Ordinary's judgment altered in their favour, and they must accordingly bear their own expenses in the appeal.

LORD JUSTICE-CLERK — The somewhat painful position into which the liquidator has been brought by the animadversions of the Lord Ordinary on his personal conduct made it necessary that the subject of the reclaiming note should receive anxious consideration. I can only say that I entirely concur with what has fallen from your Lordships on that matter, and with the course proposed.

Upon the other questions involved, I have had an opportunity of perusing the opinions which your Lordships have just read. I entirely concur in them, and do not think it necessary to do more than express my adhesion to the views which are expressed in those opinions.

The Court adhered to the interlocutor of the Lord Ordinary, except his direction to deduct £15, 15s. from the liquidator's fee, and found the liquidator not entitled to charge his expenses in the reclaiming note against the estate in the liquidation, and the claimants not entitled to expenses in the cause since 4th December 1907.

Counsel for the Claimants—Clyde, K.C. —Constable. Agents—Davidson & Syme, W.S.

Counsel for the Liquidator—Scott Dickson, K.C. — Sandeman. Agent for the Liquidator in the Reclaiming Note—A. C. D. Vert, S.S.C. Agents for the Liquidator in the Liquidation—Paterson & Gardiner, S.S.C.

Saturday, March 7.

SECOND DIVISION.

[Sheriff Court at Ayr.

DEMPSTER *v.* WILLIAM BAIRD & COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 1 (3) *—Recurrence of Incapacity after Seven Years' Wage-Earning—Prior Unrecorded Agreement — Competency of Arbitration Proceedings.*

A miner who on March 1st 1899 had received injuries through an accident, agreed to accept from his employers compensation, as for total incapacity, at the maximum rate, and did so down to 21st May 1900, when payments of compensation ceased and he was taken back into employment, worked when he was able, and was paid wages. Seven years later, on 1st April 1907, he became again, as the result of his injuries, totally incapacitated. No memorandum of the agreement had been recorded.

The miner having by ordinary application under section 1 (3) of the Workmen's Compensation Act 1897 instituted arbitration proceedings to fix the compensation due to him, beginning the first payment as from 21st May 1900, the arbiter dismissed the application as incompetent in respect of the previous agreement, stating "it is not averred or proved that such agreement has been ended or varied." The employers admitted liability from the time when total incapacity had again supervened.

Held that the arbitration proceedings were competent, there being no existing agreement regulating the rights of parties.

Expenses—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37)—*"Expenses of the Stated Case"—Adjustment of Case.*

In a stated case under the Workmen's Compensation Act 1897 the Court allowed the appellant "his expenses of the stated case." The Auditor having allowed £5, 0s. 8d. as expenses of preparing the case prior to its actual presentation in Court, the respondents objected that this amount was not "fair and reasonable," and proposed £2, 2s.

The Court, *following London and Edinburgh Shipping Company* v. *Brown*, February 16, 1905, 7 F. 488, 42 S.L.R. 357, *modified* the expenses, and allowed £3, 3s.—to include £1 paid to the sheriff-clerk.

The Workmen's Compensation Act 1897 (60 and 61 Vict. c. 37), sec. 1 (3), enacts—"If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the employment is one to which this Act applies) or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First Schedule to this Act, be settled by arbitration in accordance with the Second Schedule to this Act."

In 1907 Alexander Dempster, miner, Muirkirk, who on 1st March 1899, while in the employment of Wm. Baird & Company, Limited, had received severe injuries through a fall of rock from the roof of the pit where he was working, presented an ordinary application under the Workmen's Compensation Act 1897, sec. 1 (3), in the Sheriff Court at Ayr, craving the arbiter to ascertain and fix such weekly payments as might be found to be due and payable to him under and in terms of the said Act, and to grant an award against the said William Baird & Company, Limited, in his favour, finding him entitled to such weekly payments, beginning the first payment as on the 28th day of May 1900 for the week preceding that date, and so on weekly thereafter until he was again able to earn his full wages, or such weekly payment was varied, with interest on each weekly payment at the rate of 5 per centum per annum from the date when the same became payable till payment, with expenses.

The Sheriff-Substitute (CAMPBELL SHAIRP) dismissed the application as incompetent, and stated a case for appeal.

