truly agreed on the facts necessary and relevant to raise the questions of law, and accordingly counsel for the pursuer very properly, on the suggestion of the Court, put in a minute in which he admitted that the moneys received in respect of the three bills mentioned in the summons were applied for the purposes of the Galloway Woollen Manufacturing Company, of which the pursuer and defender were the sole partners. That makes the proof allowed by the Lord Ordinary unnecessary, but, of course, leaves the Lord Ordinary's reasoning. With that reasoning I concur, and have very little to add. It is conceded that if a partner pays a partnership debt, though he may have recourse against the other partner if the funds of the partnership are not sufficient to meet that debt, yet that recourse will necessarily depend on the state of the partnership account for its measure, and you cannot find that out till there is an accounting between the partners. If that be so, the fact that these partners sign a bill makes no difference, because such persons know that in a question with the holder of the bill they may be called on to pay the whole, leaving recourse to depend on the true state of the bargain between them. I assume the true state of the bargain to be that each one of the partners should pay one half if the partnership could not pay or did not pay. The position then comes to be just the same as payment of a debt by one partner, and therefore the Lord Ordinary on the merits is right. I propose that we recal the interlocutor of the Lord Ordinary, but sustain the sixth plea-in-law for the defender, which is to the effect that the action ought to be sisted to await the result of the accounting in the judicial factory, and that we remit to the Lord Ordinary with instructions to him to sist the action.

LORD KINNEAR and LORD DUNDAS concurred.

LORD M'LAREN and LORD JOHNSTON were absent.

The Court recalled the interlocutor of the Lord Ordinary and sustained the sixth plea-in-law for the defender.

Counsel for the Pursuer (Reclaimer)—Munro—J. A. Christie. Agents—St Clair Swanson & Manson, W.S.

Counsel for the Defender (Respondent)—J. R. Christie. Agents—Simpson & Marwick, W.S.

Thursday, January 20, 1910.

SECOND DIVISION.

[Lord Johnston, Ordinary.

HEDDERWICK AND OTHERS (HEDDERWICK'S TRUSTEES) *v.* HEDDERWICK'S EXECUTOR AND OTHERS.

Trust—Failure of Objects—Trust for Behoof of Firm—Transfer of Business to Limited Company.

A partner addressed a letter to his firm in which he directed them to hold two-fifteenths of his interest in the firm in trust, and to apply the annual proceeds "for the purpose of rewarding meritorious or long-service employees of our said firm, or for any other purposes of the business, as the managers may in their discretion deem expedient, and they shall be sole judges." Subsequent to the truster's death the business was transferred to a private limited company.

Held (*rev.* judgment of Lord Johnston) that the trust purposes failed when the business was transferred to the limited company, and that the fund fell into intestacy.

On 14th April 1908 Edwin Charles Hedderwick, Glasgow, and two others, as the registered holders of certain shares under a letter dated 10th November 1895, written by the deceased James Hedderwick, LL.D., brought an action of multiplepoinding. Claims were lodged by (1) the said Edwin Charles Hedderwick as executor-dative of Dr James Hedderwick; (2) Maxwell Hedderwick as trustee acting under the said letter of 10th November 1895; and (3) James Hedderwick & Sons, Limited.

The following *narrative* is taken from the judgment of Lord Johnston (Ordinary)—"The object of this multipleponding is to determine the effect, under changed circumstances, of a direction given by James Hedderwick, LL.D., in an *inter vivos* deed which he executed some years before his death, by which he endeavoured to make a provision for the rewarding of employees of his firm. Dr Hedderwick was the founder or one of the founders of the *Glasgow Citizen* newspapers, and had in the course of a long business life established or at least extended a lucrative business as a newspaper proprietor and general printer and publisher. The business began more than a century ago. . . .

