represented by the sum due, or any part of it, a system which led to scandalous abuses, employees being practically defrauded, by being made to take what might or might not truly represent the money due, and which in general practice did not represent the full value. And sometimes goods were foisted on them which they did not wish for, or did not require. It was abuses of this description which were the reasons influencing Parliament to make it the law that that which was to be paid to the servant as wages should be paid in coin of the realm. It appears to me to be a very great stretching of the terms of the Act to make it apply, not to a substitution of something else for money, but to compulsion upon the employer to pay the full wages over, in cases where the employer may have a good claim against the employee, in a case where the workman refuses to work for him, but goes on occupying the house which was let to him because he was in the employment, his occupation of the house being legal only while he continues in the employment. Here the parties agreed that in the event of the employee leaving his employment, which of course he did when he refused to work, that the employer should be entitled to deduct sums due for occupation of the employee's house from the wages due. If that were carried out, would the making of the deduction agreed upon be a failure to pay wages in coin of the realm? If I were in the position of answering that question according to my own judgment, I should be inclined to answer in the negative. There is in such a case no attempt by the employer to induce the workman to accept something other than coin, which is the evil struck at by the statute. The workman has received or taken something of the employers for which he is undoubtedly bound to pay the employer. He takes a benefit by residing in, and holding on to, a house belonging to his employer. The employer is in no way refusing to pay coin. He is only retaining what by bargain he is entitled to retain, as against a debt due to him by the employee. I cannot myself see the ground for holding him to be in breach of the Truck Act.

But the matter has been decided otherwise, and that by the final authority. To that I bow, and therefore I concur in the judgment proposed.

The Court answered the question in the affirmative and refused the appeal.

Counsel for the Appellants—Macmillan, K.C.—Strain. Agents—Webster, Will, & Company, W.S.

Counsel for the Respondents—The Solicitor-General (Anderson, K.C.) — R. C. Henderson. Agent — The Crown Agent (Sir W. S. Haldane).

COURT OF SESSION.

Tuesday, December 10.

SECOND DIVISION.

[Sheriff Court at Stirling.

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

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *Schedule II,* 9 (*d*)—*Process—A.S., June* 26, 1907, *sec.* 12—*Recording of Disputed Memorandum of Agreement—Genuineness—Inadequacy of Compensation.*

The Act of Sederunt of 26th June 1907, section 12, enacts—"When the genuineness of a memorandum under paragraph 9 of the Second Schedule appended to the Act is disputed . . . or the sheriff-clerk refuses under subsection (*d*) of said paragraph to record such memorandum, the person disputing the genuineness . . . or the sheriff-clerk, as the case may be, shall lodge a minute stating clearly all the grounds for his action, and the memorandum shall thereupon be dealt with as if it were an application to the Sheriff for settlement by arbitration of the questions raised by the minute."

A workman objected to the recording of a memorandum of agreement, "on the ground that it is not genuine, in respect that said payment of forty pounds sterling was not accepted by the claimant in full satisfaction and discharge of all claims past and future in respect of the accident described in said memorandum," and, after correspondence, at the instigation of the sheriff-clerk, lodged a minute to that effect. The sheriff-clerk referred the objection to the Sheriff-Substitute as arbitrator. *Held* that it was competent for the Sheriff-Substitute to consider the grounds of objection founded on alleged inadequacy of compensation and improper means by which the agreement was obtained.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) enacts—Second Schedule (9)—"Where the amount of compensation under this Act has been ascertained . . . by agreement, a memorandum thereof shall be sent . . . to the [sheriff-clerk], who shall, . . . on being satisfied as to its genuineness, record such memorandum. . . . (*d*) Where it appears to the [sheriff-clerk], on any information which he considers sufficient, that an agreement as to the redemption of a weekly payment by a lump sum . . . ought not to be registered by reason of the inadequacy of the sum . . . or by reason of the agreement having been obtained by fraud or undue influence, or other improper means, he may refuse to record the memorandum of the agreement . . . and refer the matter to the [sheriff], . . . who shall . . . make such order . . . as under the circum-

stances he may think just. (*e*) The [sheriff] may, within six months after a memorandum of an agreement as to the redemption of a weekly payment by a lump sum . . . has been recorded in the register, order that the record be removed from the register on proof to his satisfaction that the agreement was obtained by fraud . . . or other improper means, and may make such order . . . as under the circumstances he may think just."

