compensation at the full statutory rate which had been regularly paid and accepted.

The Sheriff-Substitute allowed a proof, and found compensation due at the rate already mentioned, from the date of the last payment until the further orders of Court; and he awarded modified expenses to the respondent.

The Sheriff-Substitute thus virtually repelled the employers' objections to the petition; and so far as the stated case shows, the ground on which he did so was, that in making payment of the weekly compensation to the respondent the appellants had intimated to him, apparently on more than one occasion, that in their opinion and in that of their medical adviser "he had recovered and ought to be seeking for work, and that the payment of 9s. 9d. would in a very short time be stopped." In the view of the Sheriff-Substitute there had thus arisen a question as to the duration of compensation within the meaning of section 1, sub-section 3. In my opinion, no such question had arisen at the date when the petition was lodged, which is the material date. By the terms of the Act itself every payment of compensation is subject to review *de futuro;* and I regard the words used by the appellants when they made the payments as being no more than an expression of what the statute implies, namely, that the payments might have to be reviewed in the future, and even in the near future. In that sense the duration of compensation is always uncertain; but that does not mean that there is always a question as to its duration within the meaning of section 1, sub-section 3. There might be a case of payments being stopped on an allegation of complete recovery. But that is not this case. Here full payment had been regularly made down to date in accordance with the appellants' liability under the statute. It lay with the employer to make the next move, namely, to require the workman to submit himself for examination under section 11 of Schedule 1; and I see no reason at all for the assumption that in this case the employers would have taken the matter into their own hands. Indeed, I draw the contrary inference from the facts set forth by the Sheriff-Substitute as proved.

It follows that the petition should have been dismissed, unless it can be supported on the ground indicated in the second question of law stated by the Sheriff-Substitute. That question is, whether, where a workman has no agreement capable of registration under the Act, "he is entitled to have his right to compensation constituted and controlled by a court of law as a guarantee against injustice being done to him or by him?" The only possible answer is, that neither party has any right under the statute except what the statute confers; and that the question ignores the statutory conditions upon which alone an arbitration is admissible under section 1, sub-section 3. It is not until the parties are at arm's length that the statute contemplates a resort to arbitration, and then only when some definite question has arisen between them, which they have had at least an opportunity of settling by agreement and which they have failed so to settle. The mere fact that there exists no agreement capable of registration does not show that the parties are at arm's length. On the contrary, that is the normal state of matters, where, as here, the parties are *de facto* in agreement from the very first, and where compensation has been paid over a period of many weeks on the maximum scale.

In these circumstances I am of opinion that the Sheriff-Substitute ought to have dismissed the petition; and that his award of expenses was incompetent and must be recalled.

The LORD PRESIDENT and LORD KINNEAR concurred.

LORD M'LAREN was not present.

The Court pronounced this interlocutor—

"Find that the petition by the applicant is incompetent: Therefore find it unnecessary to answer the two questions of law stated: Recal the award of the arbitrator: Remit to him to dismiss the claim, and decern: Find no expenses due to or by either party in connection with the stated case."

Counsel for the Appellants—C. D. Murray—Hossell Henderson. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Thursday, June 7.

FIRST DIVISION.

[Lord Johnston, Ordinary in Exchequer Causes.

PATERSON *v.* INLAND REVENUE.

Revenue—Public-House—Licence Duty—Billiard Saloon in Flat above—Whether Part of Licensed Premises—"Offices"—Inland Revenue Act 1880 (43 *and* 44 *Vict. c.* 20), *sec.* 43.

The tenant of a public-house was tenant under a separate lease of a billiard saloon situated in the flat immediately above the public-house. There was no internal communication between the saloon and the public-house, access to the saloon being obtained by an outside staircase.

Held that the billiard saloon was neither part of the dwelling-house in which the retailer resided or retailed spirits, nor within the description "offices, courts, yards, and gardens therewith occupied," and consequently that licence duty was not exigible in respect thereof.

The Inland Revenue Act 1880 (43 and 44 Vict. c. 20), section 43, enacts—"(1) On and after the first day of July 1880, in lieu of the duties of excise now payable on licences

to be taken out by retailers of spirits in the United Kingdom, there shall be charged and paid the duties following (that is to say)—If the annual value of the dwelling-house in which the retailer shall reside or retail spirits, together with the offices, courts, yards, and gardens therewith occupied, is under £10 . . ." [*Here follows a sliding scale of the duty payable.*]

On 28th October 1905 William Cleghorn Paterson, wine and spirit merchant, Harbour Bar, Girvan, brought an action against the Lord Advocate as representing the Commissioners of Inland Revenue, in which he sought declarator that he was not bound to pay excise licence duty in respect of a billiard saloon occupied by him as tenant, and situated in the flat immediately above his licensed premises. He also sought repayment of excess licence duty which he had paid under protest in respect of the said saloon.