"Dr Hedderwick had four sons, Percy David Hedderwick, Edwin Charles Hedderwick, Maxwell Hedderwick, and Francis Hedderwick. . . . In 1892 a contract was entered into, the object of which was to give continuity to the business so far as that was possible under a private deed of copartnery. *Inter alia* by article 8 the capital stock of the firm was to be treated as divided into thirty equal shares, whereof fifteen were to be held as contributed by and belonging to Dr Hedderwick himself, and three, six, and six respectively to be

contributed by and belonging to his sons Percy David, Edwin Charles, and Maxwell. . . . By section 16 the actual management of the business was vested in Edwin Charles and Maxwell Hedderwick, and provision was made for replacing them in the event of death or retiral.

"While this contract was current Dr Hedderwick on 10th November 1895 addressed a probative letter to Messrs James Hedderwick & Sons, which commences thus—'Being desirous during my life to settle my estate among my family on a basis which would in my view and after consultation with my sons be just and equitable to all concerned, I hereby authorise and instruct you to distribute and hold the fifteen shares which are at my disposal in our business to and among my family as follows—. . . [*Here followed directions as to the disposal of thirteen shares.*] . . .

"*Fifth.* As regards the remaining two shares, I hereby authorise and instruct you to hold the same in trust in the books of the firm, also subject to my liferent, and to hold and apply the annual proceeds of these two shares for the purpose of rewarding meritorious or long-service employees of our said firm, or for any other purposes of the business, as the managers may in their discretion deem expedient, and they shall be the sole judges.'

"It is under this fifth head that the question in the present case arises.

"Dr Hedderwick died on 1st December 1897, and the business was continued after his death by his partners until the end of 1904, when by reason of difficulties in the conduct of business it was converted into a limited company with a capital of £150,000, divided into 50,000 preference and 100,000 ordinary shares of £1 each. The new company took over the business and assets and obligations of the old company as it stood, and allotted 90,000 of the ordinary shares among the partners of the old firm, 6000 of which was the proportion effeiring to the two shares placed in trust by Dr Hedderwick for the benefit of employees of the firm and for other purposes of the business. . . . After the commencement of the new company a further question arose as to how the 6000 ordinary shares of the company, which were registered in the names of Edwin Charles Hedderwick, Maxwell Hedderwick, and Percy David Hedderwick, the three surviving partners of the old firm, 'in trust for the purposes specified in the said testamentary letter, dated 10th November 1895,' were to be dealt with.

"To obtain a decision of this question and judicial guidance this multiplepoinding was raised by Edwin Charles Hedderwick in name of himself and his two brothers, in whose names as trustees the 6000 shares of the new company had been vested.

"I held the action competent, and a record has been made up in the competition.

"Edwin Charles Hedderwick, as sole executor-dative of his father Dr Hedderwick, and as such entitled and bound to ingather on behalf of the next-of-kin of the deceased all moveable estate of which he had not competently disposed or which had fallen into intestacy, maintained, first, that the trust which the deceased by said letter purported to create was *ab initio* ineffectual and invalid in respect of the ambiguity and indefiniteness of its purposes; and second, that in any event the said trust if originally valid had ceased and determined in consequence of the said firm being no longer in existence, and of its business having been transferred to a limited company and the consequent failure of the trust purposes.

"Mr Maxwell Hedderwick maintained that the said trust was valid, effectual, and continuing in respect that though the firm of James Hedderwick & Sons had been converted into a limited company at 31st December 1904, there were employees of the old firm alive who were proper objects of the benefits of the said fund, and that there were other former employees who might in course of time come to be proper recipients of its benefits.

"A claim was also lodged for James Hedderwick & Sons, Limited, who maintained that the trust purposes now fell to be exercised by them, through their directors, on behalf and for the benefit of the employees and the business of the company, in terms of said letter of 10th November 1895."

On 18th March 1909 the Lord Ordinary pronounced this interlocutor—"Repels *in hoc statu* the claim of Edwin Charles Hedderwick as executor-dative of Dr James Hedderwick: Repels the claim for James Hedderwick & Sons, Limited: Ranks and prefers Edwin Charles Hedderwick, Maxwell Hedderwick, and Percy David Hedderwick, trustees under the letter by the said Dr James Hedderwick, mentioned in the said closed record, in terms of the claim by the said Maxwell Hedderwick as trustee foresaid, and decerns."