The Act of Sederunt, 26th June 1907, sec. 12, is quoted *supra in rubric*.

James Burns, brusher, Kilsyth, *appellant*, appealed by way of Stated Case against a decision of the Sheriff-Substitute (MITCHELL) at Stirling, in proceedings at his instance against William Baird & Company, Limited, Glasgow, *respondents*, under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58).

The Case stated by the Sheriff-Substitute set forth—"This is an arbitration in connection with an application for the registration of an alleged memorandum of agreement between the appellant and the respondents. The application to record was made on 26th March 1912, *per* a letter from the Scottish Mine Owners' Defence and Mutual Insurance Association, Limited, on behalf of the respondents; and said memorandum bore that the appellant accepted a lump sum payment of £40 'in full satisfaction and discharge of all claims past and future' in respect of injury by accident on 11th December 1911. The memorandum also bore to be signed by an agent (in Glasgow) on behalf of appellant. On 27th March 1912 the registrar, the sheriff-clerk, at the request of the respondents, served a copy of the memorandum on the appellant, with an intimation that it would be recorded unless the genuineness was disputed or recording was objected to before 4th April. On 3rd April 1912 another agent (in Kilsyth) wrote to the registrar a letter which concluded with these words—'Please note that my client (Burns) disputes the genuineness of the same (memorandum) and objects to the recording.' The registrar on 6th April notified this intimation to the said Assurance Association, and stated that consequently the memorandum would not be recorded without a special warrant from the Sheriff. On 12th April the appellant's new agent wrote to the registrar setting forth the circumstances under which he had previously written for the appellant 'objecting to' the recording of the memorandum, and now referring the registrar to the Act of Parliament, Schedule II, 9 (*d*), and requesting him to refer the matter to me. On 16th April the registrar replied to appellant's said agent suggesting to him to lodge a minute as provided for in section 12 of the Act of Sederunt of 26th June 1907, and on 17th April appellant's said agent wrote to the registrar pointing out that under said provision the sheriff-clerk had power to lodge a minute 'stating clearly all the grounds for his action' (the words of the section) in refusing to record the memorandum under Schedule II, 9 (*d*), of the Act, and inquiring whether he intended to lodge such a minute. By letter of same date the registrar replied that while he had power under the said Act of Sederunt to lodge such a minute, it was clearly the intention of Schedule II, 9 (*d*), of the Act that he should only do so when no objection had been lodged to the recording of the memorandum, and that as such objection had been lodged the appellant should lodge a minute. On 3rd May the appellant lodged a minute objecting to the recording of the memorandum on the ground that it was 'not genuine in respect that said payment of £40 sterling was not accepted by the claimant in full satisfaction and discharge of all claims past and future in respect of the accident,' and explaining and averring that there was inadequacy of consideration and in effect unfair or improper treatment in the matter of the agreement. On 5th July 1912, after hearing parties, I held that the appellant's procedure *per* minute No. 1 of process was not competent under the statute (the grounds stated in said minute not in my view raising a question of 'genuineness'), dismissed the same, and granted warrant to record the memorandum of agreement, finding the respondents entitled to modified expenses."

