without grassum or consideration other than the rent?"

Now, we have been given no information in regard to the character of the new house as compared with the old, but I think that we may assume (nothing to the contrary being stated) that it is in no way inferior to the old house, and the fact that a public-house which, prior to the widening of the street, was carried on next door to the appellants' premises, has now disappeared, presumably justifies the inference that the latter premises must have increased in value. Indeed, I do not think that it was seriously disputed that a rent considerably higher than that which is being paid by M'Diarmid might have been obtained. That, however, is not conclusive, because, I apprehend, a rent may be the fair yearly value of the subjects within the meaning of the Valuation Act although it is not the highest rent which might have been obtained. The question therefore is whether in a reasonable sense the appellants can be said to have let the premises to M'Diarmid "for a yearly rent conditioned as the fair annual value thereof."

Now, Mr Usher, the managing director of the appellant company, has stated in his evidence, with perfect frankness, the circumstances under which M'Diarmid was continued as tenant at the old rent.

Mr Usher's evidence is to the effect that he did not consider what rent might be obtained for the premises, but that he continued M'Diarmid as tenant because the latter had been tenant for twenty-two years and had proved himself to be a good tenant. He further said that although M'Diarmid was in no way "tied" to the appellants he had in fact been in the habit of taking "a good deal of beer" from them.

It seems to me that that evidence amounts to an admission that the rent of £49 was not conditioned as the fair annual value of the premises, but that the appellants were, by reason of other and perfectly intelligible considerations, willing to allow M'Diarmid to occupy the premises at that rent whatever the true yearly value might be. In these circumstances I am of opinion that the verbal lease to M'Diarmid cannot be held as fixing, for the purposes of the Valuation Act, the yearly rent or value of the premises.

In questions of this kind what has been decided in one case can seldom be regarded as an authority in another case where the circumstances are different. I may, however, refer to a case, the leading feature in which was very much what we have here. I refer to the case of *Kerr's Trustees*, which is reported in 11 Macph. 983. There the proprietor of a farm which it was proved might have been let for £71 a-year, let it to an old servant whom he favoured, and to whose son he bequeathed the farm by his will, at a rent of £50 a-year. The Court held that the lease was not conditioned as the fair annual value of the farm. That decision confirms me in the view which I take that the Assessor and the Magistrates were justified in disregarding the verbal lease to M'Diarmid.

I am accordingly of opinion that the appeal should be dismissed and the determination of the Magistrates affirmed.

LORD DUNDAS—I am of the same opinion. The proof and the findings in this case have been somewhat loosely gone about, which is unfortunate. But taking them as they stand, I do not think that we are in a position to hold that the heritage in question was "*bona fide* let for a yearly rent" (viz., £49), "conditioned as the fair annual value thereof." There is, of course, no hint or suggestion in this case of *mala fides* on the part of the appellants. The question is whether or not £49 truly represents, in the circumstances, the fair annual value of the subjects. For the reasons which your Lordship has stated I answer this question in the negative. The determination of the Magistrates is, in my opinion, a reasonable and right one, and ought not to be interfered with.

The Court were of opinion that the determination of the Magistrates was right and dismissed the appeal.

Counsel for the Appellants—C. D. Murray. Agents—Simpson & Marwick, W.S.

Counsel for the Respondent — Spens. Agents—Wishart & Sanderson, W.S.

COURT OF SESSION.

Thursday, January 18.

SECOND DIVISION.

(Before Seven Judges.)

[Sheriff Court of the Lothians and Peebles at Linlithgow.

BINNING *v.* EASTON & SONS.

Process—Appeal from Sheriff—Competency—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *Sched.* ii (8)—*A.S. 3rd June* 1898, *sec.* 7 (*a*)—*Application for Warrant to have Memorandum Recorded.*

Held (*per* the Lord President, Lord Justice Clerk, Lord Kyllachy, and Lord Stormonth Darling; *diss.* Lord M'Laren and Lord Kinnear; *abs.* Lord Kincairney, who resigned before advising) that the judgment of the Sheriff in an application for special warrant to have an alleged agreement, under the Workmen's Compensation Act 1897, recorded, is final, and appeal therefrom *dismissed* as incompetent.

The Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), Schedule ii, sec. 8, provides—"Where the amount of compensation under this Act shall have been ascertained, or any weekly payment varied, or any other matter decided, under this Act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent in manner prescribed by [Act of Sederunt] by the said com-

mittee or arbitrator or by any party interested, to the [sheriff clerk] for the district in which any person entitled to such compensation resides, who shall, subject to such [Act of Sederunt], on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the said memorandum shall for all purposes be enforceable as a [Sheriff Court] judgment. Provided that the [Sheriff] may at any time rectify such register." By sec. 14 (*a*) it is provided that in the application of this schedule to Scotland the words indicated in brackets shall be substituted for those in the text.

The Act of Sederunt of 3rd June 1898, sec. 7 (*a*), provides—"The memorandum as to any matter decided by a committee, or by an arbitrator other than a Sheriff, or by agreement, which is by paragraph 8 of the second schedule appended to the Act required to be sent to the sheriff clerk, shall be as nearly as may be in the form set forth in Schedule A appended hereto. Where such memorandum purports to be signed by or on behalf of all the parties interested, or where it purports to be a memorandum of a decision or award of a committee or of an arbitrator agreed on by the parties and to be signed in the former case by the secretary or by at least two members of the committee, and in the latter case by the arbitrator, the sheriff clerk shall proceed to record it in the special register to be kept by him for the purpose, without further proof of its genuineness. In all other cases he shall, before he records it, send a copy to the party or parties interested (other than the party from whom he received it) in a registered letter containing a request that he may be informed within a reasonable specified time whether the memorandum and award (or agreement) set forth therein are genuine; and if within the specified time he receives no intimation that the genuineness is disputed, then he shall record the memorandum without further proof; but if the genuineness is disputed he shall send a notification of the fact to the party from whom he received the memorandum, along with an intimation that the memorandum will not be recorded without a special warrant from the Sheriff."

The Act of Sederunt further provides, sec. 7 (*b*)—"A judgment of a sheriff disposing of an application made to him under the Act, or a certified copy thereof, shall be dealt with by the sheriff clerk as if it were a memorandum as to a matter decided by an arbitrator agreed on by the parties duly signed by the arbitrator. . . ."

An action was raised in the Sheriff Court at Linlithgow by Andrew Binning, 15 Livery Street, Bathgate, against James Easton & Sons, slaters and plasterers, Livery Street, Bathgate, in which the pursuer, who had been injured while in the employment of the defenders, sought the granting of "warrant to record in the special register of Court kept for the purpose the memorandum of agreement between the pursuer and defenders proposed for registration by the pursuer in terms of the Workmen's Compensation Act 1897, and relative Act of Sederunt, and which was lodged by the pursuer with the Sheriff Clerk on or about the 6th day of February 1904."

The pursuer averred—"(Cond. 4) On or about the 14th day of February 1903 the defenders, through their senior partner's wife, at a meeting at pursuer's house in Bathgate, admitted liability to compensate the pursuer under the Workmen's Compensation Act 1897, and agreed and contracted to pay him compensation in terms of and under the said Act at the rate of 12s. 6d. per week from 14th February 1903. Accordingly the defenders themselves regularly paid him every week compensation under said Act at said rate from said date under said agreement down to on or about 11th July 1903, when they failed to continue said payments. Said agreement is accurately set forth in the memorandum sought to be recorded. (Cond. 5) By the defenders' said agreement and actings the defenders admitted (1) that the pursuer was a person to whom the Workmen's Compensation Act applied; (2) that compensation under said Act was due to him; and (3) agreed to pay him compensation at the rate of 12s. 6d. per week under the said Act, and they are not entitled to resile from such agreement. Through the defenders' said actings the pursuer did not take any proceedings under the Workmen's Compensation Act. (Cond. 6) On or about the 6th February 1904 the pursuer requested the Sheriff Clerk at Linlithgow to record said memorandum of agreement pursuant to paragraph 8 of the second schedule to the said Act, and at same time sent a copy of said memorandum of agreement to be forwarded to the defenders in order that the Sheriff Clerk might satisfy himself of its genuineness. The defenders acknowledged receipt of a letter from the Sheriff Clerk at Linlithgow sending them a copy of said memorandum of agreement, and stated that they disputed the genuineness of the memorandum of agreement. In consequence of said objection, which is illegal and unfounded, the Sheriff Clerk at Linlithgow declines to record said memorandum of agreement, and this petition has been rendered necessary."

