not well stated, but probably it would be sufficient to answer the first question in the affirmative, as was done in the *Darngavil* case.

The other case arises out of an application by the workman to have a memorandum of agreement recorded, and the terms of the memorandum are set forth in the Case. Now I am bound to say that this Case is very unfortunately framed, because from beginning to end it contains no single finding of fact. But the two cases are so intimately connected—they are between the same parties, arose out of the same accident, and were conducted together and decided on the same day—that I have no doubt we are entitled to look at the facts which are found in the one Case as applicable to the other Case so far as necessary. Therefore I take it that we may safely import into the case I am now dealing with the 7th finding of fact in the other case with regard to this joint reference to Dr Nicol and his report thereupon. It was argued to us by Mr Anderson in this case, on behalf of the employers (appellants), that the effect of the parties having voluntarily agreed to refer to Dr Nicol the question whether the workman had recovered from his injury, and of Dr Nicol's report, already stated, was really to supersede and put an end to the agreement which it is now sought to record. Although the Case is not well stated, I think if we take it upon the footing I have indicated there is enough to warrant us in accepting that argument. We were informed that the First Division decided a case yesterday—*The Niddrie Coal Company* v. *Hanley*—which appears to have a bearing on this point. I understand that it was there held that, in reply to a workman's application to have a memorandum recorded, it was relevant for the employers to allege a discharge by him of prior date of his claims in respect of the accident, and a remit was made to the arbiter to inquire into the matter. If a discharge by a workman is a good answer to his request for the recording of a memorandum, it would seem that an award adverse to the workman, by a referee to whom the parties have voluntarily referred the decision in fact as to his recovery, would equally bar his application for registration; and in the present case there is no need for further inquiry into the facts, for we have them found for us in the Stated Case. I have therefore come to the conclusion in this case that the employers are entitled to succeed. Here, again, the questions are not very well framed, but in the result we shall find that the memorandum ought not to be recorded.

The LORD JUSTICE-CLERK and LORD MACKENZIE concurred.

LORD LOW was absent.

LORD ARDWALL was taking a proof.

The Court answered the second question in the first Case in the negative, and the first question in the second Case in the affirmative.

Counsel for Cunningham — Ingram. Agent—C. Strachan Petrie, Solicitor.

Counsel for M'Naughton & Sinclair — Anderson, K.C.—J. A. Christie. Agents—St Clair Swanson & Manson, W.S.

Saturday, July 16.

SECOND DIVISION.

[Sheriff Court at Ayr.

CADENHEAD *v.* AILSA SHIPBUILDING COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 1 (3) *and First Schedule, sec.* 12—*Supervening Incapacity—Agreement to Pay Compensation Ended by Sheriff on Recovery of Capacity—Application for Compensation of New—Competency.*

A workman having been injured, his employers agreed to pay him compensation under the Workmen's Compensation Act 1897. A memorandum of the agreement was duly recorded. The employers afterwards applied to the Sheriff as arbiter to have the weekly payments reviewed in respect the workman had recovered. The Sheriff after proof found that the incapacity had ceased, and ended the compensation. The workman thereafter made application to the Sheriff for compensation under the Act, on the ground that supervening incapacity had arisen, caused through the injury sustained by him.

Held that as the Sheriff had already found that incapacity had ceased and had terminated the weekly payments, the application for an award of compensation of new was incompetent.

The Workmen's Compensation Act 1897 (60 and 61 Vict. c. 37), enacts—First Schedule, sec. (12)—"Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased."

James Cadenhead, caulker, 20 West Portland Street, Troon, *appellant*, and the Ailsa Shipbuilding Company, Limited, *respondents*, brought this Stated Case under the Workmen's Compensation Act 1897 from the Sheriff Court at Ayr.

The Case, stated by the Sheriff-Substitute (SHAIRP), set forth the following facts:—"In this arbitration the appellant, who on 8th September 1906 sustained personal injury by accident while in the respondents' employment, presented an application under section 1, sub-section 3, of the said Workmen's Compensation Act 1897, for compensation, in terms of said Act, from the respondents at the rate of 18s. 4d. per week as from and after 3rd September 1908. The personal injury to the appellant before referred to was a wound on the anterior surface of his right forearm, which was struck by a piece of iron or steel rivet. The injury incapacitated the appellant from