The premises for which the pursuer held a public-house certificate consisted of a single room (the bar) with a dwelling-house of one room and kitchen attached, and were occupied by him under a lease, dated 17th November 1902, at an annual rent of £14. Under this lease he also occupied the stable, cellars, and outhouses behind the "Harbour Bar," at an annual rent of £11. Under another lease dated 25th May and 6th June 1905 he occupied as a billiard saloon at a rent of £20 the flat above the bar, room and kitchen. It belonged to the same proprietrix but had no internal communication with the lower flat, access to the saloon being obtained from the street through a pend leading to the yard behind and by an outside stone staircase going up from the yard to the flat above. There was also a private exit behind the bar into the entrance lobby of the dwelling-house, and thence through a back door into the court behind, from which the saloon might be reached by ascending the outside stone staircase above described, thus avoiding the necessity of going out into the public street.

The pursuer pleaded—"(1) The pursuer is entitled to decree of declarator as concluded for in respect that (*a*) the said flat occupied by him as a billiard saloon is not certificated by the licensing authority for the sale therein by retail of exciseable liquors; (*b*) the said flat is a separate tenement from the certificated premises; and (*c*) the said flat is not occupied by the pursuer along with certificated premises as offices, courts, yards, or gardens."

The defenders pleaded—"(1) In the circumstances and on a sound construction of the statutory provisions relating to licence duty, the rent of the billiard room is rightly included in the annual value according to which the duty has been charged."

The facts connected with the case are given in the opinions of the Lord Ordinary and the Lord President.

On 7th March 1906 the Lord Ordinary in Exchequer Causes (JOHNSTON) assoilzied the defender from the conclusions of the summons.

Opinion—"The pursuer is tenant under a lease, No. 6 of process, of a public-house for six and one-half years, commencing at Martinmas 1902. The premises when they were first let to him consisted of the bar in Knockushion Street known as the Harbour Bar, with the stable, cellars, and outhouses behind the same, all as presently occupied by Hugh Kirkwood, publican there, under exception (from and after the term of Whitsunday 1904) of the flat above the said public-house, which flat was to be taken over by the landlady at Whitsunday 1904. Accordingly, the upper flat was in the hands of Mr Kirkwood, the publican who preceded Mr Paterson. It is not indicated whether it was used by him as a billiard saloon or not, and for the purposes of the case I shall assume that it was not. The landlady did take the upper floor back into her own hands after a short period, but by the lease No. 7 of process she re-let it to Mr Paterson at Whitsunday 1905 for a period of seven years, and the terms of this lease, I think, require to be noted. The subject is described as that flat above the said Harbour Bar, situated at the corner of Henrietta Street and Knockushion Street, Girvan, to be used by him as a billiard saloon, and that for a period of seven years from and after the term of Whitsunday 1905. Now, Mr Young is quite right in drawing attention to this, that not only is the use of the upper flat defined, but that there is a break in favour of the landlady just at the term at which the lease of the public-house runs out, showing, therefore, that in her mind the billiard saloon was a valuable adjunct—I use that word in preference to offices—a valuable adjunct of the public-house business. I think that the same thing is shown by the previous passage, which declares that in the event of Paterson, the publican, selling the business, the landlady shall be bound to accept the purchaser as tenant of the billiard saloon after let. Now, I cannot read that otherwise than as indicating that in the first place the landlady thought the billiard saloon an important adjunct of her public-house premises, and, in the second place, that Mr Paterson thought that it would be of no use to him if he had not got the public-house, and that at the same time its possession would enhance the value of the public-house as a marketable subject. Now, these considerations do not necessarily lead to the decision of the case, but they are, I think, pertinent to the question which I have got to consider, and that is whether the terms of this statute, badly worded as they are, support the demand of the Crown. What I have got to interpret are the words, 'if the annual value of the dwelling-house in which the retailer shall reside or retail spirits, together with the offices, courts, yards, and gardens therewith occupied,' is as defined, the duty should be as specified. Now, there is no question that the first case which was referred to, the case of *Lawrence* and its sequels, the cases of *Kirk* v. *The Lord Advocate*, and *Paterson* v. *The Lord Advocate*, are all cases dealing

with the question of 'the dwelling-house.' They are all cases in which a dwelling-house, practically separate, was sought to be brought under the definition of 'the dwelling-house in which the retailer shall reside or retail spirits,' and I do not think they really throw any light upon the question which we have here. At the same time, I agree with Lord Stormonth Darling when, in a subsequent case bearing more nearly upon the question, he says that his statement in the case of *Kirk* to the effect that 'the test of liability is the annual value of the certificated premises and no other,' was not an accurate statement if it be taken as a general statement, but that he intended it only with reference to the particular circumstances with which he was dealing.