The pursuer pleaded—"(1) The said memorandum and the agreement set forth therein being genuine, special warrant ought to be granted as prayed for, with expenses."

The defenders pleaded—"(1) The action is irrelevant. (2) The memorandum of agreement mentioned in the prayer of the petition not being genuine, ought not to be recorded in the special register under the Workmen's Compensation Act 1897."

On 28th June 1904 the Sheriff-Substitute (MACLEOD) after a proof found in fact that the pursuer had failed to prove the admission of liability or the agreement to pay compensation, and refused the prayer of the petition.

The pursuer appealed to the Sheriff, (MACONOCHIE) who found in fact and in law in terms of the interlocutor appealed against and dismissed the appeal on 15th July 1904.

The pursuer appealed to the Court of Session and, counsel having been heard on the competency of the appeal, the Second Division appointed the case to be argued before Seven Judges.

Argued for the respondents—The appeal was incompetent. Application for special warrant under the Act of Sederunt 3rd June 1898, section 7 (*a*), was made to the Sheriff not as a common law Judge but under a purely statutory jurisdiction—*Cochrane* v. *Traill & Sons*, November 27, 1900, 3 F. 27, 38 S.L.R. 18; *Cammick* v. *Glasgow Iron and Steel Company*, Nov. 26, 1901, 4 F. 198, 39 S.L.R. 138. The question whether or not there had been a genuine agreement was one for arbitration—*Dunlop* v. *Rankin & Blackmore*, November 27, 1901, 4 F. 203, 39 S.L.R. 146; *Blake* v. *Midland Railway Company*, [1904], 1 K.B. 503. That a workman adopting the alternative of agreement should be put to the expense of litigation in order to make the agreement enforceable was contrary to the intention of the statute. The case was analogous to that of an appeal to a Sheriff under the Railway Clauses Consolidation (Scotland) Act 1845 (8 and 9 Vict. cap. 33), section 61, under which no appeal lay against the determination of a Sheriff—*Main* v. *Lanarkshire and Dumbartonshire Railway Company*, December 19, 1893, 21 R. 323, 31 S.L.R. 239.

Argued for the appellant—The interlocutor appealed against was pronounced by the Sheriff in exercise of his common law jurisdiction, and not as an arbiter under the Act; appeal could not be by stated case—*Cochrane* v. *Traill & Sons, cit. sup.* The appeal was taken from the Sheriff's findings in fact, and was competent—*Cammick* v. *Glasgow Iron and Steel Company, cit. sup.*, Lord Trayner, 4 F. 202.

At advising—

LORD JUSTICE-CLERK—This case turns on the question whether the proceeding for testing the genuineness of an agreement under the Workmen's Compensation Act and relative Act of Sederunt, with a view to its being registered, must be, where a dispute arises as to genuineness, in a Court litigation, with appeal from one Court to another, or whether such a proceeding is of a ministerial nature, to be dealt with by the official appointed by the Act, without review. What seems to be contemplated is that where a memorandum is laid before the sheriff clerk, he shall at once, if satisfied of its genuineness, place it on the register. This is plainly not a procedure in any process of law, but merely a convenient means of providing for a claim based on a memorandum such as the statute contemplated being so formalised as to give to the claiming party under it a right to proceed by summary diligence to put it in force unless stayed by some competent process. To this procedure there is added by Act of Sederunt the useful proviso that if the sheriff clerk finds that genuineness is not admitted the matter shall be referred to the Sheriff to decide. It appears to me that this amounts to nothing more than bringing in the Sheriff to fulfil the duty which in an undisputed case would be done by the sheriff clerk, who if satisfied would register, if dissatisfied would refuse to register. That appears to me to be a ministerial act only. I do not think it alters its character in any way that in order to the question of registering or not registering an inquiry may be necessary. Such an inquiry is not by any means inconsistent with the duty to be discharged being ministerial under the statute, as distinguished from a proceeding in a Sheriff Court process properly so called. I see no ground for holding that the statute intended that a proceeding for registration of a memorandum should become a process of pleading, to be carried, it may be, through several courts of review. If the words of the statute plainly implied this of course the implication would require to receive effect. But in a statute plainly intended to give a rapid, simple, and easy procedure for settlement of workmen's claims for injury, it would require very distinct enactment to make it imperative that such a procedure as the one in question should be held to be in the same category as an ordinary action in the Sheriff Court, liable to run the gauntlet of Court after Court, involving great delay and expense.