Opinion.—". . . [*After the narrative above quoted*] . . . I may first dispose of the question whether Dr Hedderwick's bequest is void from uncertainty. I quite concede to Mr Macmillan that this bequest is not a charitable bequest, and therefore not entitled to the benignant construction, whatever that means, which is accorded to charitable bequests. I concede to him also that the old firm having a separate *persona*, power to apply the annual proceeds of the two shares alternatively 'for any other purposes of the business,' if read in a wide sense apart from the context, would, as the firm was not limited by a memorandum from extending the scope of its business, simply mean to apply these annual proceeds in any way the firm or its managers might elect, and would therefore render the bequest sufficiently indefinite to void it. But I cannot read these words in a wide and general sense. I think that they are related to the primary purpose, which is declared to be that 'of rewarding meritorious or long-service employees of our said firm,' and that they must therefore be read as confined to other purposes *ejusdem generis* or of a class beneficial to the employees. Many such could be suggested, as for instance that of providing reading and recreation rooms

at the works. I must therefore repel Mr Edwin Charles Hedderwick's first contention, viz., that the bequest is void from uncertainty.

"But it is not so easy to dispose of the question, what was the effect of a transfer of the firm's business to a limited company? In this connection it is necessary to observe the distinction between the doctrine of *surrogatum* and that of *cy près*. The two shares in the old private firm have been transformed into 6000 shares in the limited company. The trustees of those shares, as representing a minority interest, could not prevent the transmutation, and were bound to accept the 6000 shares of the limited company as a *surrogatum* for the two shares in the old firm and either to retain or realise them. Having regard to the nature of the change, the practical continuity of the business, and the truster's intentions, I think that there was nothing to prevent their continuing to retain them so far as that matter is concerned.

"In arriving at this conclusion I desire to reserve my opinion on the question whether the new shares were a proper *surrogatum* for the old. They bear an exact and proper proportion to the shares allotted to the other parties interested in the old firm, but how far the exactitude of the equivalent is affected by the creation of additional shares, whether issued or unissued, is a subject on which I have no opinion at present, as I have not full information. It is possible that it may arise when the condescendence of the fund *in medio* comes to be adjusted, just as two other questions may also arise, viz., as to the propriety of the trustees having parted with some of the shares, and of the disposal after reference to Mr Ker of the unexpended balance of the share of profits of the old firm falling to the trust shares.

"But it is one thing to say that the new shares may be treated as a *surrogatum* for the old, and another to determine how the annual proceeds of those shares are to be disposed of. I may say at once that I do not see how they are to be applied under the doctrine of *cy près*. It might be very reasonable that the business of the company remaining substantially identical with that of the old firm the employees of the company should be admitted to the benefit of the trust. But in the first place the doctrine of *cy près* to which appeal is made with this end is only applicable in the case of charities. And in the second place it cannot be applied by me in the exercise of the ordinary jurisdiction of the Court, but only by one of the Divisions in the exercise of the Court's *nobile officium*. Accordingly I must determine that if the old firm is at end and the new company a totally distinct *persona*, neither can it directly or through its managers have any claim to the administration, nor its employees any claim to the benefits, of the trust.

"In the next place, assuming that the old firm, and therefore the surviving partners as representing it for the purpose of liquidation, as bare trustees properly hold the shares in trust, Dr Hedderwick committed, not to the firm, but to its managers, who were defined by the contract of copartnery to administer the trust; and it is a question whether the firm being no longer in existence, its managing body can be held to remain in existence and to have succession in terms of the old contract of copartnery for the purpose of administering this fund. I cannot say that I have any very confident opinion on this subject, but on the best consideration which I can give to the question I think that I am bound to give effect as far as possible to Dr Hedderwick's intention. Dr Hedderwick's intention was clearly to benefit meritorious and long-service employees of the firm with which he himself had been so long connected, and this intention ought not to be disappointed if it is possible to give it effect. The managers of the old firm at its dissolution were his sons Edwin Charles and Maxwell Hedderwick, and so long as they survive, the machinery for administration which he set up may be held to subsist, though I do not think that the provisions for its continuance could on their death or retirement be brought into play.