The case stated—"The following facts were admitted or proved:—(1) That as the result of the said injuries received by him the said Alexander Dempster was totally incapacitated for his work as a miner from the said 1st day of March 1899—the date of the said accident—until the 21st day of May 1900. (2) That his average weekly earnings in the employment of the said William Baird & Company, Limited, during the twelve months previous to the date of said accident were twenty-eight shillings and eightpence. (3) That in the fourth article of the applicant's condescendence it is averred that 'the applicant, by agreement with the respondent, received compensation, under the Workmen's Compensation Act 1897, from the 15th day of March 1899 until the 21st day of May 1900, at the rate of 14s. 4d. per week'; and the answer of the said William Baird & Company, Limited, to this averment is 'Admitted.' That accordingly, under an agreement entered into between the applicant and the said William Baird & Company, Limited, they agreed to pay to him, and he agreed to accept and receive from them, as compensation under said Act for his said injuries, the sum of 14s. 4d. weekly from the 15th day of March 1899. That it was not averred or proved that such agreement had been ended or varied, and that no memorandum of said agreement was sent to the Sheriff-Clerk or recorded by him in the special register. (4) That on or about the 21st day of May 1900 the said William Baird & Company, Limited, ceased to pay to the said Alexander Dempster the said weekly payments, but gave him employment as a pit bottomer, and that the said Alexander Dempster worked when he was able for the said William Baird & Company, Limited, as a pit bottomer from about the said 21st day of May 1900 till about the 1st day of April 1907, when, as the result of his said injuries, he became totally incapacitated for even light work, and ceased working altogether. And (5) that the said William Baird & Company, Limited, refused to pay him compensation from and after the said 21st day of May 1900.

"On these admitted or proved facts I sustained pleas-in-law stated for the said William Baird & Company, Limited, to the effect that their liability to pay compensation under the said Act to the said Alexander Dempster having been settled by agreement between him and them (a memorandum of which agreement might have been recorded by the said Alexander Dempster in terms of section 8 of the second schedule to the Workmen's Compensation Act 1897, and upon an extract of which recorded memorandum the said William Baird & Company, Limited, might have been charged to pay to the said Alexander Dempster the weekly payments agreed upon), his application for arbitration was incompetent; and I accordingly dismissed the application and found the said Alexander Dempster liable to the said William Baird & Company, Limited, in their expenses of process."

The question of law stated for the opinion of the Court was—"Was the Sheriff-Substitute right in holding that, the compensation due to the applicant having been settled by agreement between him and the respondents, the proper course for the applicant to have adopted was to have recorded a memorandum of said agreement and charged the respondents thereunder; and that the present application for arbitration is incompetent because an agreement as to the compensation to be paid to the applicant by the respondents has been entered into between the parties?"

Argued for the appellant—The incapacity provided for by agreement subsisted only down to May 21st, 1900, and the ceasing of such incapacity terminated the agreement—*Colville & Sons, Limited* v. *Tigue*, December 6, 1905, 8 F. 179, 43 S.L.R. 129; *Strannigan* v. *Baird & Company, Limited*, June 7, 1904, 6 F. 784, Lord Kinnear at 792–793, 41 S.L.R. 609. There being no subsisting agreement, arbitration was competent. If the respondents affirmed that there was a subsisting agreement, then there was a dispute as to the duration of the agreement, and on that ground also arbitration was competent. In *Dunlop* v. *Rankine & Blackmore* (*cit. infra*), upon which the respondents relied, the application was brought immediately on the cessation of payments to enforce compensation for incapacity alleged never to have ceased.

Argued for the respondents—There was no room for arbitration. The respondents were willing to pay compensation from the date when the appellant again became totally incapacitated. As regarded the seven years prior thereto, the workman was personally barred, after accepting wages during that period, from claiming compensation. In any case, the application for arbitration was incompetent, for when an agreement to pay compensation had been come to the statutory method of working out that agreement, *i.e.*, by recording it and charging thereon, must be pursued—*Dunlop* v. *Rankine & Blackmore*, November 27, 1901, 4 F. 203, 39 S.L.R. 146; *Fife Coal Company, Limited* v. *Lindsay*, January 17, 1908, 45 S.L.R. 317. It was plain from the stated case that the claim was made as on a subsisting agreement, and the Sheriff expressly stated that "it was not averred or proved that such agreement had been ended or varied." A subsisting agreement excluded arbitration—Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), sec. 1 (3); *Colville & Sons, Limited* v. *Tigue* (cit. *sup.*); *Dunlop* v. *Rankine & Blackmore* (*cit. sup.*). Reference was also made to *Lochgelly Iron and Coal Company, Limited* v. *Sinclair*, November 16, 1907, 15 S.L.T. 544.