If there is nothing in the statute to justify such a conclusion, as I think there is not, then I cannot hold that anything done by Act of Sederunt can make the decision different from what it would have been had the Act stood alone. I do not think that any Act of Sederunt could competently be passed to an effect which would make the procedure open to a series of appeals for which the statute gave no authority.

My view is that the proceedings for the registration of a memorandum, whether dealt with by sheriff clerk or by the Sheriff on his reference, are ministerial, and that appeal is not competent.

LORD M'LAREN—The enactments to be considered are the Workmen's Compensation Act, sec. 8 of the 2nd schedule, and the relative provisions of the Act of Sederunt, 3rd June 1898.

Section 8 provides— . . . [*His Lordship proceeded to quote section 8 of the 2nd schedule to the Act, and also section 7 (a) of the Act of Sederunt of 3rd June 1898, supra.*] . . .

I assume, in accordance with previous decisions, that a verbal agreement may be the subject of a memorandum under the Act of Parliament. I also assume that the Act of Sederunt has the force of law, being framed in the exercise of powers conferred by Act of Parliament. It follows that as in this case the genuineness of the memorandum was disputed the writing could not be recorded, and would not be "enforceable as a Sheriff Court judgment" without a special warrant under the hand of the Sheriff.

It is quite clear that in granting the warrant for registration the Sheriff does not act as arbitrator, because arbitration and

agreement are alternative methods, and the provisions as to registration presuppose a completed arbitration or a completed agreement. The Act of Sederunt is silent as to the procedure necessary for obtaining a special warrant from the Sheriff, and I assume that the procedure may be as informal as is consistent with the administration of justice. But clearly the Sheriff could not grant the warrant *periculo petentis*. To do so would be to make the Act of Sederunt a dead letter. The Sheriff must at least hear what the other party has to say against the genuineness of the memorandum, and if the parties are at issue as to the existence of an agreement he must proceed upon evidence given on affirmation or oath, because our laws do not allow an issue of fact to be determined on unsworn testimony.

Having heard the arguments and the evidence adduced, the Sheriff may then issue a warrant of registration, which according to the language of the Act of Parliament is to be "enforceable as a Sheriff Court judgment."

I think in the procedure which I have sketched we have all the characteristics of proper judicial procedure—a Judge appointed by the Crown and not acting as an arbitrator, an application by one of the parties for his intervention, an issue joined, a judgment on the facts and law of the case, and the power of enforcing that judgment by the ordinary diligence of the law.

But if in granting the warrant the Sheriff is acting judicially, I think it must be taken that his decision is subject to review, because neither in the Act of Parliament nor in the Act of Sederunt is the Sheriff's decision made final, and at common law all decrees and warrants of inferior magistrates are subject to the review of the Supreme Courts.

Let me suppose that no provision had been made by Act of Sederunt prohibiting the Sheriff Clerk from puting the memorandum on the register when the parties were at variance on the subject. What would be the remedy of the party who disputed the genuineness of the memorandum?