following his occupation of a caulker, and an agreement was entered into between him and the respondents by which they agreed to pay him compensation under the said Act at the rate of 18s. 4d. per week during his incapacity for work, or until the weekly payments should be ended, diminished, redeemed, or suspended in accordance with the provisions of the Act. A memorandum of said agreement, dated 21st February 1908, was recorded by the Sheriff-Clerk of Ayrshire in the Special Register kept by him for the purpose at Ayr on 4th March 1908. On 31st March 1908 the respondents presented a minute stating that appellant's incapacity for work as a caulker in consequence of said accident had ceased, and craved, in terms of section 12 of the First Schedule to said Act, a review of the foresaid weekly payments, and on such review that the said payments should be ended or diminished. After hearing proof in this last-mentioned application, and obtaining a report from a medical referee in terms of section 13 of the Second Schedule to said Act, on 7th July 1908, I, as arbiter, found that appellant was no longer incapacitated from pursuing his occupation as a caulker, and ended the said weekly payments. My award was registered by the sheriff-clerk in said Special Register on 17th July 1908. On these admitted facts I, on 21st April 1910, dismissed the appellant's said application for compensation as incompetent."

The *question of law* for the opinion of the Court was—"Did my said award, dated 7th July 1908, finding that appellant's incapacity for his work as a caulker in consequence of said accident had then ceased, and ending the said weekly payments of compensation, render the appellant's said application for an award of compensation as from 3rd September 1908 incompetent, with the result that the appellant was prevented from leading evidence to show that supervening incapacity had arisen in consequence of the personal injury sustained by him as aforesaid?"

Argued for the appellant—This accident had been dealt with by agreement between the parties, and the workman was not thereby precluded from having his claim for compensation dealt with in an arbitration—*Strannigan* v. *Baird & Company, Limited*, June 7, 1904, 6 F. 784, 41 S.L.R. 609. The agreement to pay compensation had been implemented and terminated.. These were the first proceedings to make a claim under the Act. There being no subsisting agreement between the parties, arbitration proceedings were competent—*Dempster* v. *Baird & Company, Limited*, 1908 S.C. 722, 45 S.L.R. 432. All the arbiter could do was to end the award if a man had recovered. If a workman a day after compensation was ended took ill again as the result of the same accident, he was entitled to apply again. The First Schedule of the Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37) provided, sec. 1 (*b*), that a workman should be entitled to a weekly payment "during the incapacity." If the incapacity returned, the workman was therefore entitled to get compensation again. *Calder & Sons* v. *Tigue*, Dec. 6, 1905, 8 F. 179, 43 S.L.R. 129, and *Coakley* v. *Addie & Sons, Limited*, 1909 S.C. 545, 46 S.L.R. 408, were also referred to.

Counsel for the respondents were not called upon.

LORD JUSTICE-CLERK — Mr Mackenzie Stuart has stated everything that could be said in support of his contention, but it seems to me to be absolutely without foundation. The Court is I think bound by both decision and statute. Under the Act a person who has been injured can if he chooses register an agreement, or if there is no agreement he can raise a process of arbitration before the Sheriff to get his compensation fixed. When the application comes before the arbitrator, who is generally the Sheriff in this country, it is in his hands until he has disposed of it. He may, if he sees fit, on the evidence award full compensation; or he may award less than full compensation if the man is capable of doing some work; or he may refuse to give him compensation on the ground that he has recovered. He may do any one of these three things when the case first comes before him. If he does either of the first two it is at any time open to the employer to have the decision reviewed by the arbitrator with the object of altering the compensation if there has been partial recovery, or ending the compensation if there has been total recovery.

Now the Act does not seem to me to contemplate anything more than that. If proceedings are brought before the Sheriff he must deal with them if there is still any incapacity; but if he comes to be satisfied that there is no incapacity he must end the compensation. It is now suggested that after that has been done, *i.e.*, after the compensation has been declared ended under the powers given to the Sheriff by the Act, the workman is entitled to come forward and raise a new case altogether, and on the averment that incapacity has supervened institute proceedings to have compensation of new awarded. If that were the law you might have half-a-dozen cases at long intervals of years, and you might require to trace the man's history during these years to see whether the incapacity from which he was suffering had anything to do with the accident, or whether he was suffering from some other accident with respect to which he could have no claim because it did not occur in the service of his former employers.

It is quite plain that the Act never contemplated anything of that kind. There may be a certain amount of hardship where a man has been held to have recovered absolutely and where something subsequently supervenes which shows that he has not really recovered; and it was to meet the case where there was a suggestion of some such possibility that the device of a nominal payment of a penny a-week was adopted in order not to end the compensation. That, however, was held,

in the case of *Rosie* v. *Mackay*, not to be allowable under the Act, and one regrets it in some respects. But we must take it to be the law that you cannot carry on the compensation nominally when you are satisfied that there is no compensation due at the time.