The minute, No. 1 of process, was to the following effect—"The said James Burns objects to the recording of the memorandum of agreement on the ground that it is not genuine in respect that said payment of forty pounds sterling was not accepted by the claimant in full satisfaction and discharge of all claims, past and future, in respect of the accident described in said memorandum. It is explained and averred that the claimant is illiterate, and cannot even write his own name. On or about 26th March 1912 the respondents, through their agents, requested the claimant to come to Glasgow, and at the interview which took place on the date mentioned respondents offered the claimants forty pounds, stating that that sum was the most he could get under any circumstances, and that his hand would soon be better. In that belief the claimant reluctantly accepted the sum offered. As the claimant was unable to write, one of the respondents' representatives intimated to the claimant that he would send out for a 'sheriff,' who would sign for him. The claimant gave the party who was brought in authority to sign for him, but expressed at the time his dissatisfaction with the sum he was being paid by the respondents. The said party, however, offered him no advice. The respondents did not suggest to the claimant, although they knew of his being illiterate, that he should obtain independent medical or legal advice. In accepting said sum of forty pounds the claimant relied on the respondents treating him fairly from their knowledge of his injuries, which were examined on several occasions by the respondents' medical officers. It is explained and averred that the said sum of forty pounds paid to claimant is grossly inadequate. The

claimant has, since receiving said payment, consulted his own medical adviser, and has ascertained that the working capacity of his right hand is completely and permanently destroyed. It is further explained and averred that in terms of paragraph 12 of the Act of Sederunt of 26th June 1907, these questions fall to be settled by arbitration."

The *questions of law* were—"(1) Was I right in holding that the appellant's procedure *per* minute No. 1 of process was not competent under the Workmen's Compensation Act 1906? (2) Was I entitled to dismiss said minute without proof of the grounds of opposition to the recording of the alleged memorandum of agreement set forth therein?"

Argued for the appellant—The facts averred in the minute were relevant to infer that the memorandum was not genuine, and therefore the Sheriff-Substitute ought to have inquired into them, in accordance with section 12 of the Act of Sederunt, 26th June 1907. "Genuineness" ought not to be construed too strictly, for the intention of the Act of Sederunt was to avoid litigation and settle questions of compensation by arbitration. In any event, it would have been competent for the Sheriff to have considered the question of the adequacy of the compensation had the sheriff-clerk himself lodged the minute, and the mere fact that it was the workman who lodged it, and that too on the advice of the sheriff-clerk, could make no difference. The following authorities were referred to—*Hanley* v. *Niddrie and Benhar Coal Company, Limited*, 1910 S.C. 875, *per* Lord Kinnear at p. 880, 47 S.L.R. 726, at p. 729; *Macandrew* v. *Gilhooley*, 1911 S.C. 448, 48 S.L.R. 511; *Lochgelly Iron and Coal Company, Limited* v. *Sinclair*, 1909 S.C. 922, 46 S.L.R. 665; *Ellis* v. *Lochgelly Iron and Coal Company, Limited*, 1909 S.C. 1278, *per* Lord President at p. 1281, 46 S.L.R. 960, at p. 961; *John Brown & Company, Limited* v. *Orr*, 1910 S.C. 526, 47 S.L.R. 437.

Argued for the respondents—It was the workman and not the sheriff-clerk who had taken exception to the registration of the memorandum, and therefore in terms of sec. 12 of the Act of Sederunt, 26th June 1907, the only question for the Sheriff was the "genuineness" of the memorandum. The question of the adequacy of the compensation was not competent—*Macdonald* v. *Fairfield Shipbuilding Company, Ltd.*, October 20, 1905, 8 F. 8, *per* Lord Kyllachy at p. 11, 43 S.L.R. 1, at p. 3; *Traill & Sons* v. *Cochrane*, July 19, 1901, 3 F. 1091, *per* Lord Adam at p. 1093, 38 S.L.R. 848, at p. 850; *M'Lean* v. *Allan Line S.S. Co., Ltd.*, 1912 S.C. 256, 49 S.L.R. 207. The workman's remedy was provided by sec. 9 (*e*) of the Second Schedule of the Act of 1906, under which he was entitled to raise the question of adequacy within six months of the recording of the memorandum. The facts averred in the minute were not relevant to infer that it was not genuine, for the workman, admittedly, had agreed to accept the compensation. In *John Brown & Company, Limited* v. *Orr*, *cit. sup.*, while the decision of the Court was to the effect that the remedy was statutory, the ground on which it was sought to set aside the memorandum was that it was not genuine. The following cases were also referred to—*Binning* v. *Easton & Sons*, January 18, 1906, 8 F. 407, 43 S.L.R. 312; *Coakley* v. *Addie & Sons, Ltd.*, 1909 S.C. 545, 46 S.L.R. 408.

