claim, and if he did so I think it is irrelevant to consider whether there are others against whom a claim might have been made upon the same ground of relationship. In the present case the son George who was killed by the accident was the only unmarried son. He lived with his mother and supported her. That was a very natural arrangement. Each of the other sons had a wife and family to maintain, and apparently amongst themselves they recognised that it was the part of the unmarried son to take his mother to live with him and maintain her. Now I think a case like this perhaps explains the motive of the framers of the statute in making the question of dependency contingent upon facts rather than upon legal obligations. Where there are relatives who are legally liable but who in fact never gave any support, then it cannot be said that in consequence of the death of the one who gave support she has been deprived of anything except what she got from him, because the other relatives never contributed to her support at all. In all the circumstances I think that this is a reasonably clear case of total dependency, and that the award of the Sheriff is well founded.

LORD KINNEAR—I agree. I think that the first question in law put to us by the Sheriff must be answered in the affirmative. I agree with Lord M'Laren in the first place that the question whether the respondent was or was not dependent upon the allowance of her deceased son is truly a question of fact, and in the second place that that question of fact is to be determined with reference to the point of time fixed by the statute when it says "dependants means such members of the workman's family as were wholly or in part dependent upon the earnings of the workman *at the time of his death*." Now upon the question of fact there can be no difference of opinion. In his statement of facts the Sheriff tells us that this respondent had several sons, but all of them were married and had children except the son George, whose death has given rise to this action. Then he says that for several years before this son George's death the mother had lived with him and had been entirely supported by his earnings. She did not and could not earn anything for herself, and nobody else contributed to her support. And then he goes on to add that none of the other children contributed, which indeed was implied in the statement he had made that nobody but George had contributed anything. I am unable to see how it can be held in the face of these statements that this poor woman was not wholly dependent upon the earnings of her deceased son. A question of law might arise over and above the question of fact if it were disputed that there was any legal liability on the part of the son to support his mother. But nobody disputes that. It appears to me to be immaterial that now that the son who did support her has died she may have a claim for contributions to her support from other children, because the point of time the statute says we are to consider is not the time subsequent to the deceased man's death, but the time at which his death happened. How was she supported up to that time? The answer is by the deceased's son and by him alone. With reference to the other cases that were cited, they do not appear to me to be directly in point, and consequently do not require detailed examination.

LORD MACKENZIE—I agree that the first question should be answered in the affirmative. The case here is one where there was the existence of a legal obligation on the part of the deceased workman to support the claimant. That obligation was implemented, and implemented by him alone. Accordingly I think that the conclusion to which the Sheriff-Substitute has come is entirely right. I do not think we are prevented from reaching that conclusion by the fact that there are cases in which a construction has been put upon the Act to the effect that the existence of a legal obligation alone, without its implement, may form a ground for holding that the person claiming was in the position of a dependant of the deceased workman.

The LORD PRESIDENT and LORD PEARSON were absent.

The Court answered the first question in the case in the affirmative, affirmed the determination of the Sheriff-Substitute as arbiter, and dismissed the appeal.

Counsel for the Appellant—R. S. Horne—Strain. Agents—W. & J. Burness, W.S.

Counsel for the Respondent—Hunter, K.C.—W. Thomson. Agents—J. Douglas Gardiner & Mill, S.S.C.

Tuesday, June 30.

SECOND DIVISION.

LAMONT AND OTHERS *v.* LAMONT.

Trust—Nobile Officium—Appointment of New Trustees—Competency—New Trustees or Judicial Factor—Sole Surviving Trustee in Marriage-Contract Trust Bankrupt and Incapable—Petition to Remove and Appoint Truster's Testamentary Trustees.

At the date of a husband's death the only surviving trustee under his antenuptial contract of marriage was his brother, all the original trustees being dead and no new ones having been assumed, although the marriage-contract conferred the ordinary powers of assumption.

The beneficiaries, with the exception of one son, presented a petition to the Inner House, in virtue of its *nobile officium*, praying for the removal of the trustee and the appointment as new trustees of the persons (among them being three of the petitioners) who

acted as trustees under the truster's trust-disposition and settlement. The grounds for removal were the bankruptcy of the trustee and his general incapacity to manage the trust. The objecting son, while he did not oppose the removal of the trustee, contended that it was in the circumstances incompetent for the Court to appoint new trustees, and that its power was limited to the appointment of a judicial factor.