"The question which I have to determine is rather upon the latter half of the clause quoted above, than the former, viz., whether this billiard saloon can be brought within the term 'offices, courts, yards, and gardens therewith occupied.' I think that the case of *Phillips* v. *The Lord Advocate*, 1 Fr. 828, is much nearer an authority than these above referred to, and supports me in the conclusion at which I have arrived, that such premises as this billiard saloon must be held to be covered by the terms of the statute. I set aside 'courts, yards, and gardens' and look at the word 'offices' only, but I must take the word 'offices' in conjunction with the words 'therewith occupied.' Now, the word 'offices' is a word of very wide meaning. I think you may search the dictionary through and you will hardly get a word to which such various grades of meaning have been gradually attached. Even when used in the plural, and taken in the special significance in which presumably it is used here, it is an extremely general word. I don't think I can do better than refer to two quotations in Murray's Dictionary. The *Times* of 1798 has this passage, 'To be sold, a freehold house with numerous attached and detached offices of every description.' Now, it seems to me that that indicates that one hundred years ago at any rate the word 'offices' carried an extremely wide meaning. Again, he gives this passage from an author Russell writing in 1881—'The usual outbuildings and offices which such fortified places contained.' It seems to me that these indicate a wide range of meaning, and of meaning fluctuating with the principal subject. The term 'offices' describes something which is pertinent, but it describes something which corresponds as a pertinent with the principal subject. That is appropriate as a pertinent to one thing which is not necessarily appropriate to another. For instance, to go back to Murray, a pantry, scullery, laundry, etc., are not appropriate offices of a farm, neither are byres and dairies appropriate offices of a dwelling-house, but they are each respectively offices of this particular principal subject. Now, if one considers what the principal subject is here, viz., a public-house, that may fairly come under the term offices in connection with a public-house, which would not necessarily come under the same term with reference to another building. Therefore, as I said at the beginning, one must regard not merely the word 'offices,' but the words 'occupied therewith,' as marking the relation between the 'offices' and their principal subject. Now, I cannot dispossess my mind of the consideration that a billiard saloon is an adjunct of a public-house which every publican would be delighted to have. There can be no question that—to refer to the case of *Phillips* (*supra cit.*)—the stable is not necessary to the public-house, but it is a very convenient adjunct of the public-house. It gives the customers of the public-house an opportunity of stabling. They get no drink in the stables, but in consequence of the use of the stable they are attracted to the public-house. I think that the billiard saloon is in very much the same position. A man who goes to the billiard saloon gets no drink there, because I cannot accept the suggestion of Mr Young that the licensed premises cover the billiard saloon. He can get no drink there, but the attraction of the billiard saloon is also an attraction to the public-house; and, apart from the terms of the lease, I cannot hold that the billiard saloon is not really 'therewith occupied.' The billiard saloon is truly an adjunct of the public-house in the sense of the statute and therefore an office in the sense of the statute. I say 'apart from the lease,' because if I go to the lease I find that conclusion confirmed by the terms of the lease to which I have already referred. Accordingly I am prepared to hold that this billiard saloon must be included in the annual value of the licensed premises just as much as the stable, courts, washing-house, and whatever else there may be in the back yard, and I therefore assoilzie the Crown from the conclusions of the summons with expenses. . . . .

"I think I should add that the situation of the premises weighs with me also. I cannot say that these have that separateness which the pursuer contends for. The court is not in any way a public court. One other set of premises has a right-of-way through it; otherwise it is truly a private court belonging to the public-house, and the passage to the billiard saloon is part of it."

The pursuer reclaimed, and argued—The question turned on sub-sec. 1 of sec. 43 of the Inland Revenue Act 1880 (43 and 44 Vict. c. 20). The licence was for the "Harbour Bar," together with "the offices, courts, yards, and gardens therewith occupied." The saloon clearly did not fall under any of the last three. A billiard saloon was not one of the "offices" of a public-house in the sense of the Act—*Lawrence* v. *The Lord Advocate*, January 24, 1889, 53 Justice of the Peace Reports, 167; *Kirk* v. *Lord Advocate*, October 22, 1897, 5 S.L.T. 143; *Phillips* v. *Lord Advocate*, December 28, 1898, 1 F. 828, 36 S.L.R. 636; *Grant* v. *Langston*, May 28, 1900, 2 F. (H.L.) 49, 37 S.L.R. 691; Webster's Dictionary, *voce* "offices." The saloon could not be called a pertinent, for it was held on a separate lease. The subjects were separate and the rents were separate. One of the leases too excluded assignees

and the other did not. The rent of the saloon, £20, was more than the rent of the licensed premises. The Lord Ordinary was wrong in thinking that the saloon fell within the word "offices." The word "offices" must be construed with relation to the principal subject, *e.g.*, "offices" of a farm-house. The saloon was not necessary for the purposes of the other, and the "offices" of a house meant such buildings as were necessary for the purposes of the house.