At advising—

LORD SALVESEN—The material facts as found by the Sheriff-Substitute and appearing from the correspondence annexed to the case are as follows:—On 11th December 1911 the appellant, while in the employment of the respondents, sustained personal injury consisting of a compound fracture of his right hand, caused by accident while working in their No. 1 pit. On 26th March 1912 a solicitor on behalf of the appellant signed a document which set forth that he had on that day made an agreement with the respondents to the effect that a lump sum payment amounting to £40, in addition to the weekly compensation already paid, was accepted by the claimant in full satisfaction and discharge of all claims, past and future, in respect of the said accident. The document also bore a request "that this memorandum be recorded in the special register at the Sheriff Court of Stirling, Dumbarton, and Clackmannan at Stirling"; and was addressed to the Sheriff-clerk, Court-house, Stirling. On the same day an application to record a memorandum was made by a law agent of the company with which the respondents were insured, and on 27th March the sheriff-clerk served a copy of the memorandum on the appellant, with an intimation that it would be recorded unless the genuineness was disputed or recording was objected to before 4th April.

On 3rd April an agent on behalf of the appellant—Mr M'Dougall—wrote to the sheriff-clerk stating that his client disputed the genuineness of the memorandum and objected to its being recorded, and this was duly intimated to the respondents. On 12th April Mr M'Dougall explained in a further letter to the sheriff-clerk the grounds of his client's objections. These were, briefly, that £40 was inadequate as compensation for his injuries, that the appellant had no independent legal or medical advice, that he was informed that £40 was all that he could get, and that he was illiterate. He also enclosed a report from a medical man in support of his statement as to inadequacy, and asked that the matter should be referred to the Sheriff. The sheriff-clerk wrote in reply that he would submit the whole documents to Sheriff Moffat. On 16th April the sheriff-clerk wrote to Mr M'Dougall advising him to lodge a minute as provided for in section 12 of the Act of Sederunt of 26th June 1907, and at the same time an initial writ claiming that the amount of compensation should be determined by arbitration. Two further letters passed between the parties, one in which the claimant's agent suggested

that the sheriff-clerk should lodge a minute stating the grounds on which he referred the matter to the Sheriff, and the other in which the sheriff-clerk took up the position that the intention of the Act of Sederunt seemed to be that the sheriff-clerk should only act when no objection had been lodged to the recording of the memorandum, and indicating his view that it fell to the appellant to lodge a minute. A minute was accordingly lodged. It sets forth that the appellant objected to the recording of the memorandum, on the ground that it was not genuine, in respect that £40 was not accepted by the claimant in full satisfaction of all claims, past and future, in respect of the accident. The succeeding paragraphs of the minute, however, show that the appellant did authorise the memorandum to be signed on his behalf, but that he had done so on a statement made by the respondents' representative that £40 was the most he could get under any circumstances, and that his hand would soon be better; that he was himself illiterate and had no independent medical or legal advice; and that he accepted said sum in reliance on the respondents treating him fairly from their knowledge of his injuries. He further averred that the £40 paid to him was grossly inadequate, as he has since ascertained that the working capacity of his right hand is completely and permanently destroyed.

