ence to it." And says Lord Moncreiff—"Even if decree in terms of the prayer were pronounced, I do not at present see how, or against whom, it can be enforced if the defenders refuse to obtemper it."

Now whether the decision of the Second Division in the case to which I have just referred is in accordance with the statute or not, it is quite clearly inapplicable to the present case, because no one disputes that if we grant decree in terms of the crave of the first alternative of the initial writ here we shall be granting an operative decree.

I hold therefore (first) that there is here before us a dispute within the meaning of the 68th section of the statute; (second) that that dispute has been decided by the rules of the Society, and that the decision so given is binding and conclusive on all parties; and (third) that this is the appropriate statutory method of enforcing the decision of the district executive. Accordingly I am for recalling the interlocutor of the Sheriff-Substitute and granting decree in terms of the first alternative crave of the initial writ.

Lord Mackenzie—I am of the same opinion. The pursuer here holds a decision of the domestic tribunal in his favour. His Lodge expelled him on the 19th November 1912. He appealed to the district committee against that decision, and they on 4th April 1913 sustained the appeal. The result was that the pursuer was reinstated in his position as a member of the Society. That is the only operative decision and the only one to which we can look.

Now in these circumstances he applies to the Sheriff-Substitute, under the provisions of the 68th section of the 1896 Act, for enforcement of the finding in his favour. In my opinion he was entitled to get from the Sheriff-Substitute the necessary order, because this, I think, is clearly a dispute within the meaning of the 1908 Act, section 6.

The argument to the contrary was that the matter was still *sub judice* before the domestic tribunal, because it was said an appeal had been taken by the defenders to the executive committee and that that had not been exhausted. If that matter is not exhausted by the executive, the responsibility rests with the defenders themselves. There is no duty whatever upon the pursuer, who was successful and holds the judgment, to take any proceedings at all for having the judgment set aside. There are no proceedings at present pending before any other Court. Looking to the way in which the case has been presented by the defenders, I think it is too late now to take up a position that they are entitled to have the present proceedings sisted in order that they may take steps for having the matter further heard and disposed of by the grand executive committee.

The next point that was argued by the defenders was that the actings of the district committee were *ultra vires*, that they had pronounced their decision as if in the exercise of a discretionary power, and that the statute conferred no discretion upon them. As I understood the point, it was this, that under the rules a misstatement upon a matter of fact necessarily disentitles the pursuer from remaining a member. In regard to that I can only say that it is not raised upon record; there is nothing about that—there is no plea, and the question is not one that is before us. Accordingly the only point which requires attention is that the remedy is incompetent. That argument was founded upon the case of *Gall*. For the reasons explained by your Lordship in the chair, I think that this case is distinguishable from the case of *Gall*. What we are here asked to do is not to pronounce a decree *ad factum præstandum*, but to give a declaratory finding preliminary to the operative conclusion which asks for a decree for payment of money. There is no difficulty in working out that decree. Accordingly the present cannot be considered as ruled by the case of *Gall*. That being so I think the judgment of the learned Sheriff-Substitute is wrong and should be recalled.

Lord Skerrington—I agree with your Lordships. The pursuer's case seems to me a very plain and simple one, and my only difficulty has been to understand why such an experienced Sheriff-Substitute dismissed the action. The two decisions which he cites do not really apply to the circumstances of the present case. With reference to the case of *Gall*, I do not think that the Court can have intended to decide as a matter of general principle that there is no jurisdiction to restrain the officials and members of a voluntary association from illegally excluding an individual member from the association if such member has a patrimonial right which would be prejudiced by his exclusion.

Lord Johnston was not present.

The Court recalled the interlocutor of the Sheriff-Substitute, and decerned in terms of the first alternative claim of the initial writ.

Counsel for the Pursuer (Appellant)—Christie, K.C.—Lowson. Agent—W. M. Urquhart, S.S.C.

Counsel for the Defenders (Respondents)—Wilson, K.C.—Aitchison. Agents—Balfour & Manson, S.S.C.

Thursday, February 25, 1915.

SECOND DIVISION.