It does not seem to be open to doubt that he would be entitled to apply to a Court of law for interdict against the registration of the memorandum. The Act of Parliament only empowers the Sheriff Clerk to record the memorandum "on being satisfied as to its genuineness," and how could he be satisfied of that fact if one of the two parties to the alleged agreement denied its existence? In such circumstances the recording of the agreement would be an illegal act, *i.e.*, an act not authorised by the schedule, and would therefore be a proper subject of restraint by interdict. Then the Sheriff's judgment would be appealable. So far as I see, this mode of determining the question in dispute would still be competent, because the Act of Sederunt does not say how the jurisdiction or authority of the Sheriff is to be set in motion, but leaves the parties free to move the Sheriff according to known forms of process. It is certainly a more convenient way of determining such a question that the party putting forward the alleged agreement should initiate the proceedings, but then I am unable to see that this makes any difference as to the right of appeal. I do not think that the party who is *in petitorio*, by presenting an application for warrant to record can deprive the defender of the right of appeal, which he would have if he unsuccessfully applied for interdict against the recording of the memorandum.

It is certainly undesirable that such questions should be made the subject of protracted litigation, but as regards this Court at all events, there is nothing in the notion of an appeal which can be said to be contrary to the spirit of the Act, because in the alternative case of an award of compensation by the Sheriff as arbitrator the right of appeal exists. If there is also the right of appeal to the House of Lords, that is only because in this particular case the Act of Parliament has not empowered the Sheriff or the Court of Session to give a final decision, but has expressly made the genuineness of the memorandum a condition of the right to have it recorded.

It seems to me that as regards the interests of the injured workman or his dependants it is of very little consequence whether an alleged agreement is or is not recorded. If its genuineness is disputed it is always open to the party putting it forward to withdraw the agreement and to claim arbitration—that is, if he has given the preliminary notice, which he would probably do in any case to keep himself safe.

I am therefore disposed to sustain the jurisdiction, for the reasons which I have stated.

LORD KINNEAR—The only question which we have to decide is whether this appeal should be heard and disposed of on the merits, or whether it should be dismissed as incompetent. I agree with Lord M'Laren in thinking that it is competent and should be disposed of on the merits. But I cannot say that I concur with his Lordship in assuming that a memorandum drawn up by one of the parties and embodying a previous verbal agreement is proper to be recorded under the 8th section of the second schedule. That is one of the questions that may be raised, and it has not been argued before this Court. The only question, therefore, which I propose to consider is whether the appeal is competent.

The Workmen's Compensation Act 1897, sched. II, sec. 8, has conferred on the workman the right to require in certain cases that a memorandum of an agreement shall be recorded in a special register. I agree with the Lord Justice-Clerk that the duty of recording which is imposed on the sheriff clerk is ministerial and not judicial. But for that very reason it is impossible, in my opinion, to hold that when a memorandum is presented to him, the sheriff clerk has an absolute and exclusive jurisdiction to decide whether it shall be recorded or not. Indeed he has no jurisdiction in any proper sense of the word.

The statute gives a right to which the Clerk must give effect. The provision is imperative—the sheriff clerk "shall" record the memorandum when presented to him. I think the general rule by which this case may be decided is this—that when an Act of Parliament confers a right it does not intend it to be violated without remedy; and if the Act itself gives no special remedy the party aggrieved must have recourse in order to enforce his right to the ordinary Courts of the country. I conceive, therefore, that if the sheriff clerk refuses to record a memorandum the workman has the right, by an appropriate action, to have him ordained to perform the duty imposed on him. In many cases it might be a very difficult question for the sheriff clerk to decide whether or not a memorandum should be recorded; and the case before us is an example, because although the question of fact which the Sheriffs have decided is probably simple enough, the question whether this is a memorandum which ought to be recorded at all is a very troublesome question of construction, depending as it does on the interpretation of two clauses—section 8 and section 14 (*b*) of the second schedule—which it is by no means easy to reconcile. But that is all the more reason for saying that the final decision in the matter is not to rest with the Sheriff Clerk. Unless it is excluded by express terms or by necessary implication, the workman has a remedy—the ordinary remedy of going to the Sheriff and asking him to ordain the memorandum to be recorded; and of course it follows that the employer in like manner has his remedy when it is proposed to record a memorandum so as to make it enforceable as a judgment although he has not in fact made the agreement which is alleged. I think it impossible to hold that the Legislature intended either that the workman should be denied the right which the statute gives him, or that the employer should be subjected to diligence for payment of a debt he never contracted, at the discretion of a clerk of court who has no judicial authority whatever.

