liferenters and then fiars, it would never be possible for them to pay the other special bequests and the residue and wind up the trust with the exception of the sum to be held, because it would always be in the mouths of the liferenters and fiars to say, "Oh no, you must not part with the estate, because our investment may in the future depreciate."

Accordingly I think that the case is a very simple one, and that questions one and two and the first part of three must be answered in the affirmative.

LORD KINNEAR—I am of the same opinion.

LORD JOHNSTON and LORD MACKENZIE concurred.

The Court answered the first two questions and branch one of the third question in the affirmative.

Counsel for First Parties—Pitman. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for Second Parties—Constable, K.C.—Chree. Agents—E. A. & F. Hunter & Company, W.S.

Counsel for Third Parties—Macphail, K.C.—J. H. Millar. Agents—W. & J. Cook, W.S.

Thursday, October 20.

FIRST DIVISION.

(SINGLE BILLS.)

LIQUIDATORS OF KOSMOID TUBES, LIMITED, PETITIONERS.

Company — Voluntary Winding-up — Approval of Deliverances by Liquidator on Creditors' Claims — Companies (Consolidation) Act 1908 (8 *Edw. VII, c.* 69), *sec.* 193.

Under section 193 of the Companies (Consolidation) Act 1908 the liquidators of a company, which was being wound up voluntarily, presented a petition for the approval of the whole of their deliverances on the claims of creditors, a statement of which was produced. The creditors having been duly certiorated of the petition and of the deliverances for which approval was sought, and no answers having been lodged, the Court *granted* the prayer of the petition.

The Companies (Consolidation) Act 1908 (8 Edw. VII, c. 69), section 193, enacts—"(1) Where a company is being wound up voluntarily the liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding-up, or to exercise, as respects the enforcing of calls, or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court. (2) The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as the Court thinks fit, or may make such other order on the application as the Court thinks just."

On 6th September 1911, Ninian Glen, C.A., Glasgow, and another, the liquidators of Kosmoid Tubes, Limited, Dumbarton, presented a petition under section 193 of the Companies (Consolidation) Act 1908 for approval of the deliverances of the liquidators on the whole claims adjudicated upon by them as contained in their statement of adjudications, and to rank the claims of the creditors in accordance therewith.

After stating the objects for which the company was established, viz., the manufacture of tubes, &c, the capital of the company, original and reduced, and the confirmation of a resolution for the voluntary winding-up, the petition proceeded—"(7) The liquidators have realised the whole assets of the company, and are now in a position to complete the winding-up by paying a dividend to the creditors. The state of affairs of the company, as made up by the liquidators, shows, provided all the claims lodged were admitted to a ranking, a deficiency of £8570, 2s. 8d., which is made up as follows:—

Total net assets . . .	£2,279 0 6
Total claims lodged . .	10,849 3 2
Deficiency,	£8,570 2 8

"This deficiency may be increased by legal and other expenses so far as not yet paid.

"(8) The liquidators have now adjudicated on all the claims lodged. A statement of adjudications, showing the claims lodged, and the liquidators' deliverances thereon, is herewith produced, and confirmation by the Court of all the deliverances contained in said statement is now craved. The following is an abstract of the liquidators' deliverances:—

Total claims lodged with the liquidators by creditors in the liquidation	£10,849 3 2
Of which amount the liquidators have rejected the sum of .	8,244 3 9
Leaving as claims admitted to an ordinary ranking by the liquidators	£2,604 19 5"

At the hearing in the Single Bills counsel for the petitioners stated that certain questions had arisen regarding the deliverances pronounced on certain claims; that in order to have these judicially determined a copy of the petition and the deliverance on his claim had been served on each of the creditors, accompanied by the relative excerpt from the state of adjudications; that the induciæ had expired, and that no answers had been lodged. He accordingly craved the Court to grant the prayer of the petition.

The Court (the LORD PRESIDENT and LORDS KINNEAR, JOHNSTON, and MACKENZIE) pronounced this interlocutor—

"Approve of the deliverances of the

liquidators on the whole claims set forth in the state of adjudication on claims No. 10 of process: Rank the claims of the creditors in accordance therewith, and decern."

Counsel for Petitioners — Macmillan. Agents—J. & J. Ross, W.S.

Saturday, October 21.

SECOND DIVISION.

[Sheriff Court at Glasgow.

