. This conclusion being arrived at, the defenders cannot be held in any way contravening the provisions of the statute. Nevertheless, this fact does not dispense with the duty on the part of defenders of taking reasonable precautions for the safety of their men. I fail, however, to see that there has been any failure of reasonable precautions. I think it is proved, in the first place, that the manufacture of defenders' white lead does not to any appreciable extent give off noxious fumes in the way the ordinary manufacture does. But apart from this, so far as I can see, and so far as is applicable to their own manufacture, the defenders have complied with the usual precautions taken in white lead factories. It is at all events clear that pursuer has not established that he has been poisoned by fault on the part of defenders. I understand that even where the utmost precautions are taken in the manufacture of white lead there will be cases of white lead poisoning. In this case it seems to me more probable on the proof that if there is fault on the part of anybody in connection with pursuer's illness it is rather pursuer's own fault than that of defenders; but this is one of those cases where pursuer, after first suffering to some extent from lead poisoning, goes back to the employment knowing the risk of lead poisoning. Some constitutions are no doubt more susceptible than others, and probably pursuer is one of those. But if the evidence of Messrs Duncan, Tervet, and Lacy be accepted, there was no neglect in any particular of what could be held the master's duty, even if the Act was applicable, with the sole exception that for a short time there was no proper room for meals, but as pursuer did not take his meals at the works this does not affect the case in any way. I think there is some reason for supposing that pursuer was careless about wearing a respirator, also that he handled white lead, and at one time he seems to have had an injury to his hand through which, I think, it is possible some white lead may have worked into the system. In conclusion, I fail to see either that pursuer has established any fault on defenders' part, or, assuming fault has in some particular been proved, that he has proved his illness was due to such cause, while he must be held to have known that there was a risk incidental to working with white lead of any kind, and that risk he must be held to have accepted as incidental to the employment.

"I did not put the question to defenders whether they wanted decree for expenses in the event of my granting absolvitor? Probably such a decree would be of no value; but anyway, as pursuer has suffered in defenders' employment, I imagine defenders do not care for a decree for expenses."

The pursuer appealed to the Court of Session, and argued—The Act did not define white lead, but it applied to all white lead factories, and this was a white lead factory. When it was passed there was only one kind of white lead, but statutes which applied to a genus included new species, and if they were directed against certain known methods of doing a thing they were held also directed against new methods of doing the thing objected to—Wallace on Statutes (2nd ed.), p. 525; Maxwell on Statutes (2nd ed.), p. 93; *Taylor* v. *Goodwin*, March 25, 1879, L.R., 4 Q.B.D. 228; *Regina* v. *Smith*, June 4, 1870, 1 Crown Cases Reserved, pp. 266, 270; *Lane* v. *Cotton*, 1702, 12 Modern Reports, p. 485. The provisions of the Act had not been complied with, for there was no proper eating-room, there was no proper ventilation, and there was no sufficient supply of the statutory appliances. Even if some of these were inapplicable to this factory, that did not relieve the defenders from observing the others; it merely showed a case for modification by the Home Secretary as contemplated by the Act. In such circumstances, where a workman met with an accident the master was responsible for the omission to supply the necessary appliances—*Murdoch* v. *M'Kinnon*, March 7, 1885, 12 R. 810. Working in lead was always a dangerous occupation, and the defenders had failed to take such precautions for the safety of their workmen as they were bound to take at common law. Even at common law they were bound to see the premises were properly ventilated, and that there was abundance of washing appliances, *e.g.*, soap, brushes, and towels.

Argued for the defenders—*Prima facie* this factory was not under the Act, because it was not a certified factory, although its existence was known to the inspector. No prosecution had ever been instituted against the defenders for not complying with the provisions of the statute. This laid a heavy *onus* upon the pursuer of showing that it was under the Act, and that he had not discharged. But it properly was not under the Act, which was not applicable to the manufacture of this article. Its mere name did not bring it under the Act—converse of *Smith* v. *Lindo*, April 29, 1858, 27 L.J., C.P. 196. It was doubtless called white lead, but that only in a popular sense, and because it was a cheap substitute for the more expensive white lead of commerce. The Act did not regulate the manufacture of a genus—lead—but of a specific article, viz., carbonate of lead, which was dangerous on account of its extreme solubility. This was not carbonate but sulphate of lead. The Act clearly did not regulate its manufacture, for it provided for the supply of sulphuric acid in carbonate of lead factories in order that the insoluble sulphate might be formed. Even if the factory was under

the Act, the pursuer had failed to show that the injury to his health resulted from the failure of the defenders to comply with the requirements of the Act. If not under the Act, the pursuer had failed to show that the defenders had failed to take any reasonable precautions. The utmost that could be said was that occasionally the soap ran done and the towels were dirty, but the pursuer had never complained of the want of such appliances.