The Sheriff-Substitute, after hearing parties, held that the proposed procedure was not competent under the statute, the grounds stated in the minute not, in his view, raising a question of genuineness. He accordingly dismissed the same and granted warrant to record the memorandum of agreement. The question of law is whether he was right in so doing.

If this question had arisen under the former Act I think the Sheriff would have been right. In the case of *Macdonald* (8 F. 8) it was held that an objection to the recording of a memorandum of agreement that the agreement had been made under essential error, and that the sum agreed to be paid was more than half the workman's average weekly earnings, was irrelevant. Lord Kyllachy said—"The genuineness of the agreement is admitted. It is admitted to be as much a genuine agreement as if it had been in writing and signed by both parties. The objection to it stated by the respondents is only this, that although in fact made between the parties, it was induced by essential error—in other words, that although a genuine agreement it was not a valid agreement. . . . That being so, it does not appear to me to be possible to doubt that the Sheriff-Substitute was right in granting the special warrant which is in question." The reason of the decision, as afterwards explained, was that the Sheriff-Substitute's function was merely ministerial, and that the moment it was conceded that the agreement was genuine he had no option but to grant warrant to have it recorded.

This decision has very little bearing on the provisions contained in the Second Schedule of the Workmen's Compensation Act 1906, and especially section 9 (*d*) and (*e*). Under the former subsection, if it appears to the sheriff-clerk, on any information which he considers sufficient, that an agreement as to the redemption of the weekly payments by a lump sum ought not to be registered by reason of the inadequacy of the sum, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum and refer the same to the judge, who shall, in accordance with rules of Court, make such order as under the circumstances he may think just. By the latter sub-section the judge may, within six months after such an agreement has been recorded, order that the record be removed from the register on proof that the agreement was obtained by fraud or undue influence or other improper means. Had, therefore, the sheriff-clerk lodged a minute containing the same statements as in the minute lodged by the appellant's agent, there can be no doubt that it would have been the duty of the Sheriff-Substitute to inquire into the facts and to make such order thereafter as he thought just. The question of law accordingly appears to be whether, when the minute is lodged by the appellant and the matter is referred to the Sheriff, he is precluded from considering any objection except one that goes to the genuineness of the agreement.

I am unable to agree with the Sheriff-Substitute. What the sheriff-clerk in effect did was to refer the whole matters as to the inadequacy of the compensation and as to the alleged improper means by which the agreement fixing this sum was obtained, and I think it must be assumed that he regarded the agent's statements as constituting information which he considered sufficient to justify him in so doing. If he had not thought so, it was his duty to have recorded the memorandum, but I think he acted quite properly when, after considering the correspondence and the minute lodged on behalf of the appellant, he laid the whole papers before the local judge. It was not within his power to order inquiry into the statements made, nor was it within his competency to consider their relevancy, although I do not suggest that he might not have disregarded merely frivolous objections. The alternative view would lead to very strange results. Although the adequacy of the compensation is not objected to by the workman the sheriff-clerk may on his own initiative refer that matter to the Sheriff for his determination. Can he not do so when the workman takes the objection and brings it pointedly under his notice? Again, although the register may be corrected within six months after the memorandum has been recorded on the ground of fraud or undue influence or other improper means, yet if the Sheriff is right no such objection will be listened to at the instance of the workman when it is stated before the memorandum has been recorded. Nothing could be more