Argued for respondent—In *Grant* v. *Langston* (*ut supra*) the subject in question was really a shop, not a dwelling-house. The case of *Phillips* v. *Lord Advocate* (*ut supra*) was in the respondent's favour. The billiard saloon was occupied as an appanage of the public-house. The upper flat was referred to in the lease of 17th November 1902 as within the "offices," *e.g.*, "the said public-house and offices, including the flat above the same." The lease of 1905 provided that the billiard saloon was to be so conducted as not to endanger the licence of the public-house. That showed the subjects were meant to go together. Moreover, the lease provided that if the public-house were sold the proprietrix should be bound to accept the purchaser as tenant of the saloon. "Offices" need not be such buildings as were "necessary" for the use of the principal subject—it was enough if they were used for and as part of the subject. A "store" and a "billiard saloon" were both offices of a public-house if they were used as part of the premises.

LORD PRESIDENT—The reclaimer here, Mr Paterson, occupies a public-house known by the name of the Harbour Bar at Girvan, which consists of a single room in which spirits are sold, with a dwelling-house of one room and kitchen attached. There are also in connection with the premises certain outhouses and stables. Above the public-house proper, and in the same building, there is another flat. That flat has not got internal communication with the premises below, but separate access is obtained thereto by means of an outside stair. The conditions of occupation of that flat at this time are that it is occupied by Mr Paterson as a billiard room, and the whole question in the present case is whether the Crown in charging licence duty against Mr Paterson, which as your Lordships are aware is charged upon a sliding scale according to the value of the premises, is or is not entitled to aggregate with the other subjects the value of the billiard room.

Now, that question turns upon the phraseology of the 43rd section of the Inland Revenue Act of 1880, which imposes the duty, and that section is as follows:—[*reads section*]. Now, it is clear that anything to be included in the valuation must be in one of two categories. It must be either "the dwelling-house in which the retailer shall reside or retail spirits"—and I may say in passing that certainly in the process of years the emphasis upon the word dwelling may be said to have been taken away, and it is held that a house in which a retailer retails spirits is a house of this character, even although he does not dwell in it, in the sense of sleeping in it—it must be either that or it must be "the office, court, yard, or garden" which is occupied with the dwelling-house in which the retailer shall reside or retail spirits. Now, I take those two questions separately. First of all, is this billiard room a part of the dwelling-house in which the retailer shall reside or retail spirits? I think it is clearly not, and I think so for this reason, that in the question of the unity of a house, as to which there is a great deal of authority, not only in connection with this statute but also in connection with the Inhabited House Duty Statutes, I think the criterion has always come to be, whether there is or is not internal access. The simplest case of a house is where a house is entirely self-contained. You enter on the ground floor and obtain access to all the rest of the house from that floor. But houses may be built in storeys, and they may be built in such a way that storeys or even different parts of one storey may be in the sense of the law separate houses. That is so in the case of the inhabited house duties, and it is so also, so far as I know, in other cases in which the law has construed what a house is. Now, applying that criterion here, I cannot doubt that this second flat is a separate house; in other words, it is not a part of the house in which this retailer resides or retails spirits. The Lord Ordinary has taken the same view, but then he has held that although it is not that, it is within the term "office, court, yard, or garden" occupied with the house in which the retailer resides.

Now, how does that stand? The history of this second storey is that while in the original lease it was let as part of the whole premises, it was only let in that way for a certain limited period, and it was provided that the landlord should resume possession at an early date, which the landlord did. After that it became the subject of a separate lease, and the tenancy of Mr Paterson as a billiard room keeper rested upon a separate lease in which this separate subject is let to him as a billiard room. Now, in these circumstances, I am bound to say that I cannot bring myself to the conclusion that it is an office occupied with the public-house. I quite agree that there is an intimate connection between the two, and that probably, in Mr Paterson's view, it was a matter of advantage both for his public-house that he should have the billiard room, and for his billiard room that he should have the public-house. Nay more, I think it is shown by the terms of the lease that that view was shared by the landlord, because one of the leading provisions of the lease provides that whereas the lease of the public-house is a lease to assignees whomsoever, the lease of the billiard room excludes assignees and sub-tenants. Nevertheless, if the present tenant of the public-house sells the public-house—that is to say, sells his tenant right in the public-house to assignees whomsoever—the landlord becomes bound to let to that tenant the

