the Lord Ordinary. But then, having considered it and disposed of it, he says it is not a fit case to bring before the Inner House, and we cannot interfere with his discretion on this point.

LORD MACKENZIE—I concur.

LORD PEARSON was absent.

The Court sustained the objection and refused the reclaiming note.

Counsel for the Pursuers (Respondents)—Scott Dickson, K.C.—Orr Deas. Agents—Boyd, Jameson, & Young, W.S.

Counsel for the Defenders (Reclaimers)—Clyde, K.C.—Spens. Agents—J. & J. Ross, W.S.

Thursday, June 25.

FIRST DIVISION.

[Sheriff Court at Linlithgow.

RINTOUL *v.* DALMENY OIL COMPANY, LIMITED.

Master and Servant — Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 13—*Dependants*—"*Wholly*" *Dependent*—*Dependent in Fact and Dependent in Law.*

In a claim by a widow for compensation for the death of her son it was proved that she had five sons including the deceased; that of these the deceased alone was unmarried; that for several years before his death she had lived with him and been entirely supported by him; that she did not, and could not, earn anything herself; that her other sons though able and liable to contribute to her support had not in fact done so.

Held that the claimant was wholly dependent on the deceased at the time of his death within the meaning of the Workmen's Compensation Act 1906.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), section 13, enacts:—"*Definitions.*—In this Act . . . 'dependants' mean such of the 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 . . . 'Member of a family' means . . . mother . . ."

Mrs Jessie Hardie or Rintoul, widow, Church Place, South Queensferry, claimed compensation under the Workmen's Compensation Act 1906 from the Dalmeny Oil Company, Limited, Dalmeny, in respect of the death of her son George, a miner, who was fatally injured while in the defenders' employment, and upon whom she alleged she was at the time of his death wholly dependent.

The matter was referred to the arbitration of the Sheriff-Substitute at Linlithgow (MACLEOD), who awarded compensation.

A case for appeal was stated.

The *facts* as stated in the case were—"Including the deceased, the respondent had five sons — Peter, Thomas, George (deceased), William, and James, all of whom were working miners. Of these, deceased alone was unmarried. Of the other four (who all survive) Peter and Thomas have each a wife and nine children, most of whom are dependent on them. William has a wife and four children dependent upon him, and James has a wife and two children dependent on him. For several years before her deceased son's death the respondent had lived with him and been entirely supported by his earnings. She did and could earn nothing herself, and no one else contributed to her support. But though as matter of fact the respondent derived her whole support from her said son, during these same years her four other sons were all (*a*) able and (*b*) liable to contribute to her support, but her said deceased son had taken the whole burden of the respondent's support upon himself and was *de facto* her sole support, the others not in fact contributing."

The Sheriff-Substitute further stated—"I decided in law that the respondent was at the time of her said deceased son's death wholly dependent on his earnings, and accordingly I awarded her the sum of £300, there being agreement between the parties that that was the amount appropriate to my decision. Had I decided that the respondent was at the time of her said deceased son's death only in part dependent upon his earnings I would have awarded her £160."

The *questions of law* were—"(1) Was respondent wholly dependent upon the earnings of her said deceased son at the time of his death within the meaning of the Workmen's Compensation Act 1906? (2) Was respondent only partially dependent upon the earnings of her said deceased son at the time of his death within the meaning of the said Act?"

Argued for appellants — *Esto* that the question of dependency was one of fact—*Main Colliery Company* v. *Davies*, [1900] A.C. 358—the question remained, what was the test of dependency. The criterion was the obligation to support, not the fact of supporting. The respondent had other means of support, for her other sons were equally liable to contribute. That being so she was only "in part dependent" on the deceased — *Cunningham* v. *M'Gregor & Company*, May 14, 1901, 3 F. 775, at p. 778, 38 S.L.R. 574; *Turners Limited* v. *Whitefield*, June 17, 1904, 6 F. 822 (Lord Kinnear's opinion), 41 S.L.R. 631; *Sneddon* v. *Addie & Son's Collieries, Limited*, July 15, 1904, 6 F. 992, *per* Lord Moncreiff at p. 996, 41 S.L.R. 826; *Coulthard* v. *Consett Iron Company, Limited*, [1905] 2 K.B. 869, *per* Collins, M.R., at p. 872 foot. In *Coulthard's* case no support was given and yet the Court held there was total dependency. That showed that the obligation to support must be kept in view as well as the fact of actual support. The respondent, accordingly, could not be said to be wholly dependent on her deceased son.