[Sheriff Court at Dumfries.

SCOTT *v.* SANQUHAR AND KIRKCONNEL COLLIERIES, LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *Second Schedule* (9)—*Agreement—Genuineness—Terms of Receipts for Payments and Terms of Memorandum—Total Incapacity or Incapacity under the Act.*

Where the receipts for payments under an agreement entered into between an employer and a workman

with regard to compensation bore that the payments were "accepted as the amounts payable under the Workmen's Compensation Act 1906," and the terms of the memorandum the workman proposed to record were "the liability to pay workmen's compensation during the claimant's incapacity for work at the rate of ten shillings per week was admitted by the respondents" — *held* (1) that the agreement was to pay compensation during incapacity; (2) that the memorandum was in terms of the agreement; and (3) that the Sheriff was wrong in refusing to record the memorandum as not being in terms of the agreement.

Pryde v. *Moore & Company*, 1913 S.C. 457, 50 S.L.R. 302, *commented on.*

Master and Servant— Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *Second Schedule* (9), *proviso* (*b*)—*Recording of Memorandum of Agreement — Workman Returning to Work and Earning the Same Wages as he Did before the Accident.*

In an application to record a memorandum of agreement where it was admitted that the workman had returned to work and was earning the same wages as he did before the accident, and where the Sheriff had refused to record the memorandum, *held* that the Sheriff had no absolute discretion to refuse to record the memorandum, and the case *remitted* to him to record the memorandum under such conditions as he considered just in the circumstances.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), Second Schedule (9) (as applied to Scotland by section 13), enacts — "Where the amount of compensation under this Act has been ascertained . . . either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent . . . to the [sheriff-clerk], who shall . . . on being satisfied as to its genuineness record such memorandum in a special register . . . and thereupon the memorandum shall for all purposes be enforceable as a [Sheriff Court] judgment: Provided that— . . . (*b*) Where a workman seeks to record a memorandum of agreement between his employer and himself for payment of compensation under this Act and the employer . . . proves that the workman has in fact returned to work and is earning the same wages as he did before the accident and objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the [sheriff] under the circumstances may think just."

John Scott, farm servant, Girthhead, Wamphray, sometime residing at Gateside, there, and now at Old Police Station, Johnstone Bridge, Lockerbie, with consent, *appellant*, being dissatisfied with a determination of the Sheriff-Substitute (CAMPION) at Dumfries acting as arbiter under the Workmen's Compensation Act 1906 in an arbitration between him and the Sanquhar and Kirkconnel Collieries, Limited, Sanquhar, *respondents*, appealed by way of Stated Case.

The Case stated—"This was an application by the claimant and appellant asking the Sheriff to grant warrant to the Sheriff Clerk to record in the Special Register kept at Dumfries in terms of said Act a memorandum purporting to set forth an agreement between the applicant as claimant and the above-named respondents, said memorandum being in the following terms, viz.—'The claimant claimed compensation from the respondents in respect of personal injuries resulting in stricture of the urethra, due to accident arising out of and in the course of his employment with the respondents at respondents' works at Kirkconnel, on or about the twenty-second day of October Nineteen hundred and twelve. The liability to pay workmen's compensation during the claimant's incapacity for work at the rate of ten shillings per week was admitted by the respondents, and they paid compensation at the said rate of ten shillings a week to the claimant until sixth January Nineteen hundred and fourteen. It is requested that this memorandum be recorded in the Special Register of the Sheriff Court of Dumfries and Galloway at Dumfries.'

"On said memorandum being intimated to the respondents they lodged a minute of objections in the following terms, viz.— 'Take notice that the respondents object to the memorandum sent to you for registration in the above-mentioned matter being recorded on the following grounds, namely —(1) That the agreement to pay the claimant compensation at the rate of 10s. weekly was for total incapacity for work, and (2) that the claimant has resumed work and is earning full wages.'

