by cross-examination the evidence that was presented to destroy his case. It may be that the Court in that case took the view that the evidence given by the pursuer's witnesses was dishonest. It is not necessary to regard any of the evidence given in this case as purposely dishonest. There is room for misunderstanding with regard to the movements of an inspecting fireman in the dark labyrinths of a mine, and Mr Watt argued with some plausibility that the fireman's inspection may have escaped the observation of the two witnesses who supported the pursuer's case while they were still at work in "the laigh," and that the fireman may have come upon them a second time at the horse-lye after his inspection of the faces. But with regard to the conclusion which ought to be drawn from the manner in which the pursuer's case was presented to and left with the jury, I think the present case is *a fortiori* of that of *Keenan*, and that the verdict cannot be regarded as a verdict at which a reasonable jury could arrive.

The case is not one which would justify the adoption of the course rendered legitimate by section 2 of the Jury Trials Amendment (Scotland) Act 1910, which the defenders asked us to take, namely, to enter judgment in their favour. It may be that if this case is tried again it will be found that some misunderstanding or misconception explains what so far as the trial that has already taken place is concerned is unexplained. I think therefore the proper course is to allow parties an opportunity of having the case retried.

LORD SKERRINGTON—I think that the verdict must be set aside upon the ground that the testimony adduced by the pursuer was fundamentally self-contradictory and incoherent. At the same time it must not be supposed that a verdict will be set aside merely because it is possible to discover certain discrepancies in the evidence adduced by the successful party. There are few cases, or at anyrate few honest cases, in which some such discrepancies do not occur. The present case is an exceptional one, and the contradictions in the evidence of the principal witnesses for the pursuer are such as it is impossible to explain satisfactorily upon any theory which was presented to the jury or to the Court by the pursuer's counsel. The case is, I think, *a fortiori* of *Keenan's* case (1914 S.C. 959). While I thought it "essential to the justice of the case" that the verdict in *Keenan's* case should be set aside, I was unable to hold that there was no evidence in support of the verdict which the jury was entitled to consider. For the reasons already indicated the evidence adduced by the pursuer in the present case is, in my judgment, insufficient to support the verdict.

LORD CULLEN—I am of the same opinion. The witness William M'Colgan was not treated by the pursuer as a discredited witness. The pursuer founded on his evidence just as much as on that of any other of her witnesses. The result was that the pursuer's evidence as a whole, which was presented by her to the jury for acceptance as being truthful and reliable, was self-contradictory on a crucial point. In these circumstances it seems to me clear that the verdict for the pursuer, based as it was on that contradiction, was not one at which the jury were reasonably entitled to arrive.

LORD SANDS concurred.

The Court set aside the verdict and granted a new trial.

Counsel for the Pursuer—Morton, K.C.—Crawford. Agent—R. D. C. M'Kechnie, Solicitor.

Counsel for the Defenders—Watt, K.C.—Gillies. Agents—W. & J. Burness, W.S.

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*Saturday, January* 13.

## FIRST DIVISION.

[Sheriff Court at Dumbarton.

## JOHN BROWN & COMPANY, LIMITED *v.* BAIRD.

*Workmen's Compensation Act* 1906 (6 *Edw. VII, cap.* 58)—*Compromise of Claims—Discharge by Workman of All Claims, Past and Present, in Return for Lump Sum Payment—Subsequent Application for Arbitration—Whether Barred by Discharge.*

A workman having received injuries on 20th April 1920, his employers admitted liability therefor and paid him compensation under the Workmen's Compensation Act 1906 and the War Additions Acts 1917 and 1919 from the the date of his accident down to 21st August 1920, when their works doctor certified that the workman had recovered capacity. After some negotiations the workman on 31st December 1920 signed a discharge of all his claims under the Workmen's Compensation Act and the War Additions Acts 1917 and 1919 subsequent to 21st August 1920 for £35. The recording of the memorandum of this agreement was objected to by an approved society of which the workman was a member, on the grounds (1) that the sum was inadequate, and (2) that the workman was at the date when he signed the discharge mentally unsound. The Sheriff Clerk having refused to record the memorandum the matter was referred to the Sheriff-Substitute as arbitrator. Before anything more had been done the workman raised arbitration proceedings in order to obtain an award of compensation against the employers. *Held* (*diss.* Lord Skerrington) that the discharge was a compromise by the workman of his claims under the Act and not a redemption of a weekly payment; that it vouched an agreement within the meaning of section 1, sub-section (3), of the Act and not an agreement to exclude its application in breach of section 3, sub-section (1) thereof; and that accor-

dingly the workman was barred by its terms from claiming compensation.

