should, in my opinion, be affirmed.

In proposing a judgment which turns upon a construction of the 81st section of the Local Government Act as affecting police burghs, it is right to say that, while none of the parties denied that the question was one which, under the 43rd section of the Burgh Police (Scotland) Act 1892, might have been submitted for the determination of the Secretary for Scotland, yet all of them disclaimed any desire to avail themselves of this privilege, and claimed the judgment of the Court.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court pronounced the following interlocutor:—

"Find (1) that the petitioners the County Council of the county of Dumbarton are alone entitled to impose and levy assessments for the purposes of the special water supply district of Duntocher and Dalmuir under the Public Health (Scotland) Act 1867, and the Local Government (Scotland) Act 1889, or either of them, from the whole ratepayers in the said special water supply district, including the ratepayers within the burgh of Clydebank: Find (2) that the said Eastern District Committee, subject to the provisions of the Local Government (Scotland) Act 1889, is the local authority under the said Public Health (Scotland) Act 1867 so far as the water supply is concerned in the whole of said special water supply district, including such part thereof as is within the burgh of Clydebank: Find (3) that all the disbursements in connection with the said special water supply district fall to be paid by the petitioners, the said County Council, out of the county fund on the requisition of the said Eastern District Committee; and decern," &c.

Counsel for the Petitioners—A. Jameson—C. K. Mackenzie. Agents—C. & A. S. Douglas, W.S.

Counsel for the Respondents, the Eastern District Committee—Ure—Aitken. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for the Respondents, the Clydebank Commissioners—D.-F. Sir Charles Pearson, Q.C.—Napier. Agents—Douglas & Miller, W.S.

Saturday, November 17.

SECOND DIVISION.

[Sheriff Court at Edinburgh.

CONNOLLY *v.* YOUNG'S PARAFFIN LIGHT COMPANY.

Reparation—Master and Servant—Limited Company—Manager—Fellow Servant.

A widow raised an action of damages at common law against a limited company in whose works her deceased husband had been employed, alleging that her husband's death had been caused by the negligence of the defenders' manager, who had superintendence entrusted to him under them, and who had ordered certain dangerous operations to be carried out without taking reasonable precautions for the safety of the workmen employed.

The Court *dismissed* the action as irrelevant, on the ground that the pursuer had not made any averments to take the case out of the ordinary rule, by which the manager was the fellow-servant of the workman.

Reparation—Master and Servant—Process—Employers Liability Act 1880 (43 *and* 44 *Vict. cap.* 42), *sec.* 4—*Notice of Injury—Excuse for Want of Notice.*

Section 4 of the Employers Liability Act 1880 enacts that an action for recovery under the Act of compensation for an injury shall not be maintainable unless notice of the injury is given within six weeks of the accident causing it, provided always that in case of death the want of such notice shall be no bar to an action, if the judge shall be of opinion that there was reasonable excuse for such want of notice.

In an action of damages brought under the Act by the widow of a deceased labourer against his employers, the excuse offered by the pursuer for having omitted to give notice within the statutory period of the injury alleged to have caused her husband's death, was, that she was in such a state of mind from grief that she overlooked the necessity of having the circumstances of the death investigated.

The Court *dismissed* the action as incompetent, *holding* that no reasonable excuse for the failure to give notice had been stated.

Mrs Ellen Connolly, widow of Thomas Connolly, for herself and as tutor of her pupil sons, Thomas and Peter, and Ellen Connolly, a minor child of Thomas Connolly, raised an action in the Sheriff Court at Edinburgh against Young's Paraffin Light and Mineral Oil Company, Limited, for payment of £500, as damages for the death of the said Thomas Connolly, who had been employed in the defenders' works at Addiewell.

The action was laid both at common law and under the Employers Liability Act.

Intimation of a claim under the Act had been given on 23rd July 1894.