At advising—

Lord Young—This is an appeal from the Sheriff-Substitute in an action of damages by a workman in a factory for injury to his health in consequence of neglect on the part of his master to use proper measures in his premises for the health of his workmen. The action is raised both under the Statute 46 and 47 Vict. c. 53, regulating the manufacture of white lead, and also at common law. The Act 46 and 47 Vict. c. 53, requires certain precautions to be taken by those having white lead manufactories, which the defenders are said to have neglected.

There are two questions raised with reference to the statute, as far as this case is based on the statute. The first is, whether the statute is applicable to the defenders' work? and the second is, if it is so, whether the state of the pursuer's health is attributable to the defenders' neglect of its provisions?

The judgment of the Sheriff-Substitute is against the pursuer on both these questions, and it is to the effect that the statute is not applicable, this not being a white lead factory. The article manufactured is a kind of white lead no doubt. It serves as a substitute for it, but the weight of the evidence is, I think, to the effect that this article is not white lead within the meaning of the Act—is not of the character of the white lead to which the Act applies. That is a question on which I should have been unable to form a judgment without the evidence of scientific people, or of people versed in this trade and this article, but the evidence is that this is not white lead, or possessed of those dangerous qualities in its manufacture that the statute contemplates in making the provisions it does applicable to white lead factories.

I therefore agree with the Sheriff-Substitute that the statute is not applicable.

The second question is, whether if the statute is applicable, the injury to the pursuer's health is attributable to a failure on the defenders' part to comply with its provisions? and on that question I agree with the Sheriff-Substitute it is not. I think all the provisions required by the statute were taken by the defenders, and that the state of the pursuer's health is not attributable to neglect on the defenders' part supposing the statute is applicable.

That disposes of the case under the statute, and at common law I am of opinion it is not proved that the damage is attributable to any fault on the defenders' part, or that they neglected any reasonable and therefore proper precautions.

I therefore think the action is unfounded in fact, not being supported by evidence, and that the judgment of the Sheriff-Substitute should be adhered to.

Lord Rutherfurd Clark concurred.

Lord Lee—I think that this case is attended with difficulty, but I have been unable to arrive at the same conclusion with your Lordships.

The facts which I consider to be proved are these—1st, That the work carried on at the defenders' factory is the production from lead of a white pigment which they call "white lead;" 2nd, that the production of this pigment as there carried on is attended with the danger known as "lead poisoning;" 3rd, that the pursuer as well as other men employed in the works suffered from such lead poisoning; 4th, that it is not proved that the pursuer's illness was caused by his own fault, or by any fault to which he materially contributed; 5th, that the lead poisoning of the pursuer is reasonably accounted for, and must, on the evidence, be ascribed to the fault of the defenders in neglecting to observe the provisions of the Factory and Workshops Act 1883, which was considered by the managers, to whom the matter was left, to be applicable.

With regard to the obligations undertaken by the defenders in employing their work-people, I observe that Mr Hannay, the patentee of the process and the defenders' director, states in answer to the question how far the requirements of the Act were carried out at the works—"That has always been left more to the manager and heads of the departments, but I have given general instructions to see that everything was given to the men that they wanted." And Mr Tervet, the manager, states—"I understood then we were compelled by the Act of Parliament and by the special rules to have the respirators, and that the men should wear them. Up to the time the pursuer was injured I was certainly of the opinion that this product of ours fell under the head of white lead." It is also proved by the manager's evidence and by the facts of the case that the product as manufactured at these works is not non-poisonous.

If therefore I could upon any technical ground reach the conclusion that the Act applies only to the production of carbonate of lead, I should think that employers in the position of the defenders, who knew the necessity of precautions and proposed to take them, incurred an obligation at common law to see to the protection of workmen employed by them on the footing that they accepted the responsibility of using such precautions.

But this is a point which in my view does not require to be decided. For I think that the Factory and Workshops Act 1883, on a sound construction, applies to the defenders' factory. The statute makes it unlawful to carry on a "white lead factory" excepting under the conditions required by the Act. These conditions are not merely the scheduled conditions, but such amended, additional, or modified conditions as the Secretary of State under section 3 may see fit to approve of or impose; and it is required further, that special rules shall be adjusted for "every white lead factory" to be approved of by the Secretary of State. These special rules are to be framed and transmitted by the occupiers of the particular factory, and provision is made for the publication and amendment of such special rules in the case of each factory, and also for the enforcement of them against the work-people as well as against the manufacturer.