"On 6th October last I heard parties' agents on the application, and thereafter a joint minute of admissions was adjusted by them and lodged on 19th November 1914 in the following terms:—'Dickie for the claimant and Fergusson for the respondents, concur in admitting for the purposes of this action (1) that the claimant, who is in minority, entered the service of the respondents on or about 31st May 1912. He was engaged by the respondents as a waggon trimmer up to 22nd October 1912, when he met with an accident arising out of and in the course of said employment. As a result of said accident the claimant sustained injuries resulting in stricture of the urethra and was totally incapacitated for work until on or about the 6th day of January 1914; (2) that the average weekly earnings of the claimant, who was at the date of the injury under twenty-one years of age, were less than twenty shillings per week; (3) that the respondents have paid compensation under the Workmen's Compensation Act 1906 to the claimant at the rate of 10s. per week. The Workmen's Compensation Act provides that the rate for total incapacity, where the workman is under twenty-one years of age and his average earnings are under twenty shillings per week, is ten shillings per week. The first payment was made on 30th November 1912, and the respondents continued to pay compensation at

said rate until on or about 6th January 1914, when they ceased payment. Down to 25th January 1913 the receipts were granted by James Scott, the pursuer's father, on behalf of the claimant. Thereafter to 6th January 1914 they were granted by the claimant himself. The receipts are herewith produced and referred to for their terms. (4) Reserving the question as to whether the claimant has or has not recovered from the result of said accident, as to which the parties are at variance, the parties admit that the claimant on or about 7th January 1914 obtained employment as a farm servant and is still so employed. When able to work he can as a farm servant earn at least the same wages as he did before the accident, and at the date of the application was earning such wages.'

"The receipts produced, some of which were signed by the father of the claimant and others by the claimant himself, were as follows:—

"'RECEIPT FOR PAYMENTS.'

"'John Scott, 10/.

"'*Under the Workmen's Compensation Act* 1906.

"'Case No. 15/606.

"'Messrs Sanquhar & Kirkconnel Collieries, Ltd., Sanquhar.

"'Date when first payment is due, 5th November 1912.'

"*The undernoted payments are accepted as the amounts payable under the Workmen's Compensation Act* 1906.

"'Date of Payment.	Amount of Compensation agreed on.	Signature of Claimant or person authorised to receive payment.	Signature of Witness in case where person cannot sign.
1912.			
30th Nov. —5 weeks	£2 10 0	James Scott	
17th Dec. —3 ,,	1 10 0	James Scott	
31st ,, —2 ,,	1 0 0	James Scott	
1913.			
11th Jany.—2 weeks	1 0 0	James Scott	
25th ,, 2 ,,	1 0 0	James Scott	
8th Feb. —2 ,,	1 0 0	John Scott	
22nd ,, —2 ,,	1 0 0	John Scott	
8th Mch.—2 ,,	1 0 0	John Scott	
15th ,, —1 week	0 10 0	John Scott	
22nd ,, —1 ,,	0 10 0	John Scott	
29th ,, —1 ,,	0 10 0	John Scott	
5th Apl. —1 ,,	0 10 0	John Scott	
12th ,, —1 ,,	0 10 0	John Scott	
19th ,, —1 ,,	0 10 0	John Scott	
26th ,, —1 ,,	0 10 0	John Scott	
3rd May —1 ,,	0 10 0	John Scott	
10th ,, — ,,	0 10 0	John Scott	
17th ,, — ,,	0 10 0	John Scott	
21st July. —6 weeks	3 0 0	John Scott	
16th Aug.—7 ,,	3 10 0	John Scott	
13th Sept.—4 ,,	2 0 0	John Scott	
14th Oct. —4 ,,	2 0 0	John Scott	
12th Nov. —4 ,,	2 0 0	John Scott	
8th Dec. —4 ,,	2 0 0	John Scott	
1914.			
27th Jan. —4 weeks	2 0 0	John Scott'	