billiard room. I think that shows that this idea of the two businesses being run together was as clearly present to the landlord's mind as it was to the tenant's. But then that does not seem to me to further the matter as regards the meaning of the statute. I think when you have the expression "dwelling-house together with offices, courts, yards, and gardens therewith occupied," you necessarily point to something that is an appanage of the dwelling-house, or which is connected with the dwelling-house. I do not say that it is a necessity to the dwelling-house, because the dwelling-house might do with either no offices at all or with fewer offices, but the use of the office must be a subordinate use to the dwelling-house. Now, I do not call the use of the billiard room a subordinate use to the public-house; I call it a co-ordinate use. Accordingly, upon the whole matter, I am of opinion that the Lord Ordinary's interlocutor should be reversed, and that we should find that the Crown is not entitled to aggregate in the value of these premises the value of the billiard room, and that decree should be given to Mr Paterson accordingly.

LORD M'LAREN—I am of the same opinion. I do not think that the billiard room falls under the description of a "dwelling-house with the offices, courts, yards, and gardens therewith occupied." It seems to me that when the house was built the upper flat was designed for separate occupation from the lower, because they have separate entrances. You can only obtain access from the one to the other by going out to the street or going into the courtyard behind. Then the businesses are separate. In this country at least it is not a usual combination to have a billiard room attached to a licensed public-house. I am of opinion that we ought to sustain the claim for return, which is the subject of this action.

LORD KINNEAR—I concur.

LORD PEARSON—I also concur.

The Court pronounced this interlocutor:—

"Recal the said interlocutor [of 7th March 1906]: Find, declare, ordain and decern against the defender conform to the conclusions of the summons: Find the pursuer entitled to expenses, and remit . . ." &c.

Counsel for Pursuer and Reclaimer—M'Clure, K.C.—Macmillan. Agents—Gardiner & Macfie, S.S.C.

Counsel for Defender and Respondent—Solicitor-General (Ure, K.C.)—A. J. Young. Agent—Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Thursday, June 21.

FIRST DIVISION.

[Sheriff Court at Airdrie.

HAMILTON & CALDER *v.* CALEDONIAN RAILWAY COMPANY.

Railway—Rates and Charges—Distinguishing Rates—Terminal Charges—Traffic Carried over Railway from One Private Siding to Another—Right of Trader to Specification as to how Charge for Services Made up—"Terminals"—"Special Services"—Railway and Canal Traffic Act 1888 (51 *and* 52 *Vict. c.* 25), *sec.* 33, *sub-sec.* (3).

The Railway and Canal Traffic Act 1888 (51 and 52 Vict. c. 25), section 33 (3), enacts—"The company shall within one week after application in writing made to the secretary of any railway company by any person interested in the carriage of any merchandise which has been or is intended to be carried over the railway of such company, render an account to the person so applying in which the charge made or claimed by the company for the carriage of such merchandise shall be divided, and the charge for conveyance over the railway shall be distinguished from the terminal charges (if any), and from the dock charges (if any), and if any terminal charge or dock charge is included in such account the nature and detail of the terminal expenses or dock charges in respect of which it is made shall be specified."

Held (1) that the above-quoted enactment was not limited to "station-to-station" rates but was also applicable to "siding-to-siding" rates; and (2) that "terminal charges" as therein used included not only terminal charges proper, *i.e.*, "terminals" in the sense of the Railway Rates and Charges No. 19 (Caledonian) Railway, &c., Order Confirmation Act of 1892 (the Act regulating the right of the railway company to charge), but also charges for services which under the nomenclature of the Act of 1892 would be "services" as distinguished from "terminals."

Hamilton & Calder, boilermakers, Vulcan Boiler Works, Coatbridge, with the concurrence of the Procurator-Fiscal there, brought a complaint in the Sheriff Court at Airdrie under the Summary Jurisdiction (Scotland) Acts 1864 and 1881, the Criminal Procedure (Scotland) Act 1887, and the Railway and Canal Traffic Act 1888, against the Caledonian Railway Company, charging them with an offence under section 33 (3), of the Railway and Canal Traffic Act 1888 (51 and 52 Vict. c. 25), in respect that they had failed, when called upon to do so, to render an account in which a certain charge for goods carried was divided, and the charge for conveyance over the railway distinguished from the terminal charges, and the nature and details of the terminal expenses or charges