"I think, therefore, that the shares of the new company as a *surrogatum* for those of the old firm are properly held by the surviving partners as representing the old firm in liquidation, and that the proceeds of these shares may be applied for the benefit of meritorious and long-service employees of the old firm, so long as any such exist, in their discretion by Messrs Edwin Charles and Maxwell Hedderwick as the managers of the old firm at the date of its dissolution. Should they die or refuse to act, I do not think that they could be replaced under the contract of copartnery of the old firm, and looking to the decision in *Robbie's Factor*, 20 R. 358, it is a question whether their place could be supplied by any interposition of the Court. I am not called on *in hoc statu* to determine this question. As the two shares in James Hedderwick & Sons were, strictly speaking, *in hereditate jacente* of the late Dr Hedderwick, subject to the burden of the trust, should the trust lapse his executor will be entitled to be preferred to the fund. I can therefore only repel the claim for Mr Edwin Charles Hedderwick as executor of his father *in hoc statu; quoad ultra* I shall repel the claim for James Hedderwick & Sons, Limited, and sustain that for Mr Maxwell Hedderwick. . . ."

The claimant Edwin Charles Hedderwick (Dr Hedderwick's executor) reclaimed, and argued—The trust was *ab initio* void for uncertainty. In any view the trust failed when the business was transferred to the limited company. The firm ceased to exist, the business ceased to exist, and the managers had also ceased to exist, because there could be no managers when there was no business to manage. But the managers were the persons to whom the truster had confided a discretion, and that discretion was personal to them and could not be

exercised by anybody else—*Robbie's Judicial Factor* v. *Macrae*, February 4, 1893, 20 R. 358, 30 S.L.R. 411. This was not a charitable trust, the benefit of the firm not being a benevolent purpose. Accordingly the doctrine of *cy près* did not apply—*Young's Trustee* v. *Deacons of the Eight Incorporated Trades of Perth*, June 9, 1893, 20 R. 778, 30 S.L.R. 704.

Argued for the respondent Maxwell Hedderwick (Dr Hedderwick's trustee)—The trust was not void for uncertainty—*Macduff* v. *Spence's Trustees*, 1909 S.C. 178, 46 S.L.R. 135. Trusts were held void for uncertainty when there was uncertainty as to the objects. Here there was no such uncertainty. The objects were (1) meritorious employees, and (2) the firm. The trust did not fail when the firm was converted into a limited company. There were still objects in existence. Although the firm had come to an end, there were still long-service employees. They were not affected by the fact that the firm had ceased to exist. Nor was there any difficulty about the exercise of discretion. This claimant was one of the managers of the firm, and was still entitled to exercise the discretion which the truster had confided to him. The reference to "managers" was merely a designation, not a qualification. What might happen on this claimant's death was not *hujus loci*.

Argued for the claimants James Hedderwick & Sons, Limited—The company was entitled to administer the fund through its board of directors. The objects of the trust were the employees both of the firm and of the company. The intention of the truster was to benefit the business, not the firm which carried on the business. The firm and the company were, no doubt, different *personæ*, but the truster did not intend to draw a distinction between them. Discretionary powers granted to trustees might transmit to trustees appointed by the Court—*Macfarlane's Trustees* v. *Macfarlane*, December 20, 1903, 6 F. 201, 41 S.L.R. 164, *per* Lord Kyllachy.

At advising—

LORD JUSTICE-CLERK—The contest in this multiplepoinding is between three competitors—(1) the executor-dative, who claims that the letter of 10th November 1895 by the late Mr Hedderwick is ineffectual to establish a trust, or if it ever was valid to do so, has become ineffectual when the business as it existed at that time came to an end by the formation of a new company under the Limited Liability Act. The executor maintains that this change when it took place made the provisions of the letter ineffectual, with the result that the part of the estate intended to be dealt with fell into intestacy.