If in such an action an ordinary application in the Sheriff Court would be competent, I do not see why an appeal in that action from the Sheriff to the Court of Session in the usual way should not be equally competent. The only distinction which it is possible to state between such a case and the one with which we are dealing, is that here the petition in the Sheriff Court does not conclude in the ordinary form for an order on the sheriff clerk to record the memorandum, but craves the Sheriff to grant warrant to have the memorandum recorded. The form of the prayer is taken from the terms of the 7th section of the Act of Sederunt, and I think it is a proper form. A question has been raised as to the competency of the Act of Sederunt. I think it competent, because the Act does not exclude an appeal to the Sheriff; but if it were otherwise I do not know by what authority the Court could empower the Sheriff to interfere with the exercise of a discretion which, on that hypothesis, has been committed by Parliament exclusively to the sheriff clerk. If the Sheriff has jurisdiction in the matter at all it makes no difference, in my opinion, whether the writ by which the question is brought before him concludes for a decree or for a warrant. It has been suggested, however, that although a remedy may be given to either party by action in the Sheriff Court, with the ordinary rights of appeal from the Sheriff-Substitute, the present appeal is incompetent, because it is not taken by way of action, but in the course of the performance of a ministerial act which was not intended to give rise to a litigation. The appellant must therefore submit to the Sheriff-Substitute's deliverance in the meantime, and if he wants a judicial and therefore appealable deliverance he must bring a fresh action. I am unable to find in the statute any reason or excuse for this reduplication of processes; and I think it inconsistent with the general scheme of legislation, inasmuch as it multiplies procedure and increases expense. The parties either have a right to go to the Sheriff or they have not. If they have, they must be allowed to exercise it directly and in the simplest form. If they have not, they must submit to the decision of the sheriff clerk.

I am therefore of opinion that the competency of the appeal should be sustained, and that the Court should proceed to consider whether the Sheriff was right in refusing the application on its merits.

LORD KYLLACHY—I am unable to hold that the Act of Sederunt provides, or that the statute contemplates, that when, on an application for registration under the 8th section of sched. II, a question arises as to the genuineness of an agreement, that question shall be simply referred to the arbitrament of the courts of law, the applicant being left to establish his agreement as if the statute had not existed, with this difference only, that, although the litigation may be carried by either party to the House of Lords, the applicant must in all cases begin in the Sheriff Court.

I am not myself able to think that this was what the statute contemplated. It appears to me, on the contrary, (1) that, without excluding the common law right of parties to enforce their agreements in any competent manner, the scheme of the statute was to provide a short and inexpensive road to the statutory register which, once reached, should confer a *prima facie* right to summary diligence; and (2) that, ancillary to that, the scheme of the Act of Sederunt was that, as the statute required that the registrar before registering should be satisfied of the genuineness of the agreement, the question of genuineness, if disputed, should be determined, at least for the purposes of registration, by a reference to the Sheriff, who, after such inquiry as he thought proper, should settle, *vice* the Sheriff Clerk, and with the same degree of finality, whether or not the registration should be allowed.

I am not, therefore, prepared to hold otherwise than that the Sheriff in this matter is final. In other words, I am not prepared to hold that there is an appeal from the Sheriff-Substitute to the Sheriff, and from the Sheriff to the Court of Session, and from the Court of Session to the House of Lords. It seems to me that such a procedure would be contrary to the scheme of the statute, and, if introduced by the Act of Sederunt, would have been *ultra vires*. Nor do I see that any injustice or hardship is thus caused to either party. The applicant for registration (who will in general, I suppose, be the workman) has, if he fails to reach the register in the manner provided, his remedies at common law as before. He may proceed to constitute and enforce his agreement by a small debt or other action. Or if he pleases he may drop his alleged agreement and proceed to arbitration. If, on the contrary, he (the applicant) succeeds in reaching the register, and his opponent is dissatisfied, and desires to try formally the question of genuineness, he also has his remedy by a suspension or reduction, and perhaps also (though as to this I give no opinion) by an application to the Sheriff to rectify the register. I should expect, if I may say so, that in the great majority of cases—indeed in all but very exceptional cases—the result of the statutory procedure would be practically decisive. But in any case I cannot, as I have said, hold that the Sheriff in this matter discharges merely his ordinary jurisdiction. I think, on the contrary, that if he discharges a jurisdiction at all it is a statutory and special jurisdiction, under which his decision is, for a particular purpose, final.

