near the waggons. They had been repeatedly warned against doing so for fear of accident, and they knew that in doing so they were doing wrong. I cannot figure anything more serious or wilful than positive and intentional disobedience to a strict and positive order. That is the character of the case here, and I must hold accordingly that the third question should be answered in the affirmative.

LORD MONCREIFF—I have with considerable regret come to the same conclusion. It is quite plain that this poor boy at the last was doing his best to remedy the mischief that was being done, to prevent further mischief, and to save his master's property. But I am satisfied that the judgment of the Sheriff is wrong. The answer to the question depends very much upon the point of view. The respondent asks us simply to look at the proximate cause of the accident, and the proximate cause of the accident was that the waggons were slipping down the incline, and that in order to stop them the boy tried to sprag them, and was injured in consequence. If that was all—if the boy had gone across the line to try to stop the waggons—it would have been a very meritorious act, and upon the authority of the case of *Rees* v. *Thomas* I think we might have been entitled to hold that what he did arose out of his employment, and that it was certainly not wilful misconduct to try to stop the waggons. But that was not the way of it. The accident resulted from the waggons on that line being set in motion. They were set in motion by some boys, one of whom was the boy who was killed. There is no doubt on the statement of facts found by the Sheriff that the boys had been warned not to go near the waggons for fear of accident, and it was found that they were wrong in doing so. That was the ultimate cause of the accident—a wrongful act on the part of the deceased boy in crossing the line, getting into the waggons, and setting them in motion, contrary to orders. Had this boy in getting out of the waggon been run over I do not see how there could be any doubt whatever that the accident did not occur in the course of or arise out of his employment, or that he had been guilty of serious and wilful misconduct in going into the waggons. The peculiarity of the case is that he made a meritorious attempt to repair the mischief done. But that cannot affect our judgment in this case.

LORD YOUNG was absent.

The Court answered the first question of law in the negative and the third question of law in the affirmative, sustained the appeal, and recalled the award of the arbitrator.

Counsel for the Appellants — Guthrie, K.C.—Hunter. Agents—Anderson & Chisholm, Solicitors.

Counsel for the Respondent—G. Watt, K.C. — J. A. Christie. Agents — St Clair Swanson & Manson, W.S.

Friday, December 16.

SECOND DIVISION.

[Lord Kincairney Ordinary.

THE ROSEWELL GAS COAL COMPANY, LIMITED *v.* M'VICAR.

Master and Servant — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *First Schedule* (14)—*Claim for Expenses Cannot be Set off by Employer against Weekly Payment Due to Workman.*

Held that by the Workmen's Compensation Act 1897, First Schedule (14), an employer is precluded from setting off against a weekly payment of compensation due by him to a workman expenses awarded to him against the workman in an application under the Act for a diminution of the weekly rate of payment.

The Workmen's Compensation Act 1897, First Schedule (14), provides—"A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same."

This was an action of suspension at the instance of the Rosewell Gas Coal Company, Limited against Daniel M'Vicar, miner, Kelty. The facts and the contentions of the parties are fully stated in the following opinion of the Lord Ordinary (KINCAIRNEY) of 26th July 1904:—"This is a suspension by the Rosewell Gas Coal Company, which carries on business in Fife, against Daniel M'Vicar, who is a miner in their employment.

"M'Vicar suffered injury on 12th April 1902, and on claiming compensation before the Sheriff the parties agreed on a weekly sum of 15s. 8d., and a memorandum of the agreement was registered under the Workmen's Compensation Act on 7th January 1903. Proceedings were taken by the Rose well Company under the provisions of the Act for diminution of the weekly rate of compensation. These proceedings were at first unsuccessful, and on 30th May 1903 the application of the Rosewell Company was dismissed, and the company was found liable in expenses, which were taxed at £5, 15s. 6d. But on a second application by the Rosewell Company the Sheriff-Substitute pronounced an interlocutor dated 10th October 1903, by which the weekly compensation was reduced to 10s. 8d. from 3rd July 1903. By this interlocutor the Rosewell Company were found entitled to one-half of their expenses, which half amounted as taxed to £13, 4s. 1d. There was thus a balance of expenses due to the Rosewell Company of £7, 8s. 7d.

"The complainers have paid the compensation of 15s. 8d. until 3rd July 1903, and have since paid the reduced compensation to 30th October 1903.