Mr Hedderwick's son Maxwell claims that he and his brothers, partners of the firm after their father's death, registered as holding the bulk of the shares in the company forming the greater part of the fund *in medio*, are entitled, and must be held bound, to administer the fund for the benefit of employees of the old firm as long as there are such surviving.

J. Hedderwick & Sons claim the fund, maintaining that the trust purposes of the 5th purpose stand, and that the directors of the company are entitled to apply the fund and carry them out.

It is with some regret that I find myself compelled to differ from the view of the Lord Ordinary, and to hold that the letter is not valid to support either of these latter claims. I hold that the executor is entitled to judgment on the second ground maintained by him, and that the pleas of the other parties fall to be repelled.

It is perfectly true that the old business and the new are somewhat alike, being for the same general purpose. But the difficulty which appears to me to be insuperable is, that it is not possible to hold that the late Mr Hedderwick's words apply to a company which did not exist when his will became effective on his death. A company formed after his death, although for cognate purposes, could not be the company referred to in his deed.

I can see no ground for holding—what it would be necessary to hold if Mr Maxwell Hedderwick's contention was to receive effect—that the late Mr Hedderwick had any intention beyond what his words expressly bear, viz., the benefit of servants of the firm "with which he himself had been so long connected," which are the words he uses.

Nor can I hold that it is a necessary inference from Mr Hedderwick's desire so expressed that he ever contemplated there being any other company than that which he expressly referred to. It is possible to imagine, but it is not possible to hold as fact, that he ever did so. There is nothing to indicate that any other thing was present to his mind, or consciously being dealt with by him. His direction is that certain sums are to be held in trust in his firm's books to be applied for certain purposes, as "the managers" should think fit; and "as" in their discretion they "deem expedient, and they shall be the sole judges." There are now no such managers, and therefore no one to carry out his directions.

My opinion therefore is that the second contention of the executor must prevail, and that he should be found entitled to the fund *in medio*.

LORD ARDWALL—It appears to me that under the altered circumstances in which the business formerly conducted by the firm of Hedderwick & Sons is now placed the provisions of the fifth head of the letter No. 10 of process must fail, because there is now no machinery by which they may be carried out. The firm are directed to hold and apply the annual proceeds of these shares for the purpose of rewarding "meritorious or long-service employees of our said firm" or "for any other purposes of the business." Now I pause here to observe that both the firm and the business have ceased to exist, at all events under the conditions in which they existed at the

time when this letter was written. But even if it be held that the limited company may be regarded as successors of the firm in the business, yet it seems to me that there is no machinery for carrying out the objects of the bequest, because it is said that these proceeds are to be applied "as the managers may in their discretion deem expedient, and they shall be the sole judges." Now in the changed circumstances of the business which has been turned into a limited company (although a private one) there are no managers holding the position and performing the duties of the managers of the old firm, and as the application of the proceeds is to be entirely in the discretion of the managers, and they are to be the sole judges of how the proceeds of the bequest are to be applied, it appears to me that with the cessation of managers such as are indicated in the letter, there is no person competent to administer the bequest or to judge how it shall be applied. The result, in my opinion, is that the bequest fails for want of objects, there being no persons to determine what these objects are to be, and it is not legally competent to supply their place. See *Robbie's Judicial Factor* v. *Macrae*, 20 R. 358.

The Lord Ordinary, with the laudable desire, with which I entirely sympathise, of giving effect so far as possible to Dr Hedderwick's intentions, has held that the bequest may be carried out by the gentlemen who were managers of the firm at its dissolution, so long as they survive.

I regret I am unable to concur with this view, because the discretion was reposed, not in these gentlemen as individuals, but in them as managers of the business, and in a position therefore to judge who of the employees "should be rewarded or to what other purposes of the business" the bequest should be applied.