It is said, however, that the expression "white

lead factory" in the statute applies only to a factory for the production of carbonate of lead. There is nothing in the interpretation clause to support this limited construction of the expression, but it is said that the article known as white lead at the date of the statute was carbonate of lead, and the sixth of the schedule conditions requiring that "a sufficient supply of acidulated drink" shall be accessible to all persons employed is said to prove that carbonate of lead is in view.

I assume that the ordinary white lead of commerce at the date of the Act was carbonate of lead, and that it was specially in view of the Legislature at that time. But in my opinion this is not a sufficient ground for holding that the statute used the expression "white lead factory" in any such limited sense.

The expression "white lead factory" in my judgment requires construction. It may be construed, I admit, as applying only to a factory for the production of what was then commonly called "white lead," viz., carbonate of lead. But it can only be so construed by the aid of evidence that the only white lead of commerce then known was carbonate of lead. I think, however, that the expression by itself is capable of including, and may reasonably be construed as applicable to, any factory for the production of any white lead, the manufacture of which is attended with the risks which were intended to be corrected. My opinion is that to every such factory the enactment is applicable that it shall not be carried on excepting under conditions approved of by the Secretary of State and subject to the statutory inspection.

I apprehend that the general rule is well settled that a remedial statute of this kind is to be interpreted if possible so as to apply to all forms of the mischief against which it is directed. I do not say that the words can be disregarded. But I think that the sense is chiefly to be regarded, and if the words admit of it, that meaning is to be accepted which renders the statute applicable rather than such a limited meaning as would make the statute easily evaded and indeed inapplicable to any but one mode of producing the mischief.

The defenders' white lead, though not carbonate of lead, and not so soluble nor so poisonous, is in my opinion a kind of white lead, the manufacture of which according to their process produces the same injurious consequences, and I think that the principle of construction applied in the case of the *Queen* v. *Smith*, 1 Crown Cases, p. 266, and also in the case of *Taylor* v. *Goodwin*, 4 Q. B. Div. 228, is sufficient to bring it within the scope of the Factory and Workshops Act 1883 as to white lead factories.

It was argued that the evidence negatived this view, because Mr Hannay states that the inspector informed him that he was working under the Factory Act and not under the White Lead Act. Even if the inspector had been examined and had deponed upon oath to his opinion that the statute was inapplicable, I could not myself have attached much weight to his opinion in the absence of cross-examination and of information as to the position of the inspector. If it was merely one of the local inspectors of factories (as to whose qualifications the statutes make no very strict provision) it would be entitled to very little weight either upon the legal or upon the chemical questions which have been raised.

But as mere hearsay by the witness Mr Hannay, I feel bound to reject the statement as altogether incompetent and valueless.

The only other argument against the application of the statute which I think it is necessary to notice is that some of the scheduled conditions are inapplicable to this factory, particularly Nos. 1 and 6. But I think that the third clause of the Act contemplates the case of a factory as to which the Secretary of State may find it necessary to revoke, alter, or modify, "all or any of the conditions specified in the schedule," and to adapt the statutory conditions to the circumstances of the particular factory.

If the Act of 1883 is applicable to the defenders' factory the position of the case is this—that the defenders have carried on the work without enforcing its provisions or obtaining any special rules for the management of the works and the government of their work-people. In such circumstances it appears to me that they are not entitled to blame the work-people for not asking for things, or for not using things which were supplied. Therefore, even if there were more evidence than there is that everything was supplied which could be wanted, I should think that the defenders were in fault in not enforcing the provisions of the Act and in neglecting to provide themselves with the statutory means of doing so, and I should hold, in the absence of any other proved cause of the pursuer's illness, that their negligence in this respect was the cause of the lead poisoning from which the pursuer and others suffered.

But I think it right to say that in my opinion the evidence of the sufficiency of the ventilation of the drying house, and the supply of clothing and of cleansing accommodation, is far from satisfactory. There is a considerable weight of evidence against the defenders on these points.

The attempt to prove that the pursuer's illness must have arisen from an injury to his hand has in my opinion entirely failed.

On these grounds I should have held it proved that the pursuer's illness was caused by the fault of the defenders.

Lord Justice-Clerk—I concur with the majority of your Lordships. At the time the Act was passed on which the pursuer founds there was only one known article of commerce called white lead. That was an article of well-known properties and composition. Carbonate of lead was the only salt of lead which up to that time had been produced in such quantities and at such a cheap rate as to be applicable to the purposes for which white lead is used. We know the properties of that white lead, and the risks accompanying its manufacture on account of its being highly soluble, and in certain parts of the process fuming in a manner highly injurious to the human system. It was therefore thought desirable that regulations should be made by statute to protect workmen engaged in its manufacture. Now, these regulations must have had a bearing upon the chemical composition and properties of the article. That this was so is clear from what is prescribed to be done. For example, in every white lead manufactory there must be supplies, in convenient places in the

works, of acidulated water for the men to drink to counteract any poison they may have taken in by their breath or swallowed, so that the soluble carbonate may be turned into the insoluble sulphate, and thus be rendered innocuous.