At advising—

LORD JUSTICE-CLERK—This is a very exceptional and peculiar case. The work-

man, whose injury occurred in the early part of 1899, agreed with his employers to accept a certain weekly payment in respect of incapacity, and this was paid down to May 1900. At that time payments as for compensation were stopped and the workman was taken back into the employment as a bottomer and paid by wages for his work. He neither asked for nor received any money in name of compensation for the injury. No agreement was registered, and for seven years the work was continued to him and the wages for the work given to him. Then a new state of matters arose. The injury he had received had not been cured, for he again became incapacitated by reason of the injury, and now remains incapacitated.

Such being the facts, the question arises whether the workman being now incapacitated by the injury incurred seven years ago is entitled to ask for compensation in an arbitration. The Sheriff-Substitute has held that he cannot competently do so—that as there was an agreement for compensation in 1899, the workman's course was to register a memorandum of that agreement in terms of the Act and insist on his compensation being paid to him under it. I am of opinion that the view of the Sheriff-Substitute is erroneous.

The agreement of 1899 was one on the footing of total incapacity, and when in 1899 total incapacity ceased the agreement must have been modified if the master so required, either by a new agreement, or, if the agreement was put on the register, by the Sheriff being called upon to reduce the amount payable. No such proceedings took place. The master simply refused to pay any more, in respect he was employing the workman and paying him wages, and the workman was accepting the wages and claiming no compensation. The course of things therefore during the seven years was not regulated by the agreement — there was no agreement which applied to the circumstances, for an agreement based on ascertained total incapacity, and implemented by payments applicable only to total incapacity, could not apply to a case where a workman was earning the full wages of the employment which he was offered and accepted, and was receiving nothing else.

The workman now comes forward demanding to be paid compensation for all the past seven years, and to this end brings a petition in ordinary form for an arbitration under the statute. I cannot hold that he is debarred from instituting such a proceeding, he being now incapacitated. I say nothing as to whether he can succeed in his demand for compensation during the seven years when he was in employment on wages. The only question before the Court now is whether his present proceeding is bad from incompetency. The question put raises that question only, and I have no hesitation in answering it in the negative. The result will be that the case must go back to the Sheriff for further procedure.

LORD STORMONTH DARLING—If the facts stated by the Sheriff admitted of it, there would have been a great deal to be said for his view in law, that the proper course for the workman to have adopted was to have registered a memorandum of agreement, and that the course which he actually did adopt, viz., to bring an application for arbitration, was incompetent. The argument in support of the Sheriff's view comes somewhat strangely from the employers, because it is to all appearance very much against their interest.

But I do not think that the facts, viewed as a whole, warrant that conclusion, and I think we are bound to take the facts as they are stated, without regard to the pleadings of parties.

The agreement admittedly made, and for fourteen months acted on—viz., from 15th March 1899 to 21st May 1900—was not a recent agreement, and a good deal has happened since then. First, on 21st May 1900 the employers ceased to make the weekly payments which they had agreed upon, and gave the workman employment as a pit bottomer. It is not said at what wage, but whatever it was it was wage and not compensation which the workman presumably accepted, for it is expressly found that the original agreement of 15th March 1899 was never ended or varied under par. 12 of Schedule I of the Act. Then a period of seven years elapsed, and it is further found that on 1st April 1907 the workman became totally incapacitated for even light work "as the result of his said injuries," and that he ceased working altogether. Finally, it is found that the employers "refused to pay him compensation from and after the said 21st day of May 1900."

I do not understand how that is consistent with there being a continuing and subsisting agreement during all that period of more than seven years that the employers should pay him compensation at the full rate of 14s. 4d. weekly. In other words, I do not understand how it can be said that there was an agreement, when both parties show by their conduct that there was no agreement. If there was no such subsisting agreement how can the Sheriff's finding in law be justified? It is suggested that the Sheriff must have been satisfied on that head or he would not have pronounced his finding in law. I admit that Lord Kyllachy at one point of his opinion in *Colville* v. *Tigue*, 8 F. 179 (p. 183) said that the statutory tribunal "might have to decide incidentally whether some agreement submitted to it as excluding its jurisdiction is a real agreement and a subsisting agreement." But he also said (p. 184) that "if the Sheriff thought (as perhaps he might) that there was no subsisting agreement — that on its just construction the alleged agreement came to an end when the incapacity in fact ceased—his duty was to proceed to arbitrate under section 1, sub-section 3, but, doing so, to reject the applicant's claim as wholly unfounded. There was no other