I am therefore unable to hold that Edwin Charles Hedderwick and Maxwell Hedderwick are entitled to be put in the position of administering the bequest in question.

At best, as the Lord Ordinary sets forth, this could only go on during their survivance, but for the reasons I have stated I do not think that even for that period they are entitled to administer the bequest.

I accordingly am of opinion that the bequest must be held to have failed for want of machinery to carry it out, and further to have lapsed by reason of the failure of objects, and that the claim for Edwin Charles Hedderwick as executor-dative of Dr James Hedderwick should be given effect to, in respect that the bequest has fallen into intestate succession.

LORD DUNDAS—The material facts of this case, which lie within narrow compass, have been conveniently summarised by the Lord Ordinary, and need not be repeated. There are three competing claims to the fund *in medio*. In the first place, Dr Hedderwick's executor-dative (his son Edwin) claims upon the ground that the trust which the letter of 10th November 1895 purports to create was all along invalid and ineffectual, or otherwise that it has ceased and determined in consequence of the formation of the limited company and the transfer to it of the business of the former firm — the result in either view being to throw the fund into intestacy. In the second place, a claim is lodged by Dr Hedderwick's son Maxwell, to the effect that he and his brothers Edwin and Percy, who were the partners in the firm of James Hedderwick & Sons after their father's death, and in whose names the shares forming the bulk of the fund *in medio* stand registered and the balance of £200 is held in trust, are entitled and bound to administer the fund in terms of the said letter for the benefit of the employees of the old firm who came within its provisions, so long as any such continue to exist, and according to the discretion (as I understand) of Messrs Edwin and Maxwell Hedderwick and the survivor of them as "the managers" of the said firm, within the meaning of the letter. Lastly, the fund *in medio* is claimed by James Hedderwick & Sons, Limited, who maintain that the trust purposes of the fifth clause of Dr Hedderwick's letter remain operative, and now fall to be exercised by the company through its directors, on behalf and for the benefit of the employees and the business of the company.

In the view which I take of the case it is not necessary to decide as to the soundness or the reverse of the first contention put forward by Dr Hedderwick's executor, viz., that the trust which Dr Hedderwick purported to create by the fifth clause of his letter was *ab initio* ineffectual and invalid in respect of the ambiguity and indefiniteness of its purposes. I am content to say that, as at present advised, I am not disposed to differ from the Lord Ordinary's conclusion on this matter. But I think, for reasons to be explained, that the executor is entitled to succeed upon the alternative ground on which his claim is rested.

I agree with the Lord Ordinary in holding that the claim for James Hedderwick & Sons, Limited, must be repelled. It seems to be based upon some perverted and erroneous conception of the doctrine of *cy près*. There may, no doubt, be a general similarity between the business carried on by the late firm and that of the present limited company; but I am unable to see how the provisions of Dr Hedderwick's letter can be legitimately applied in favour of a new and different *persona*—viz., the company—different "managers," and a different category of beneficiaries. I regard this claim as quite untenable.

The claim of Mr Maxwell Hedderwick is perhaps in a little (but I think only a little) better position. The Lord Ordinary has sustained it because he thinks "Dr Hedderwick's intention was clearly to benefit meritorious and long-service employees of the firm with which he himself had been so long connected, and this intention ought not to be disappointed, if it is possible to give it effect." But a difficulty, to my mind, arises here, because I consider that