Argued for respondent—The question of

dependency was one of fact, viz., was the respondent actually dependent on the support of the deceased. The obligation to support did not create dependency; the sole criterion was the actual fact of support —*Turners Limited* v. *Whitefield* (*cit. sup.*); *Robert Addie & Sons' Collieries, Limited* v. *Trainer*, November 22, 1904, 7 F. 115, 42 S.L.R. 85; *Moyes* v. *William Dixon, Limited*, January 13, 1905, 7 F. 386, 42 S.L.R. 319; *Baird & Company, Limited* v. *Birsztan*, February 2, 1906, 8 F. 438, 43 S.L.R. 300.

LORD M'LAREN—This is a claim by a mother as being a dependant upon one of her sons who met his death while in the service of the Dalmeny Oil Company. The applicant in this case it appears had five sons. The deceased was unmarried and lived with her, and as he defrayed the expense of the household she was of course maintained by him. The other four sons were married and had children, but apparently they were not asked to support their mother. The case does not state that they were asked, and indeed it is stated that in fact they did not contribute to her support. In these circumstances the Sheriff-Substitute of the Lothians decided that the respondent was at the time of her deceased son's death wholly dependent on his earnings. By desire of the parties the Sheriff puts the alternative question to us, whether the respondent was wholly or partially dependent upon this deceased son. Now the position of dependants under the Statute of 1906 is not exactly the same as it was under the first Workmen's Compensation Act. Instead of defining the liability by a reference to the class of persons who would be entitled to sue for damages or *solatium*, I venture to think a much more natural definition is now made, and that definition is one founded on membership of the family. But there is superadded a provision in favour of persons who are relations in blood, although not in law—I mean the relation of an illegitimate child to his father or mother is recognised. These variations in the phraseology of the new statute do not seem to me to affect the present question, because that depends upon the definition clause which defines "dependant." The only general observation that I can make upon that definition is that I have always in reading it felt that the definition was a historical one. The test of dependency according to the literal reading of the clause is whether the person making the claim was in fact dependent upon the deceased in his lifetime. I just wish to quote the words which I think make that very clear—"'Dependants' means such of the 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, or would but for the incapacity due to the accident have been so dependent." Now it appears to me that under this definition there is no relevancy in the inquiry—what was the legal obligation to maintain? because the obligation implied in the word "dependent" is made by the statute to depend upon whether the claimant was dependent at the time of his death wholly or in part. That can only mean a question of fact, whether the claimant in fact received complete maintenance or partial maintenance. It cannot depend upon legal obligation, because I do not know of any legal obligation which limits the claim against an individual to one for partial aliment. Any person standing in the necessary relation is entitled to receive full maintenance. Accordingly, if I were to follow my own view of the statute without heeding the decisions, I should be inclined to think that, given the relationship described in the statute, the only question was whether the deceased had fully recognised his obligation and had given full maintenance, or whether in fact the claimant had received maintenance from other sources, either from relatives, it might be, who were not bound to maintain her, or it might be by the claimant's own exertion. But then the decisions both in England and Scotland seem to have put a construction upon this part of the definition clause which is not expressed upon the face of it, because the decisions come to this, that wherever the deceased person was the nearest relative and was liable in complete maintenance, then it was not an answer to the claim founded on total dependency to say that he did not in fact recognise his obligation, and had, it might be for a time, been unable or unwilling to support the claimant at all. But I should wish to reserve my opinion as to how far that principle of decision should be carried. Certainly wherever it can be proved that the claimant had been supported partly by his or her own earnings, or had assistance from others, that would in my opinion reduce the case to one of partial dependency. But perhaps it is not an unreasonable presumption to say that where no other source of regular maintenance can be pointed to except that of the person who is bound to maintain, that is to be treated as a case of total dependency. The present question is, however, entirely different, and I cannot say, as the quoted cases represent themselves to my mind, that they furnish any assistance towards the decision of the present question, which is, where there are several persons all by law equally bound to give aliment, and where in fact support is given only by one of them, whether that is to be treated as a case of total or partial dependency. The principle which I venture to state as the one which commends itself to me is that the statute looks to the action of the deceased in maintaining his relative rather than to legal obligation. Of course the legal obligation must be there. He must be a person under the clause, because if he were a stranger in blood and unconnected even by illegitimate ties, then of course there would be no dependency at all under the statute. But, given the relationship, then I think the inquiry must always be, did the deceased in fact maintain his mother or child or whoever the person may be who is making the

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