course open to him." In my own opinion in *Colville* v. *Tigue* I see I expressed the view (at p. 187) that the application for arbitration in that case was "competently brought," and Lord Low's opinion was distinct (p. 190) that "there was nothing in the Act which, when there is only an unrecorded agreement to pay compensation during incapacity, compels the employer to continue payment after the incapacity has in fact ceased." The actual decision in *Colville* v. *Tigue*, in the course of which *Dunlop* v. *Rankin & Blackmore*, 4 F. 203, was cited, was that the employers "were not liable to pay compensation to the respondent from the date at which his incapacity ceased to the date of the arbitration award." The facts of that case were that the accident happened on 24th August 1903; that the employers agreed with the workman to pay him compensation at a certain rate during the period of his incapacity; that this agreement was not recorded; that the employers made payments to him in terms of the agreement down to 14th December 1903; that they then ceased to make payments, alleging that the workman's incapacity had ceased, and offering him work at full wages, which he declined; that in March 1905 the workman instituted proceedings by way of arbitration before the Sheriff; that the Sheriff found that incapacity had ceased by 14th December 1903, but ordained the employer to make payment to the workman at the agreed-on rate from 14th December 1903 to 12th July 1905, being the date of his award, and he assoilzied the employers from any claim for future compensation.

Now, these facts are not precisely similar to those in the present case, but they resemble them very closely. In particular, they resemble them in respect that years had elapsed since the original agreement had been made—in *Colville's* case two, in this case more than seven years—and that a different kind of contract, viz., an agreement for wages, had been substituted for an agreement to pay compensation. In *Dunlop* v. *Rankine & Blackmore* I admit there was the same feature as in the present case of a refusal by the employers to continue payments under the original agreement, and yet the Court seems to have held that the workman was still entitled to have the agreement recorded, and they remitted to the Sheriff to dismiss the application for arbitration. But the agreement in that case was *de recenti, i.e.*, within a year from the date of the accident, and the sole reason for the application for arbitration would seem to have been to provide for the event of supervening incapacity. I do not therefore think that the case has any real application. The more recent case of *Beith & Kay* v. *Ness* (1903), 6 F. 168, 41 S.L.R. 113, where a workman had returned to the same employment on wages, and the cases which have followed it, seem to be much more in point.

In short, I am of opinion that we are entitled and bound, as in every case of mixed fact and law, to take the facts of the case as a whole, in order to do justice between the parties, and if we are satisfied that the agreement of 15th March 1899 has ceased to be since 21st May 1900, and is not now, a subsisting agreement, that we should so hold, and that we should answer the sole question of law—which is, whether the present application for arbitration is incompetent—in the negative, and remit to the Sheriff to proceed with it as may be just.

LORD LOW—So long ago as 1st March 1899 the appellant was injured while in the employment of the respondents, and an agreement was entered into whereby the respondents agreed to pay to the appellant as compensation under the Act 14s. 4d. weekly, that being the statutory maximum amount. The respondents paid that amount to the appellant weekly from 15th March 1899 until 21st May 1900. No memorandum of the agreement has been recorded, and the Sheriff-Substitute states that "it was not averred or proved that such agreement had been ended or varied." The Sheriff-Substitute then states that on 21st May 1900 the respondents ceased to pay the weekly payments to the appellant, but gave him employment as a pit-bottomer, and that he worked in that capacity from 21st May 1900 till 1st April 1907, when, as the result of his injuries, he became totally incapacitated. I assume, although it is not stated in the case, that during that period the appellant was paid wages.

In these circumstances the appellant instituted arbitration proceedings under section 1 (3) of the Act, in which he claims compensation from and after 21st May 1900.

The Sheriff-Substitute has dismissed the application as incompetent, on the ground that the proper course for the appellant to follow was to record a memorandum of the agreement and charge the respondents thereon.