opposed to the interests of the employer. It is far better that averments challenging the validity of an agreement should be inquired into at once than that they should be delayed in the option of the workman until six months have elapsed. It would also be most unjust that the workman should be deprived of having the Sheriff's decision as to the adequacy of the compensation paid to him because, forsooth, the objection was not taken by the sheriff-clerk on his own initiative but was brought under his notice by the workman himself. Mere inadequacy is not a ground for correcting the register if the memorandum has once been recorded, and it would utterly stultify this provision, which is made for the protection of the workman, if it were held that inquiry as to the adequacy could only take place when the sheriff-clerk had stated the objection in spite of the apparent satisfaction of the workman. There is no duty laid upon the sheriff-clerk to make inquiry into the facts of every agreement that is presented to him for registration, and in practice I fancy he would not feel himself called upon to act unless there appeared on the face of the agreement a manifest disproportion between the agreed-on compensation and the injuries. I am therefore clearly of opinion that the Sheriff-Substitute has erred in granting warrant to record this memorandum without inquiry as to the facts averred. The statute contemplates that the procedure of determining questions of this kind shall be simple, inexpensive, and summary, and it would defeat this very laudable purpose if we were to support the decision of the Sheriff-Substitute here.

None of the cases cited to us appear to have any very direct bearing on the question here in dispute. In the case of *Ellis* (1909 S.C. 1279) it was held that the validity of a discharge was a question arising in the proceedings as to the liability to pay compensation, and that the arbitrator was acting within his jurisdiction in determining it, but there the inquiry was held in an application to award compensation. The case of *Brown* (1910 S.C. 526) is more in point, because it was there decided that an action at common law for reduction of a registered memorandum was incompetent, as the recording was a judical act in arbitration proceedings under the statute, and that the remedies for improper registration must be sought within the statute. In *Hanley* v. *The Niddrie and Benhar Coal Co.* (1910 S.C. 875) it was held competent for the arbitrator to determine the question as to the validity of a discharge in an application to record the memorandum; and in *Macandrew* v. *Gilhooley* (1911 S.C. 448), the validity of a discharge pleaded by the employers as an objection to recording a memorandum of an agreement was held by this Division to have been properly inquired into and set aside by the arbitrator. All these cases, although decided on different sections of the Workmen's Compensation Act or its schedules, tend to support the conclusion that questions, whether of fact or law, arising with regard to disputed claims for compensation must be determined in the first instance by the arbitrator. I propose, therefore, that we should answer both the questions of law stated by the Sheriff-Substitute in the negative, and remit to him to inquire into the facts alleged in the appellant's minute.

The LORD JUSTICE-CLERK and LORD DUNDAS concurred.

LORD GUTHRIE was abs nt.

The Court answered the questions in the negative.

Counsel for the Appellant—Maconochie. Agent—Norman M. Macpherson, S.S.C.

Counsel for the Respondents — Horne, K.C.—Hon. W. Watson. Agents—W. & J. Burness, W.S.

Tuesday, December 10.

FIRST DIVISION.

[Lord Dewar, Ordinary.

MUIR'S EXECUTORS *v.* CRAIG'S TRUSTEES.

Agent and Client — Fraud of Agent — Forgery of Client's Signature to Bond — Bar — Adoption — Incidence of Loss as between Innocent Parties.

The nephew of an old lady, while acting as her agent, forged in 1904 his aunt's signature to a bond and disposition in security and embezzled the sum advanced. He paid the interest on the bond down to 1910, when his aunt, who had received a notice from the Inland Revenue demanding payment of £1 odd of tax in respect of interest—to be deducted by her from the creditor in the bond—instructed another nephew, a brother of her agent, to make inquiries about it. In the course of his inquiries this second nephew learned that the bond was a forgery, and that his brother had used his aunt's title-deeds to raise money for his own use; but he abstained from informing her of the facts, and put her off with the excuse that he had not yet found out. She did not discover the forgery till after the agent's death in September of that year.

In an action at her instance for reduction of the bond, and for delivery of the title-deeds which had been handed to the lender, *held* (1) that the pursuer was not barred by her actings from challenging the bond—she not having in any way adopted the forgery—and (2) that she was entitled to delivery of the deeds, and decree *granted* as craved.

Blackburn, Low, & Company v. *Vigors*, (1887) L.R., 12 A.C. 531, *explained.*

On 24th July 1911 Thomas Coubrough and others, the executors of the deceased Miss Elizabeth Muir, Greenlaw Avenue, Paisley,