Perhaps I should add that, if I thought otherwise—if I thought, that is to say, that the Sheriff was exercising his ordinary jurisdiction with all its incidents—I should, I am afraid, require to consider a question, which has not yet arisen, but which may arise hereafter, viz., whether an agreement for the payment of money by way of compounding a statutory obligation to compensate for accident, is an agreement which, under his ordinary jurisdiction, a Sheriff could allow to be proved otherwise than by writing. There is a familiar category of decisions which at least suggest that question.

I should also perhaps add that the finality of the Sheriff with respect to the existence or non-existence of an agreement is not under this statute unexampled. For, in applications under schedule 1, section 12, for review of the weekly payments under an agreement, it is, I suppose, certain that the Sheriff may have to make up his mind, in the first place, whether an agreement exists —in other words, whether there is any weekly payment to review. And in that case, while there would be an appeal to this Court on case stated, such appeal could only be upon matter of law.

LORD STORMONTH DARLING—I concur with the Lord Justice-Clerk and with Lord Kyllachy.

LORD PRESIDENT—This question turns upon section 8 of the second schedule of the Workmen's Compensation Act 1897 and the relative Act of Sederunt. I note, first, that section 8 does not bear to be dealing with the question whether or not on the merits of the case compensation is due. It assumes that the liability to pay compensation and the amount have been already ascertained, and it then provides the method of enforcing payment if required. Therefore it is not surprising if the mode adopted, that of registering the agreement and making it equivalent to a decree of Court, should be committed not to a judge but to an officer of court. So far, I understand Lord Kinnear to go the same way as I do, for he says that the act is ministerial. But I part company with him at the next step. He says that if a ministerial act is not done the aggrieved party is never deprived of his remedy, the remedy of having the party charged with the duty of performing the Act ordained to do his duty. I agree. But in this case the question is not that the sheriff clerk has refused to register the memorandum, but whether, on the merits, this particular memorandum is genuine and one which should be registered.

Reverting then to the position that here there is a ministerial act to be performed by a person who is not a judge, I turn to the terms of the Act of Sederunt. The Act of Sederunt has provided that if the sheriff clerk is in doubt as to the genuineness of the memorandum he may appeal to the Sheriff. But in such a case I think the Sheriff is invoked not as a judge but as the natural counsellor and leader of the sheriff clerk, and when he has made up his mind, it is not the Sheriff who registers the memorandum but the sheriff clerk under his directions. If the Act of Sederunt had taken away this ministerial function from the sheriff clerk and given it to the Sheriff, then I think the Act of Sederunt would be *ultra vires*, because the Act of Sederunt has only the power which the Act of Parliament gives it.

I therefore come to the conclusion that the act of the sheriff clerk is ministerial, that though the Sheriff was called in to help, he was not brought in as a judge, and that no appeal lies from his determination to this Court. The remedy for possible injustice lies in the power of application for revision of the compensation.

I think this view is consistent generaliy with the whole scope of the Act, and I do not hold this view because I think that anything turns upon the question of the form of the application. If it were a question of form merely, I do not think we should stick upon it. But I think it is a question on the merits, for it involves the difference between speedy and possible dilatory procedure. I am therefore of opinion, with the majority of your Lordships, that the appeal should be dismissed as incompetent.

I wish to say further, although in doing so I may be going beyond my province, that it has been to me a very great difficulty to apply my mind to the question as

it arises on this Act of Parliament. Because there is no doubt that there is here a pure blunder. In Scotland the proper course for a workman who has made an agreement with his employer, and wishes to have it made equivalent to a decree of Court, is provided by sub-section (*b*) of the 14th paragraph of the second schedule. Paragraph 8 of the second schedule is not meant to apply to Scotland at all, and there is no doubt that in the section (sched. II, section 15) which provides that "paragraphs 4 and 7" shall not apply to Scotland, "7" should be "8." The whole difficulty arises from a misprint which in some way found its way into the bill after it had left the House of Commons. But as judges we are powerless to remedy this; we are bound to apply our minds to the statute as it stands, and I have tried to do so in the way I should have done in any other case.