BORLAND *v.* WATSON, GOW, & COMPANY, LIMITED.

Master and Servant — Workmen's Compensation Act 1906 (6 *Edw. VII., cap.* 58), *sec.* 1—*Injury by Accident Arising out of and in Course of Employment—Rupture of Cartilage of Knee—Previous " Wrench" to Knee—Recurrence—Onus of Proof.*

In arbitration proceedings to recover compensation under the Workmen's Compensation Act 1906 it was proved that the claimant, while in the course of his employment on 4th December 1908, felt a severe pain in his knee on rising from a kneeling position; that on examination one of the cartilages of the knee was found to be ruptured; that incapacity resulted; that three years previously, while in the employment of third parties, he had sustained a "wrench" to the knee which resulted in incapacity for some weeks; that on several subsequent occasions he felt momentary pain in the knee on rising from it, but was not thereby prevented from continuing to work.

Held that the claimant had suffered injury by accident on 4th December 1908 within the meaning of the statute.

Opinion (*per* Lord Dundas) that the *onus* lay on the employers to show that no new injury was sustained, but that anything suffered on 4th December 1908 was due to the former accident.

In an arbitration under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) in the Sheriff Court at Glasgow, between John Borland (*appellant*) and Watson, Gow, & Company, Limited (*respondents*), the Sheriff-Substitute (FYFE) refused compensation and stated a case for appeal.

The following *facts* were found proved:—"(1) That appellant is a range-fitter to trade. (2) That about three years ago, whilst in the employment of Messrs Mechan & Son at Whiteinch, he sustained a wrench to his knee, and in respect thereof claimant received compensation under the Workmen's Compensation Act for a period of some weeks. (3) That subsequently on several occasions the result has been that, when at work upon his knees, the knee gave him trouble whilst in the act of raising his body from the ground, causing him pain at the moment, but not preventing him continuing to work. (4) That on 4th December last appellant was in the employment of the respondents. (5) That he was then, in the course of his work, kneeling upon the knee which had previously sustained the injury. (6) That in rising from the kneeling position he again felt the same kind of pain. (7) That on being taken to the infirmary it was found that the internal cartilage of the right knee joint was torn. (8) That an operation was performed on or about 22nd January. (9) That he was discharged from the infirmary on 27th February 1909. (10) That he was not then fit for work. (11) That he is not yet fit for work. (12) That the rupture of the knee cartilage on the 4th December 1908 was the result of the strain experienced when appellant was in other employment than that of the respondents."

On these facts the Sheriff-Substitute found that the appellant had failed to prove that he was injured by accident arising out of and in the course of his employment with the respondents, and refused the application.

The *question of law* for the opinion of the Court was—"Whether the injury which the appellant sustained on 4th December 1908 was an accident arising out of and in the course of his employment as a workman while with the respondents, entitling him to compensation under the Workmen's Compensation Act 1906."

On 6th July 1911, after counsel had been heard, the Court remitted to the Sheriff-Substitute to answer certain questions.

The questions and answers were as follows—"(Ques. 1) Was the cartilage in the appellant's knee ruptured when he was injured in the service of Messrs Mechan & Son at Whiteinch, and received compensation for a time for inability to work?—(Ans. 1) The evidence does not disclose whether the cartilage was ruptured then. (Ques. 2) If there was rupture, was it completed or was it increased, on 4th December 1908, by exertion made on that date?—(Ans. 2) Assuming there was a rupture, it was increased by the occurrence of 4th December 1908. (Ques. 3) Were the symptoms which showed themselves on 4th December in any way different from these which had shown themselves on previous occasions when the appellant required to kneel when working?—(Ans. 3) No. (Ques. 4) Did the appellant receive any new injury while in the respondent's employment, or was the condition in which his knee was found to be on 4th December 1908 produced by the accident three years before, as a natural result of that injury?—(Ans. 4) It is not possible from the evidence to say. (Ques. 5) In what circumstances, and by whom and when, was he taken to the infirmary?—(Ans. 5) On 4th December 1908, when he rose from the kneeling position and felt pain in knee, it was about twelve o'clock, but he stayed on till five, when he was assisted home. At home he was treated by his family doctor till 22nd January, when he was sent to the infirmary by his own doctor."

Argued for the appellant—On 4th December 1908 the condition of the appellant's knee changed for the worse, with the result