Now, the agreement entered into between the parties in 1899 being an agreement under the statute was of course only an agreement on the respondents' part to pay compensation to the appellant during incapacity. Further, the amount fixed by the agreement, being the maximum amount allowed by the statute, was payable only during total incapacity. Whenever the appellant ceased to be totally incapacitated the respondents were entitled to have the amount fixed by the agreement reduced, and it could have been reduced either by an arbiter in an application for review of the weekly payments, or by agreement. Now, from the 21st of May 1900 until the 1st of April 1907, a period of nearly seven years, the appellant was not totally incapacitated, because during that period he was working and receiving wages. We are not told what the amount of his wages was, but we are told that he received no compensation. In these circumstances it seems to me that during the seven years the rights and obligations of parties could not possibly be regulated by the original agreement. The natural inference from the facts which are stated is that during that period the respondents gave the appellant

employment according to his capacity, and that in consideration thereof, and of the wages which he thereby earned, he made no claim for compensation. If, however, that was what happened, the parties were during these seven years proceeding upon an agreement, expressed or implied, which was different from, and for the time superseded, the original agreement. It is perhaps possible that all the time the appellant was claiming compensation as well as wages, but if so, then there was no agreement applicable to the circumstances, because as the appellant was earning wages he could not claim the maximum amount, which was all that the original agreement provided for.

The appellant is now claiming that he was entitled to some compensation during the whole of the seven years, and the question really is whether he has adopted a competent method of enforcing that claim. If I am right in thinking that in consequence of the change of circumstances—the partial recovery of the appellant, and his employment by and receipt of wages from the respondents—the original agreement could not be appealed to as settling the rights and obligations of parties during the seven years, I think that the appellant was entitled to make an application under section 1 (3) of the Act, because his claim raises questions as to whether he is entitled to compensation at all during the seven years, and if so to what amount—questions in regard to which the parties are not agreed.

No doubt it would have been competent for the appellant to register a memorandum of the original agreement and charge the respondents thereon, and if that had been done the question of the appellant's right to compensation during the seven years could have been raised by a suspension of the charge. Butalthough such a proceeding might be competent, I think that it might be less consonant with the intention of the Legislature than the course which the appellant has adopted, because it was evidently intended that such questions should as far as possible be kept out of the courts of law and determined by arbitration.

I have dealt solely with the question of the pursuer's claim for compensation during the seven years, because it appears that that is the only matter in controversy, the respondent's counsel having stated that they admitted the appellant's right to, and are willing to pay to him, full compensation from the date when he again became totally incapacitated.

It was argued, however, that all inquiry is excluded, and that there is no room for arbitration, in respect that the Sheriff-Substitute has stated as matter of fact that it was not averred or proved that the original agreement had "been ended or varied." That statement, however, must be read along with that which immediately follows in regard to what happened during the seven years. But when these two statements are read together it seems to me to be plain that all that the Sheriff-Substitute means when he says that the original agreement has not been ended or varied is, that it has not been formally ended or varied, as, for example, by the determination of an arbiter under an application for review of the weekly payments.

I am therefore of opinion that the question in the case should be answered in the negative, and the case remitted back to the Sheriff-Substitute.

LORD ARDWALL—This stated case, both as regards the statement of facts and the question of law, is a far from satisfactory document.

The first part of the question of law is put on this assumption—"The compensation due to the applicant having been settled by agreement between him and the respondents," and the second part of the question is put upon this assumption, that "an agreement as to the compensation to be paid to the applicant by the respondent has been entered into between the parties." These assumptions appear to amount to this, that at the date when the arbitration proceedings were initiated there was a subsisting agreement between the workman and the employers as to the rate of compensation to be paid to him at that and any future time until the weekly payment thereby provided should be ended, diminished, or increased, in terms of sec. 12 of the first schedule of the Act, or otherwise ended.

If this is so, it is surprising that the Sheriff-Substitute or anyone else could consider it necessary to have a stated case at all, because under sub-sec. 3 of sec. 1 of the Workmen's Compensation Act 1897 arbitration is only competent if the question as to the amount of compensation is "not settled by agreement," and according to the question and statement of the case the compensation due to the appellant was and is "settled by agreement"; but I agree with your Lordships that we are not bound to answer the question as put, but must take the real facts of the case apart from the gloss put upon them by the Sheriff-Substitute.

It is, I think, apparent that at the date of the commencement of the arbitration proceedings the unrecorded agreement which was entered into and which had no definite period of endurance had by common consent been allowed to lapse; and further, that at the date of the arbitration the parties were in dispute as to what compensation should be paid for the present and the future. Accordingly, I have no difficulty in holding that when the arbitration proceedings commenced the agreement of 1899, such as it was, had lapsed, and that an entirely new state of matters had arisen, in which the parties were in dispute regarding the amount of compensation payable to the applicant, and regarding which compensation accordingly the arbitration was perfectly competent.