"No oral evidence was led, but on the said minute of admissions and on the terms of the receipts I found it proved that the claimant John Scott, who is in minority, entered the service of the respondents on or about 31st May 1912, being engaged by the respondents as a waggon trimmer up to 22nd October 1912, when he met with an accident arising out of and in the course of said employment by which he was totally incapacitated for work until on or about 6th January 1914. That the respondents paid compensation to the claimant at the rate of 10s. per week from 30th November 1912 until on or about 6th January 1914, when they ceased payment. That such compensation was at the rate of weekly payment during total incapacity in the case of a workman who is under twenty-one years of age at the time of the injury, and whose average weekly earnings are less than twenty shillings, as provided by sec. (1) proviso (*b*) of the First Schedule to the Workmen's Compensation Act 1906; and that the claimant on or about 7th January 1914 obtained employment as a farm servant, and at the date when the application was brought was earning as much as he did before the accident.

"I *found in law* that the payments made must be construed as an agreement under the Workmen's Compensation Act, but in respect the agreement to pay the claimant being for the period of total incapacity, and the claimant since the date of said agreement having been earning as much as he did before the accident, I dismissed the application for warrant to record the memorandum of agreement mentioned therein, and found the respondents entitled to £3, 3s. of modified expenses."

The *question of law* was—"Whether on the facts stated, the admissions of parties, and the terms of the receipts produced and admitted, I was entitled to dismiss the application to record the memorandum of agreement?"

Argued for the appellant—(1) The agreement was to pay compensation during incapacity in the sense of the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), not merely during total incapacity. This was shown by the acceptance of the payments—*Pearson* v. *Babcock & Wilcox*, 1913 S.C. 959, 50 S.L.R. 790; *Coakley* v. *Addie & Sons, Limited*, 1909 S.C. 545, 46 S.L.R. 408; *Popple* v. *Frodingham Iron and Steel Company*, [1912] 2 K.B. 141. Even if the agreement was limited to total incapacity it was nevertheless registrable unless there was evidence excluding recurrence of total incapacity—*Keevans* v. *Mundy*, 1914 S.C. 525, 51 S.L.R. 462. *M'Lean* v. *Allan Line Steamship Company, Limited*, 1912 S.C. 256, 49 S.L.R. 207, was a case of an agreement to pay during total incapacity, so was *Pryde* v. *Moore & Company*, 1913 S.C. 457, 50 S.L.R. 302, and neither was in point. (2) The fact that the workman had returned to work and was earning the same wage as he did before the accident did not give the Sheriff a discretion to refuse to record the memorandum *simpliciter*, but only to attach conditions to the recording. He might supersede extract—*Wishart* v. *Gibson & Company*, 1914 S.C. (H.L.) 53 (Lord Shaw at p. 63, Lord Chancellor (Haldane) at p. 58), 51 S.L.R. 516. Recording the memorandum was necessary as the possibility of a recurrence of incapacity was not excluded and was specially important here, as the appellant being a minor might by lapse of time become entitled to larger payments than

the agreement set forth, and if the memorandum was recorded could proceed upon it to recover these.

Argued for the respondents—The agreement was to pay during total incapacity. The receipts being for the maximum amount the agreement must be presumed to be for total incapacity. The agreement was otherwise colourless, and the Sheriff having considered it his finding could not now be disturbed. It was for the workman to show that the memorandum was in the precise terms of the agreement. Any variation, if not frivolous, was enough to entitle the Sheriff to refuse to record the memorandum. Here there was a material variation—*M'Lean* v. *Allan Line Steamship Company, Limited* (*cit. sup.*), *Pryde* v. *Moore & Company* (*cit. sup.*). If the agreement was for total incapacity, it was now spent and could not be recorded—Elliott's Workmen's Compensation Act 1906, 6th ed. p. 489; *Lochgelly Iron and Coal Company* v. *Sinclair*, 1909 S.C. 922, 46 S.L.R. 665; *M'Ewan* v. *William Baird & Company, Limited*, 1910 S.C. 436, 47 S.L.R. 430. (2) The workman having resumed work at his original wage, the Sheriff had a discretion to record or not to record the memorandum, and his finding being reasonable could not be interfered with now. *Coakley* v. *Addie & Sons, Limited* (*cit. sup.*) was accepted to a limited extent only in *Popple* v. *Frodingham Iron and Steel Company* (*cit. sup.*), and was inconsistent with *M'Ewan* v. *William Baird & Company, Limited* (*cit. sup.*). The words "if at all" in the proviso did not refer to the genuineness of the memorandum but gave a discretion to record or not. The Sheriff had no question of recovery of capacity before him; if, as was admitted, the workman had returned to work and was earning the same wages as before the accident, the matter was open to the Sheriff's discretion. Even if he wrongly concluded that the agreement was limited to total incapacity, he was still properly exercising the discretion given him in the proviso and could not be upset because he had proceeded on a wrong ground. Recording the memorandum was of no advantage to the appellant and would prejudice the respondents, as they would have to suspend a charge thereon. This involved further litigation, and the object of the Act was to exclude litigation—*Lochgelly Iron and Coal Company* v. *Sinclair* (*cit. sup.*). In the event of a remit to the Sheriff he might nullify the object thereof by the conditions he attached to recording the memorandum.