The pursuers averred—"(Cond. 2) About 10 o'clock in the morning of 31st May last, a fire broke out in the vitriol chamber of defenders' said works, in a section thereof where a large quantity of nitre used in the manufacture of vitriol was kept stored in bags. The deceased Thomas Connolly was ordered to assist in the work of extinguishing the said fire, and removing the debris caused thereby. The said work was carried on under the direct superintendence of the defenders' manager William M'Hutcheon, and the deceased Thomas Connolly was one of a squad of which Adam Brown was the foreman, and was subject to his orders. The nitre was smouldering and generating poisonous gases, from the effects of inhaling which the said Thomas Connolly became so ill that he died about 1·30 a.m. the following morning. (Cond. 3) The death of the said Thomas Connolly was caused through the gross fault and negligence of the defenders, or of those for whom they are responsible. The said William M'Hutcheon was the defenders' manager, who had superintendence entrusted to him under them, and to whose orders and directions the workmen were bound to conform. He took an active superintendence of the operations necessitated by said fire, and it was his duty to take proper precautions for the safety of the men working in connection with said operations. . . . (Cond. 5) The said claim was not intimated to the defenders within six weeks after the death of the said Thomas Connolly as required by the Act, as the pursuers, in the state of mind in which they were through grief at the death of the said Thomas Connolly, overlooked the necessity of having the circumstances of his death investigated. When they did give instructions to that effect, much difficulty was found in ascertaining the facts. It was found impossible to obtain any evidence on the subject until after the expiry of the statutory period."

The defenders pleaded—"(1) The action is irrelevant. (2) The action is incompetent under the Employers Liability Act, in respect (1) no notice was given under said Act, and no valid excuse for want of notice is averred." . . .

By section 4 of the Employers Liability Act 1880 (43 and 44 Vict. c. 42) it is enacted —"An action for the recovery under this Act of compensation for an injury shall not be maintainable unless notice that injury has been sustained is given within six weeks, and the action is commenced within six months from the occurrence of the accident causing the injury, or in case of death within twelve months from the time of death; provided always that in case of death the want of such notice shall be no bar to the maintenance of such action if the judge shall be of opinion that there was reasonable excuse for such want of notice."

On 15th October 1894 the Sheriff-Substitute (HAMILTON) pronounced the following interlocutor: — "Repels the first plea-in-law for the defenders, allows the pursuers a proof of their averments on record, and to the defenders a conjunct probation.

"*Note.*—There might have been a fuller statement as to the position occupied by Mr M'Hutcheon, but even as the record stands, the Sheriff-Substitute thinks that the action is relevant both at common law and under the Employers Liability Act. It does not seem to the Sheriff-Substitute that the question whether the pursuers had 'reasonable excuse', for not giving notice in terms of the 4th section of the Act can be decided at this stage."

The pursuers appealed for jury trial.

Argued for defenders—The action was irrelevant. There was no issuable matter stated on record upon which a case at common law could be founded. The manager was a fellow-servant of the deceased. The latter must also be presumed to have had a knowledge of the nature of the fumes, and to have taken the risk when he assisted in putting out the fire. The doctor certified that death was due to natural causes. There was no case under the statute. There was here a general order given, but no special order given to the workman to be specially obeyed—*Flynn* v *M'Gaw*, February 21, 1891, 18 R., opinion of Lord Young, p. 557. In terms of the statute, notice to the employers required to be given within six weeks of the death. No such notice had been given within the statutory period, and no reasonable excuse for such want of notice was made on record. Any pursuer in cases of this kind might make the allegation that through grief he had overlooked the necessity of sending the notice. That could not be accepted as a sufficient excuse. The action was therefor incompetent under the statute.

Argued for pursuers — The action was relevant. The manager in this case was not a fellow-servant of the deceased, but was the representative of the company. Where a company delegated the performance of its ordinary duties as an employer towards its servants to a manager, it was liable for any breach of these duties—*Wright* v. *Dunlop & Company*, February 14, 1893, 20 R. 363; *Murphy* v. *Smith*, May 31, 1865, 19 Scott's Rep. C.B. (new series), 361. There was reasonable excuse for not having given the notice within the statutory period. The cause of death was obscure, and not arising, as in most of cases of this kind, from external causes. Inquiry was therefore required, and the widow should not be held to be under the necessity of giving notice before she had made up her mind to proceed with the action. At all events, the decision of the question whether or not reasonable notice was given should be postponed for the decision of the judge at the trial—*Trail* v. *Kelman & Company*, October 22, 1887, 15 R. 4; *M'Leod* v. *Pirie*, February 15, 1893, 20 R. 381.