That being so, a party in a case of this kind is very much in the same position as a person who sustains an accident through the fault of another. He is entitled to have ascertained the amount of compensation which is due to him at the time of the trial. He is not entitled to come back after a long lapse of time and say—"I was only able to lay before the jury certain facts, and these facts were dealt with by the jury; the jury were right so far on the evidence which was placed before them, but I am prepared to prove before another jury that I am still suffering from the accident and am entitled to additional compensation." The fact that the original award of damages is final may be a hardship to one or other of the parties, but it is a hardship which cannot be avoided; otherwise there would be no end to such claims. I have no doubt or hesitation in saying that there is nothing in this Act which would justify the raising of a new case by a workman in respect of an accident after his injuries have once been inquired into and the result of them ascertained, and after the Sheriff has held that the injured person is completely recovered, and that compensation must be ended. That in my opinion is an end of the matter once and for all.

LORD ARDWALL—I concur.

LORD DUNDAS—I agree with all your Lordship has said and think that the case is a hopeless one.

LORD LOW was absent.

The Court answered the question of law in the affirmative.

Counsel for Appellant—A. Mackenzie Stuart. Agents—Lindsay, Cook, & Dickson, Solicitors.

Counsel for Respondents—Murray, K.C. —J. H. Henderson. Agents — Morton, Smart, Macdonald & Prosser, W.S.

Tuesday, July 12.

FIRST DIVISION.

[Lord Guthrie, Ordinary.

WOODS *v.* EDINBURGH EVENING NEWS, LIMITED.

Reparation—Slander—Newspaper—Advertisement not Prima facie Libellous—Advertisement for Wet Nurse—Innuendo—Relevancy.

A husband and wife brought an action of damages for slander against a newspaper for publishing an advertisement for a wet nurse, applicants being referred to the address where the pursuers resided and carried on a wine and spirit business. The advertisement was untrue and unauthorised. At its date the pursuers had been about four months married. *Held* (1) (*rev.* judgment of Lord Guthrie) that the advertisement *per se* was not libellous, and (2) that it could not be innuendoed as meaning that the female pursuer had within five months of her marriage given birth to a child of which pursuer was the father, and that each of the pursuers had been guilty of antenuptial fornication and was of immoral character; defenders *assoilzied.*

Opinion reserved as to how far a newspaper can be made responsible, without averments of negligence, for the publication of an advertisement *prima facie* innocent and non-injurious.

James Wood, wine and spirit merchant, residing at Kinleith Arms, Juniper Green, and Mrs Margaret Prentice Wood, his wife, with her husband's consent and concurrence, raised an action against the Edinburgh Evening News, Limited, in which they claimed £1000 damages for slander alleged to be contained in an unauthorised and untrue advertisement for a wet nurse published in the defenders' newspaper. The pursuers averred—"(Cond. 1) The pursuers were married on 23rd November 1909. For some time previous to his marriage the pursuer the said James Wood carried on business, and he still carries on business, as a wine and spirit merchant at 8 Young Street, Edinburgh, and in Edinburgh he has a large circle of friends. The pursuer, the said Mrs Wood, previous to her marriage carried on business, and she still carries on business, as a wine and spirit merchant at the Kinleith Arms, Juniper Green. Since their marriage the pursuers have resided and still reside together at the Kinleith Arms aforesaid. There are no other married persons living in the establishment. (Cond. 2) On Friday the 15th day of April 1910 the following notice appeared among the notices of situations vacant in the issue of the *Edinburgh Evening News* of that date—'Nurse (wet) wanted immediately. Apply Kinleith Arms, Juniper Green. Fares paid.' The same notice also appeared in the issue of the said *Edinburgh Evening News* of Saturday 16th April 1910. (Cond. 3) Neither of the pursuers authorised or instructed the said notice to be inserted. The pursuers had in point of fact no occasion for the services of a wet nurse. No child had been born at Kinleith Arms. The said notice was not received by the defenders in the ordinary course of business, or at all events it was not dealt with by them in the proper way. It is believed and averred that the said notice was handed to an employee of the defenders at their office at 18 Market Street aforesaid over the counter by some person or persons unknown. The notice was not signed, nor did it contain any indication of the person who was responsible for its insertion. The defenders, without making