Lord Hunter—The question that is put by the arbiter in this case is—"Whether on the facts stated, the admissions of parties, and the terms of the receipts produced and admitted, I was entitled to dismiss the application to record the memorandum of agreement?" From the facts as stated in the case it appears that the appellant in 1912, while in the employment of the respondents, received injuries that completely incapacitated him for work. At the time of this occurrence he was under the age of twenty-one and therefore the maximum amount of compensation to which he was entitled was 10s. per week. It is admitted by the parties that an agreement was come to under which he received compensation to the amount of 10s. per week. Towards the end of 1914, apparently, the payment of compensation ceased. The appellant recovered in the sense that he was able to do work which brought him in practically the same remuneration as he had received before. At the time that the application was made to record the memorandum he was in fact receiving pay at that rate.

Objection was taken by the respondents to the recording of the memorandum on two grounds—first, that the agreement to pay the claimant compensation at the rate of 10s. weekly was for total incapacity for work, and second, that the claimant had resumed work and was earning full wages. The sheriff-substitute in dealing with the case appears, in my opinion, to have erred in two respects. In the first place he assumed, I think wrongly, that he was bound to construe the agreement that had been come to as though it were an agreement to pay compensation during total incapacity. An examination of the receipts, which are really the main evidence of the carrying out of the agreement, shows that there is nothing to indicate that there was any special agreement between the appellant and the respondents that the compensation that was payable at the rate of 10s. weekly was to exist only during the period of total incapacity. It was, I think, an ordinary agreement to pay compensation under the Workmen's Compensation Act.

The case, in my opinion, resembles more nearly the case of *Pearson* v. *Babcock & Willcox*, 1913 S.C. 959, than the case of *Pryde* v. *Moore & Company*, 1913 S.C. 457, at all events as regards the point in the latter case on which the respondents found. Properly read, however, the case of *Pryde* v. *Moore & Company* is really an authority in favour of the appellant's proposition that there was here no agreement of a special character that would justify the introduction of words limiting its duration. It is not clear from the sheriff-substitute's findings that he really found anything at all with reference to the agreement, but towards the end of the case he assumes that the agreement was an agreement to exist only during total incapacity. For the reasons I have indicated I think he was wrong in that view.

I also think he was wrong in regarding the fact that the appellant was earning similar wages to the wages which he was earning at the time of the accident as conclusive evidence of complete recovery from the injuries sustained in consequence of the accident. That that appears to be the view of the sheriff-substitute I gather from the way in which he states the proposition in law, where he says that in respect that the claimant since the date of the agreement has been earning as much as he did before the accident he dismissed the application.

The respondents, in my opinion, were quite right when they said that this application really fell to be treated under Schedule

II, section 9 (*b*), of the Workmen's Compensation Act 1906. That section provides as follows:—"... [*His Lordship read the section.*] ..."