At advising—

LORD JUSTICE-CLERK—It appears to me that there is no case at common law stated

on record. The pursuer who desires to attack his employer through his manager must make such averments as to take the case out of the ordinary rule that the manager is a fellow-servant of the workman. But there is no such statement here, and it is therefore plain, on the face of the record, that there is no case of fault at common law against the defenders.

As regards the liability of the defenders under the statute, it has been pointed out that the claim for damages was not intimated within six weeks after the death as is required by the statute. The Act gives power to the Court to determine whether the failure to give notice was excusable, and we have therefore to look at the averments of the pursuer in order to determine whether the failure to give notice was excusable in the circumstances. A case was quoted where a question of this kind arose, and where the decision was left to the Judge at the trial. But that was a case in which the pursuer had admittedly a case at common law, and it had therefore to go to trial in any view. Here there is no case at common law, and there is therefore no reason why the point should not be decided now.

The averments of the pursuers come to this, that those whose duty it was to give notice failed to do so, because they were in such a state of mind through grief that they overlooked the necessity of making an investigation and giving notice within six weeks after the accident. It would be a very serious matter if it was held that that was a sufficient excuse under the statute. It is an excuse which every pursuer could make. It is just the state of mind in which every pursuer of an action of this kind might naturally be, and if this excuse could be good in one case it must be good in all. It is quite impossible to maintain that, and, there being thus neither notice in this case nor an excuse for the want of notice which can be maintained, this action is incompetent under the Employers Liability Act.

LORD RUTHERFURD CLARK and LORD TRAYNER concurred.

LORD YOUNG was absent.

The Court recalled the interlocutor appealed against, sustained the first and second pleas-in-law for the defender, and dismissed the action.

Counsel for the Pursuers—W. Campbell. Agent—William Considine, S.S.C.

Counsel for Defender—Comrie Thomson—Wilton. Agent—John Rhind, S.S.C.

Saturday, November 17.

SECOND DIVISION.

SCOTT, PETITIONER.

Trust—Non-Gratuitous Trustee—Petition to Resign.

A trustee under a trust-disposition and settlement, who had accepted office and become entitled on doing so to a legacy of £100 under the trust-deed, petitioned the Court for authority to resign. He stated that he had accepted office under a misapprehension as to the duties involved; that, owing to the magnitude of the estate, the affairs of the trust, if properly attended to by him, were likely to occupy more of his time and attention than, as a man with heavy business cares and responsibilities of his own, he could afford to bestow on them; that he deemed it prudent, and for the best interests of the trust, that he should resign, and that he was willing to renounce his legacy, which had not yet been paid, if he was relieved of his trusteeship.

The Court *refused* the petition, *holding* that the petitioner had stated no sufficient reason to entitle the Court to allow him to resign.

Alison, February 3, 1886, 23 S.L.R. 362, *distinguished.*

Matthew Andrew Muir, ironfounder in Glasgow, died on 27th April 1894, leaving a trust-disposition and settlement by which he conveyed to Colin William Scott and others, as trustees, his whole means and estate for the purposes therein mentioned.

By the third purpose of the trust-deed the truster directed his trustees to make payment of £100 to each of their own number who might accept office.

Four of the trustees nominated, including Colin William Scott, accepted the office conferred on them, and entered on the possession and management of the trust-estate.

Thereafter Scott presented a petition to the Court for authority to resign the office of trustee under the trust-disposition, and to find the expense of the application to form a proper charge against the trust-estate.

The petitioner stated—"The petitioner accepted office along with his co-trustees by minute of acceptance dated 21st and 28th May 1894, but finding that, owing to the magnitude of the trust-estate, the affairs of the trust, if properly attended to by him, were likely to occupy more of his time and attention than as a man with heavy business cares and responsibilities of his own he could afford to bestow on them, he deemed it prudent and to the best interests of the trust that he should resign his trusteeship, and intimated his desire to do so by letter to the trustees' agent dated 25th June 1894. Having accepted office without legal advice and under misapprehension as to the duties involved, and not