"They then intimated to M'Vicar that they would withhold payment of the com-

pensation until the balance of expenses due to them had been paid, and payment has not been made since that date. A sum of 10s. 8d. a week from 30th October 1903 to 31st March 1904 would amount to £11, 13s. 2d., and that sum has been consigned with the Accountant of Court. At that date M'Vicar charged the Rosewell Company for payment of £11, 13s. 2d., and the Rosewell Company presented this note of suspension.

"Two points were argued for the complainers the Rosewell Company—(1) That the charge was incompetent, because it bore to be given under pain of imprisonment, whereas it was maintained imprisonment for debt was abolished by the Debtors Act (43 and 44 Vict. c. 34) with certain exceptions, including alimentary debts; and by the Act 45 and 46 Vict, c. 42, sec. 4, imprisonment for alimentary debts was also abolished except in the special cases specified; (2) because the complainers were not due the sum charged for.

"As to the first objection, it may be that the charge was blundered, having regard to the fact that the complainers are a company, and also to the Act 45 and 46 Vict. c. 42, sec. 4, and that there is only power to imprison for an alimentary debt when the conditions specified in that section exist.—See *Whiteford* v. *Gibson*, 9th December 1899, 7 S.L.T. No. 233. But the point is of no general consequence. As at present advised I would not be prepared to sustain it; but as it is not embraced in the complainers' pleas I do not think it necessary to deal with it.

"The other point is of more consequence and of general application. It raises this question under the Workmen's Compensation Act—whether, when a workman has obtained an award an action to recover the amount awarded can be met by a decree against him held by his employers when it is a decree for expenses awarded in the course of the proceedings for compensation.

"I think this point is determined by the 14th article of the First Schedule of the Act, which provides expressly that 'a weekly payment or a sum paid by way of redemption thereof shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.'

"I think that the last words of this article cannot be got over. They seem unambiguous, and to meet the case precisely. I do not say whether the Sheriff-Substitute could or could not have framed his allowance of expenses in such a way as to make them a deduction from the compensation. I do not see that he could. At all events he has not done so, although I am informed he was asked to do so. The reasons of suspension must therefore be dismissed."

Of the same date the Lord Ordinary pronounced the following interlocutor:—"Finds, in respect of the 14th article of Schedule 1 of the Workmen's Compensation Act 1897, that the complainers' claim for expenses cannot be set off against the weekly payment found due by them to the respondent: Therefore repels the complainers' objections to the charge by the respondent: Refuses the prayer of the note, and decerns: Finds the respondent entitled to expenses, of which he allows an account to be given in, and remits the same when lodged to the Auditor of Court to tax and to report."

The complainers reclaimed, arguing that they could set off their claim for expenses against the weekly payment due by them. Reference was made to the First Schedule, section 14, the Second Schedule, section 12, and section 1 (4), of the Workmen's Compensation Act 1897. The first point mentioned by the Lord Ordinary in his note was not argued.

Counsel for the respondent was not called upon.

LORD JUSTICE-CLERK—I am very clearly of opinion that the judgment reclaimed against is right.

The object of the Act is to secure that an injured workman shall have for his subsistence the sum awarded to him, and that it is not to be trenched upon in any way. This is made perfectly clear by section 14 of the First Schedule.

LORD YOUNG, LORD TRAYNER, and LORD MONCREIFF concurred.

The Court adhered.

Counsel for the Reclaimers—Hunter—Thomson. Agents—W. & J. Burness.

Counsel for the Respondent—Wilton. Agent—P. R. M'Laren, Solicitor.

Friday, December 16.

SECOND DIVISION.

[Lord Low, Ordinary.

MAXTONE *v.* THE PROVOST, MAGISTRATES, AND COUNCILLORS OF DUNOON.

Local Government — Burgh — Burgh not Returning Member to Parliament—Making up Municipal Register—County Assessor on whom Duty Imposed not Entitled to Remuneration—Town Councils (Scotland) Act 1900 (63 *and* 64 *Vict. cap.* 49), *secs.* 26 *and* 67

The Town Councils (Scotland) Act 1900 provides (section 26) that the municipal register of burghs not returning members to Parliament shall be made up by the assessor for the county within which the burgh is situated, and (section 67) that the whole expense of making-up and printing the municipal register shall be defrayed by the burgh.

Held that the assessor is not entitled to remuneration from the burgh for his personal services, but only to payment of the necessary outlays which he has made.

The Town Councils (Scotland) Act 1900 (63 and 64 Vict. cap. 49), section 26, enacts—"In every burgh not returning or contri-