The Court *removed* the trustee, and appointed the truster's testamentary trustees to be trustees under the marriage-contract.

By a marriage-contract entered into between Henry Lamont and Mrs Jane Curle or Lamont, Henry Lamont assigned to trustees (to whom powers were given to assume new trustees) a policy of insurance for £2000, the purposes of the trust being the payment of an annuity of £200 to his widow, and upon her death the payment of the fee to the issue of the marriage. By the marriage-contract Mrs Lamont assigned to the trustees her whole means and estate to be held for herself, and, after her death, her husband in liferent, and to be paid to the issue of the marriage in fee. At the date of the truster's death the only surviving trustee was his brother Charles Lamont, the other trustees having predeceased the truster, and no additional trustees having been assumed.

Shortly after his death his widow and four of his children presented a petition to the Inner House craving the Court to remove Charles Lamont from his office of trustee, and to nominate and appoint as new trustees the persons who were the trustees under the trust-disposition and settlement of the deceased Henry Lamont. These included three of the petitioners, viz., the widow and two of the children.

In his trust-disposition and settlement Henry Lamont had expressly directed his trustees to fulfil all the obligations incumbent upon him under his marriage-contract.

The grounds upon which the petitioners asked for the removal of Charles Lamont were that he was a bankrupt, and otherwise a person incapable of properly managing the estate.

Charles Lamont lodged answers, in which he objected to being removed.

Henry Charles Lamont, a son of Henry Lamont, also lodged answers, and while not opposing the prayer for the removal of Charles Lamont, objected to the appointment of Henry Lamont's testamentary trustees, stating that he was "dissatisfied with the course of administration pursued by the trustees in regard to part of the said Henry Lamont's affairs." He suggested the appointment of a judicial factor.

Argued for the petitioners—On the question of the appointment of new trustees or a judicial factor—Under the *nobile officium* the Court had the power to appoint new trustees; they were not restricted to appointing a judicial factor—M'Laren's Wills and Succession, vol. ii, p. 1132, and following; Menzies on Trustees, vol. i, p. 36; *Aikman, &c.* v. *Duff*, December 2, 1881, 9 R. 213, 19 S.L.R. 160; *Miller and Others* v. *Black's Trustees*, July 14, 1837, 2 S. & M'L. 866, *affirming* 14 S. 555. The appointment of a judicial factor meant increased expense and double administration, and the interests of all the beneficiaries, and the wishes of the deceased Henry Lamont would not be furthered by the appointment of his testamentary trustees.

Argued for the respondent Henry Charles Lamont—A judicial factor should be appointed, the Court having no right or power to appoint trustees in the circumstances disclosed, and there being no reported case in which in analogous circumstances it had ever done so. It was of no avail to appeal to the *nobile officium*, for the Court only exercised the *nobile officium* on the lines and within the bounds established by precedent—Stair's Inst. iv, 31—and there was no precedent for the exercise now demanded by the petitioners. Section 12 of the Trusts (Scotland) Act 1867 empowered the Court to appoint new trustees in circumstances specified. The reasonable inference from that section was that except in the circumstances therein specified, and except in a petition brought under that section, the Court had no power of appointment. None of the circumstances provided for in that section were present in this case, and the present was not a petition under that section. There was nothing to prevent the assumption of new trustees under the trust-deed itself. See *Graham*, June 26, 1868, 6 Macph. 958. The usual and only proper course was to appoint a judicial factor. *Miller, cit. sup.*, was a case of a lapsed trust, and in *Aikman* there was an agreement that there were to be new trustees.

The Court *granted* the prayer of the petition and removed the trustee, and appointed the trustees under the deceased's trust-disposition and settlement to be trustees under his marriage-contract.

Counsel for the Petitioners — Dickson, K.C. — Orr-Deas. Agents — Boyd, Jameson, & Young, W.S.

Counsel for the Respondent (Henry Charles Lamont) — Carmont. Agents — Bruce & Black, W.S.

Tuesday, June 30.

SECOND DIVISION.

[Sheriff Court at Paisley.

MARTIN *v.* FULLERTON & COMPANY.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1)—*Accident "Arising out of and in the Course of the Employment"—Workmen Jumping from Quay to Vessel instead of Using Gangway—Disobedience to Orders.*

A labourer, working overtime on a vessel moored some six or seven feet