It is perfectly plain that where an Act prescribes such precautions having reference to a chemical product it may be not only inexpedient but dangerous to bring under the Act another product which for commercial convenience may be known by the same name but is of different chemical composition. Here the substance produced in the defenders' process is a sulphate, and to supply more sulphuric acid could not only do no good but might do harm. No doubt, as Lord Lee has pointed out, the Home Secretary has power to modify the requirements of the statute in certain cases, but I should be much surprised if he were advised to apply to a new product regulations which he is entitled to make for the old one. I think nothing can be more clear than that the whole legislation dealing with the manufacture of white lead had reference to the manufacture of one particular salt, and should not be applied to a new and different chemical product.

The new article is called white lead, because unless it were so called it would not be bought as a substitute for the old substance. It is called so not because of its composition but to indicate that it may be used as a substitute for the old white lead of commerce. Formerly no one could supply a safe and cheap sulphate substitute for the dangerous carbonate of lead, whereas if such a sulphate were once produced at a cheap rate it would effect not only a saving in price, but would also lessen the danger to those persons who have to use a salt of lead as a pigment. Now, by an ingenious process this sulphate has been produced at a sufficiently cheap rate, and it is called "white lead," with the makers' name in front. That is not conclusive of the question, and I think the majority of your Lordships are right in holding that this is not white lead in the sense of the statute, and that the statute does not apply.

Now, as to the common law, I am not satisfied that in the manufacture of ordinary sulphate of lead there is any risk if workmen take ordinary precautions for themselves. I think the defenders supplied all sufficient appliances except that up to a certain date they had no proper separate room for the men to take their meals in. Had it been the case that the pursuer suffered in health from taking his meals in an unsuitable room it might have been held that the defenders were responsible. But this defect in the arrangements could not have been the cause of any injury to the pursuer, who invariably went home to his meals.

On these grounds I agree with the majority of your Lordships that the judgment in the Court below was right.

The Court pronounced the following interlocutor:—

> "Find in fact (1) that the substance manufactured by the defenders is not white lead within the meaning of the Act 46 and 47 Vict. c. 53: and (2) that it is not proved that the injuries sustained by the pursuer in his health and constitution resulted from any neglect or failure on the part of the defenders to take proper precautions for the protection of their workmen; Find in law that the provisions of the foresaid Act are not applicable to the factory of the defenders, and that they are not liable, either under said Act or at common law, to compensate the pursuer for the said injuries: Therefore dismiss the appeal, and affirm the interlocutor of the Sheriff-Substitute appealed against: Of new assoilzie the defenders from the conclusions of the action: Find them entitled to expenses in this Court," &c.

Counsel for the Pursuer—Rhind—A. S. D. Thomson. Agent—William Officer, S.S.C.

Counsel for the Defenders—Guthrie—Salvesen. Agents—Campbell & Smith, S.S.C.

HIGH COURT OF JUSTICIARY.

Thursday, July 18.

(Before the Lord Justice-Clerk, Lord M'Laren, and Lord Rutherfurd Clark.)

HOGGAN *v.* WOOD.

Justiciary Cases — Public-house — Public-Houses Acts Amendment (Scotland) Act 1862 (25 *and* 26 *Vict. cap.* 35), *Schedule A, No.* 2—*Breach of Certificate—"Unlawful Games"—Dominoes Played for a Stake.*

> The "form of certificate for public-houses" in Schedule A, No. 2, of the Public-Houses Acts Amendment (Scotland) Act 1862 contains the proviso that the person to whom the certificate is granted "do not suffer or permit any unlawful games" within his premises.
>
> A publican was charged with having permitted a number of persons "to play at dominoes for a stake—un unlawful game"—within his premises, and was convicted. In an appeal—*held* that dominoes is not an unlawful game, and that the expression "unlawful games" does not apply to a lawful game played for a stake, and conviction *quashed.*

Robert Hoggan, publican, Jock's Lodge, Midlothian, was charged at the instance of George Mure Wood, S.S.C., Procurator-Fiscal before the Justice of the Peace Court for the county of Edinburgh, with having been guilty of an offence against the laws for the regulation of public-houses in Scotland, in so far as upon the 8th day of May 1889, or about that time, he did permit or suffer a number of persons unknown to the prosecutor to play at dominoes for a stake—an unlawful game—within his premises at Jock's Lodge aforesaid, contrary to the terms and conditions of his certificate. He was convicted, and took a case. It was set forth in the case that it had been proved that the appellant had permitted certain persons on the date above mentioned to engage in a match at dominoes for a stake within his licensed premises.