LORD KINCAIRNEY, who was present at the hearing, resigned before advising.

The Court dismissed the appeal.

Counsel for the Pursuer and Appellant—G. Watt, K.C.—J. R. Christie—J. D. Smith. Agent—James G. Bryson, Solicitor.

Counsel for the Defenders and Respondents—Campbell, K.C.—MacRobert. Agents—Macpherson & Mackay, S.S.C.

VALUATION APPEAL COURT.

Thursday, February 8.

(Before Lord Low and Lord Dundas.)

ORMSTON *v.* ASSESSOR FOR GREENOCK.

Valuation Cases — Lease — Consideration other than Rent—Purchase of Goodwill of Business—Break in Lease—Subsequent Purchaser of Property Raising Rent at Break in Lease.

A, the proprietor and occupier of a public-house, in consideration of a rent of £39 and the payment of a sum of money for goodwill, granted to B a lease of the premises for fifteen years from Whitsunday 1897 with a break at Whitsunday 1905. The premises were entered in the valuation roll at £59, of which £39 was the rent in the lease and £20 was one-fifteenth of one-half of the purchase price of the goodwill. A subsequently sold the property to C, who taking advantage of the break in the lease raised the rent payable thereunder to £49, and this was given effect to by minute of agreement, the whole other conditions of the lease being conserved. The Assessor thereupon entered the property in the roll at £69. C appealed and maintained that the entry should be £49, inasmuch as that was the full rent he obtained after purchasing the property in open market, and that he had received nothing for goodwill, and if any of the payment for goodwill effeired to the property it must be considered to have been exhausted at the time of the break in the lease.

Held that as C had bought the subject under burden of the lease to B he was liable to all the consequences of that lease, that the agreement between C and B at the break in the lease was not a termination of the old and a substitution therefor of a new lease, and that therefore the Assessor had acted rightly in entering the subject in the roll at £69.

At a meeting of the Magistrates of the burgh of Greenock, held there on 20th September 1905, for the purpose of hearing and determining appeals and complaints under the Valuation of Lands (Scotland) Acts for the year ending Whitsunday 1906, Richard Dennistoun Ormston, residing at 35 Bowmont Street, Kelso, appealed against the following entry in the valuation roll of the town and burgh of Greenock for the year ending Whitsunday 1906:—

Description of Subject.			Proprietor.	Tenant.	Yearly Rent or Value.	Observations.
Description.	No.	Situation				
Shop and Store.	38	Main Street.	Richard Dennistoun Ormston, Kelso.	John Gemmell Ostler, Spirit Dealer.	£69	Tenant pays £49. Goodwill added.

The tenant did not appear in the proceedings.

The Magistrates being of opinion that the entry in the roll was correct dismissed the appeal, and the appellant craved a Case for opinion of the Lands Valuation Court.

The following facts were stated in the Case as admitted—"(1) The appellant is proprietor of a tenement situated at 38 Main Street, consisting of three square storeys in height, including two shops on the street floor. The eastmost of these shops with a store behind is the subject the amount of the yearly rent of which is in question. The said shop and store are occupied by John Gemmell Ostler as a licensed public-house.

"(2) The former proprietor of the said tenement, Andrew Miller, was also occupier of the licensed premises. He got into financial difficulties, and in March 1896, conveyed the property to William Lawson, wine and spirit merchant, Leith, by a disposition *ex facie* absolute, but really in security of debts due by the said Andrew Miller.

"(3) In February 1897 the said Andrew Miller granted a trust-deed in favour of James Paterson, accountant in Greenock, for behoof of his creditors.

"(4) The said James Paterson, with concurrence of the said William Lawson, sold the goodwill of the said Andrew Miller's licensed business to the said John Gemmell Ostler for £650, in consideration of which the said William Lawson and the said James Paterson, with joint consent, granted him a lease of the shop for fifteen years at a rent of £39 per annum, with a break