I accordingly agree that we should answer the question put in the case by finding that in the circumstances the appellant's

application for arbitration was competent, and should remit to the Sheriff-Substitute to proceed with the same.

The Court answered the question of law in the negative, therefore sustained the appeal, remitted to the arbitrator to proceed, and found the appellant entitled "to his expenses of the stated case."

The Auditor having lodged his report on the appellant's account of expenses, the respondents objected thereto, "in respect that the Auditor has allowed the following items, which are excessive and ought not to be charged at more than £2, 2s." After setting forth the various items and the sums charged for them, amounting to £5, 9s., and the sums allowed amounting to £5, 0s. 8d., which included a fee of £1 to the Sheriff-Clerk for preparing the case, the note of objections proceeded—"In any event, the Auditor in allowing the whole of the above items has allowed more than is fair and reasonable for the preparation of the case prior to its actual presentation to the Court."

Argued for the respondents—£2, 2s. was a fair and reasonable amount for preparing such a stated case—*London and Edinburgh Shipping Co.* v. *Brown*, February 16, 1905, 7 F. 488, 42 S.L.R. 357. Reference was also made to *M'Govern* v. *Cooper & Company*, November 30, 1901, 4 F. 249, 39 S.L.R. 164.

Argued for the appellant—The amount allowed was fair and reasonable. It included £1 paid to the Sheriff-Clerk in terms of the Act of Sederunt of 3rd June 1898. Two guineas was too little if it were to include that. In *Brown* (*cit. sup.*) expenses in connection with counsel's assistance in revising and adjusting the case were disallowed, but these were not charged for here. *Brown's* case did not decide that £2, 2s. was the amount to be charged in such cases, but that expenses meant fair and reasonable expenses.

LORD STORMONTH DARLING—We shall adopt the practice in *Brown's* case, to the extent of modifying the fee to be allowed to the appellant at three guineas, which includes the one pound paid to the Sheriff Clerk.

Counsel for the Appellant—G. Watt, K.C.—Spens. Agent—J. A. Kessen, S.S.C.

Counsel for the Respondents—M'Clure, K.C.—Horne. Agents—M. J. Brown, Son, & Company, S.S.C.

Wednesday, February 19.

FIRST DIVISION.

(EXCHEQUER CAUSE.)

[Lord Johnston, Ordinary.

INLAND REVENUE *v.* CALEDONIAN RAILWAY COMPANY.

Revenue — Stamp Duty — Property Purchased under Statutory Power—Finance Act 1895 (58 *Vict. c.* 16), *sec.* 12—*Compulsory Purchase under Power Contained in Special Act—Production of Conveyance —"Completion of Purchase"—Railway—Statute.*

The Finance Act 1895, sec. 12, enacts—"Where after the passing of this Act, by virtue of any Act, whether passed before or after this Act, either

(*a*) any property is vested by way of sale in any person; or

(*b*) any person is authorised to purchase property,

such person shall, within three months after the passing of the Act or the date of vesting, whichever is later, or after the completion of the purchase, as the case may be, produce to the Commissioners of Inland Revenue a copy of the Act printed by the Queen's printer of Acts of Parliament or some instrument relating to the vesting in the first case, and an instrument of the conveyance of the property in the other case, duly stamped with the *ad valorem* duty payable upon a conveyance on sale of the property; and in default of such production the duty with interest thereon at the rate of five per centum per annum from the passing of the Act, date of vesting, or completion of the purchase as the case may be, shall be a debt to Her Majesty from such person."

Held that the section applied to property purchased in the exercise of compulsory powers contained in the Special Act of a Railway Company or other party.

Opinion per curiam (1) that a conveyance which had been produced at the Collector's office in order to be provisionally marked with the duty payable, and which had then been impressed with the proper amount of duty, had not been produced duly stamped to the Commissioners in the sense of the section; and (2) that the date of "the completion of the purchase" was that of the final payment of the price.

On 6th December 1906 the Lord Advocate, as representing the Commissioners of Inland Revenue, raised an action against the Caledonian Railway Company, in which he craved—(1) declarator that "under and in respect of section 12 of the Finance Act 1895 (*v. sup. in rubric*) . . . the defenders, when authorised by virtue of any Act to purchase property, are bound to produce to the Commissioners of Inland Revenue, within three months after completion of the purchase, an instrument of conveyance