I think the sheriff-substitute ought to have treated this case as one for allowing the memorandum to be recorded, and to have attached such conditions to the recording as would prevent the employers from suffering prejudice therefrom. The appellant in arguing the case indicated to us that he was quite willing that there should be such conditions attached as would prevent him doing diligence upon the recorded memorandum. I therefore think the proper course in this case is to remit to the Sheriff, with instructions to deal with the case under the section of the Act to which I have referred, to allow the memorandum of agreement to be recorded, and to attach such conditions thereto as in the circumstances he thinks just.

LORD GUTHRIE—I am of the same opinion. The sheriff-substitute has clearly stated the grounds upon which he arrived at his decision. It seems to me clear that in the sheriff-substitute's view the memorandum was not one that should be recorded because it did not express what the respondents proposed—namely, that the word "total" should be inserted before the word "incapacity" in the passage which runs—"The liability to pay workmen's compensation during the claimant's incapacity for work at the rate of ten shillings per week was admitted by the respondents." I agree with Lord Hunter in thinking that the sheriff-substitute was wrong in that view. That would really be the case that arose in *Pryde* v. *Moore & Company*, 1913 S.C. 457, where you had adjected to the ordinary agreement a stipulation that the payment was to continue only during total incapacity. If the sheriff-substitute advised himself wrongly in that matter, then it appears to me (that being the leading ground of his judgment) the result at which he arrived cannot be sustained.

He goes on to state another ground, that if the claimant was at the time of the application both earning wages equal to what he got before and was actually employed, then he had no other course but to dismiss the application. My opinion is, that instead of being bound to dismiss the application in such circumstances he was not entitled to refuse to record.

The matter turns on Schedule 2, section 9, sub-section (*b*). In the ordinary case the statute contemplated that a memorandum should be recorded, although it is quite true, as Mr Horne has stated, that in practice there are thousands of such agreements which are not reduced to writing and which have never been recorded. The statute, however, contemplates a memorandum, but then it provides that there is a particular case where, as I read it, it would be only reasonable that if certain conditions are fulfilled the Judge should be entitled to affix the terms. The terms that would naturally occur in a case of this kind would be to prevent diligence being done on the memorandum when recorded.

It is said, however, that the sheriff-substitute is not only entitled to impose terms but that there is committed to his absolute discretion the right to say whether a memorandum shall or shall not be recorded. If that was intended, it could have been expressed. It is quite distinctly expressed in regard to the terms, but I do not read the words "if at all" in the sense contended for by the respondents. Section 9 says that the Judge shall deal with the memorandum on being satisfied as to its genuineness. It seems to me that "if at all" was not intended to do anything more than—it may be unnecessarily—to call attention to the fact that the genuineness of the memorandum must be first cleared up.

If that is so, then I agree in thinking that the sheriff-substitute on his two grounds has come to a wrong conclusion. It was suggested that at all events the second ground was right and would be sufficient to justify the decision. But thinking as I do that both grounds are wrong, then the question does not arise.

LORD JUSTICE-CLERK—I am of the same opinion.

LORD DUNDAS was in the Extra Division.

LORD SALVESEN was on Circuit.

The Court answered the question of law in the negative and remitted the case to the sheriff to record the memorandum upon such conditions as he considered just in the circumstances.

Counsel for the Appellant—Watt, K.C.—Macdonald. Agents—Wilson & Matthew, S.S.C.

Counsel for the Respondents—Horne, K.C.—Duffes. Agents—Simpson & Marwick, W.S.

Thursday, March 11.

SECOND DIVISION.

[Lord Dewar, Ordinary.

HARVEY *v.* GLASGOW CORPORATION.

Expenses—Dominus litis—Police—Municipal Corporation Defending Action against Police Constables in their Employment—Glasgow Police Act 1868 (29 *and* 30 *Vict. cclxxiii*), *sec.* 134.

Circumstances in which *held* that Glasgow Corporation, in an action brought by a member of the public against two police constables in their employment, had a sufficient interest in the subject-matter, and had assumed such a degree of control of the litigation, as to render them liable in expenses as *domini litis* to the successful pursuer.

Opinion, per the Lord Justice-Clerk and Lord Salvesen, that a person may be *dominus litis* though he has no direct interest in the subject-matter of the litigation, provided (*per* Lord