it sufficiently appears that the formation of the business into a limited company was not present to Dr Hedderwick's mind when he wrote his letter in 1895, but must be regarded as a *casus improvisus*. It is otherwise hardly conceivable that he should not have indicated how his intention was to be given effect to under such altered circumstances. But he gives no indication of the sort; and indeed the whole language of the fifth clause seems to show that his mind was addressed solely to a state of matters in which the firm, as such, was an actively subsisting entity. He authorised and instructed "you" (*i.e.*, Messrs James Hedderwick & Sons) to hold the shares in trust "in the books of the firm," and to apply the annual proceeds for the purpose of rewarding employees "of our said firm," or for any other purposes of "the business," as "the managers" might deem expedient. It seems to me, therefore, that we have no legitimate means of gathering what Dr Hedderwick's intention would have been in relation to a state of circumstances which apparently he never contemplated. I do not see how the Lord Ordinary's conclusion can be sustained without either resorting to mere conjecture, or in some measure re-forming the machinery of the truster's provision, neither of which courses are we, as I apprehend, entitled to adopt. For these reasons I agree with your Lordships that the Lord Ordinary's interlocutor should be recalled and a finding pronounced that the executor is entitled to be ranked and preferred in terms of his claim. I have less hesitation than I might otherwise have felt in differing from the Lord Ordinary, because his Lordship frankly avows that he has not "any very confident opinion" on the matter.

The Court pronounced this interlocutor—

"Recal the. . . interlocutor reclaimed against and remit to the Lord Ordinary to rank and prefer Edwin Charles Hedderwick as executor-dative of Dr James Hedderwick, in terms of his claim," &c.

Counsel for Claimant and Reclaimer Edwin Charles Hedderwick (Dr Hedderwick's Executor)—Cooper, K.C.—Hon. W. Watson. Agents—Graham, Johnston, & Fleming, W.S.

Counsel for Claimants and Respondents (Dr Hedderwick's Trustees)—Sandeman, K.C.—A. M. Mackay. Agents—Auld & Macdonald, W.S.

Counsel for Claimants James Hedderwick & Sons, Limited—M'Lennan, K.C.—Mercer. Agents—Cumming & Duff, S.S.C.

HIGH COURT OF JUSTICIARY.

Thursday, December 9, 1909.

(Before the Lord Justice-Clerk, Lord Low, and Lord Ardwall.)

MACKNIGHT *v.* MACCULLOCH.

Justiciary Cases—Complaint—Competency—Statutory Offence—Limitation of Time for Prosecution—Coal Mines Regulation Act 1887 (50 *and* 51 *Vict. cap.* 58), *sec.* 62 (1) — *Summary Jurisdiction (Scotland) Act* 1908 (8 *Edw. VII, cap.* 65), *sec.* 26.

The Coal Mines Regulation Act 1887 (50 and 51 Vict. cap. 58), sec. 62 (1) enacts — "Any complaint or information made or laid in pursuance of this Act shall (save as otherwise expressly provided by this Act) be made or laid within three months from the time when the matter of the complaint or information arose."

The Summary Jurisdiction (Scotland) Act 1908 (8 Edw. VII, cap. 65), sec. 26, enacts—"All proceedings under this Act in respect of the contravention of any statute or order, shall, unless the statute or order under which the prosecution is raised fix any other period, be commenced within six months after the contravention occurred, and in the case of a continuous contravention, within six months of the last date of such contravention, and it shall be competent in such case in any prosecution to include the entire period during which the contravention has occurred. Proceedings shall be held as being commenced within the meaning of this section as of the date when a warrant to apprehend or to cite the accused is granted, provided that such warrant is executed without undue delay."

The manager of a mine was charged with permitting the use of naked lights in a mine, contrary to the Coal Mines Regulation Act 1887, during a period between April 25th and June 5th 1909, and was cited to appear to answer the charge by warrant dated 31st August 1909.

Held that the whole of section 26 of the Summary Jurisdiction (Scotland) Act 1908 applied only when no other period was fixed by the statute or order under which the prosecution was raised, and was therefore inapplicable here, and consequently the complaint had not been timeously brought, in respect that more than three months had elapsed from the time when the matter of the complaint arose, viz., 25th April 1909.

The Coal Mines Regulation Act 1887 (50 and 51 Vict. cap. 58), sec. 62 (1), and the Summary Jurisdiction (Scotland) Act 1908 (8 Edw. VII, cap. 65), sec. 26, are quoted *supra in rubric*.

Robert George MacCulloch, mine manager, West Lodge, Carriden, Linlithgow.