This was a Stated Case on appeal from a decision of the Sheriff-Substitute (A. J. P. MENZIES) at Dumbarton in an arbitration under the Workmen's Compensation Act 1906 between John Brown & Company, Limited, shipbuilders and engineers, Clydebank, *appellants*, and William Baird, riveter, 18 Reid Street, Maryhill, Glasgow, *respondent*.

The Case stated, *inter alia*—"The following *facts* were admitted or proved—1. The applicant for compensation, William Baird, was employed as a riveter for some considerable time before 15th April 1920 by the respondents in the application, Messrs John Brown & Company, Limited, Clydebank. During that time he was both as to physical and mental capacity a normal workman of his class. On 15th April 1920 he was 26 years of age. 2. His wages were from £6 to £7 per week. 3. On 15th April 1920, while the pursuer was in the course of his said employment, he was injured by an accident arising out of and in the course of that employment. (4) This accident consisted in the fall of a heavy ship's plate, 15 feet long by 4 feet broad and ⅛ of an inch thick, from a height of 37 feet into the hold of the ship where Baird was working. . . . 5. Compensation in respect of said accident was paid by the employers to Baird from the date of said accident at the rate of 35s. per week, being the amount for which they were liable to Baird under the Workmen's Compensation Act 1906 for total incapacity caused by the accident, along with statutory war bonuses till 21st August 1920. 6. No agreement thereanent had been presented by either party for recording. 7. On 21st August 1920 the employers ceased to pay any compensation to Baird, their position being that he had then fully recovered from the injury caused by said accident. 8. This position was adopted by the employers upon the opinion of their works doctor, who examined Baird on 17th August 1920 and certified him to have recovered from his injury and to be then fit for work. Thereupon Baird called upon William Ford, who is in charge of the employers' compensation department, and informed him of the doctor's certificate. Ford attempted to persuade him to give his work a trial, but Baird said he was not fit and declined. Ford then informed him that he declined to pay him further compensation, but arranged that he should be sent to a consulting surgeon, Dr M'Lennan, 6 Woodside Terrace, Glasgow, for an independent report. . . . . 11. Negotiations between Messrs Galbreath & Fife acting for Baird and Messrs Kerr & Barrie, solicitors, Glasgow, acting for the employers continued till 31st December 1920, when the receipt and discharge after referred to was executed. . . . 17. About Christmas 1920 Baird placed his case in the hands of Mr Scott, the law agent of his approved society, and he informed Baird and his wife that he (Scott) must first of all have an independent medical opinion. He suggested for the purpose Dr MacGregor, a lecturer in surgery and an examiner of the University of Glasgow, . . . Dr MacGregor's report of the examination is that Baird 'suffers from a moderate degree of traumatic neurasthenia arising out of the injury. The mental condition is defective. I am satisfied that he is not fit for any occupation, and am unable to forecast the continuance of that disability.' 18. On 31st December 1920 Baird and his former agent Galbreath met Barrie, the employers' agent, in the office of the last named. There is no reliable evidence of how the meeting came to take place, except that it was suddenly arranged for the purpose of getting the matter settled and done with. At this meeting four documents in the following terms, which had been prepared by the employers' agents, were ready for signature and were signed:—'(1) Memorandum of Agreement.—The claimant whilst in the employment of the respondents sustained personal injury to his back caused by accident on 15th April 1920. An agreement was made on 31st December 1920, which was as follows:—That a lump-sum payment amounting to £35, 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 said accident. It is requested that this memorandum be recorded in the Special Register of the Sheriff Court Books of Dumbarton at Dumbarton.—WILLIAM BAIRD.' (2) Receipt and discharge—'I, William Baird, rivetter, residing at 18 Reid Street, Maryhill, Glasgow, considering I sustained injury to my back as the result of an accident while working in the employment of John Brown & Company, Limited, engineers and shipbuilders, Clydebank, on 15th April 1920, and that in consequence of said accident I made a claim against the said John Brown & Company, Limited, in terms of the Workmen's Compensation Act 1906 and the Workmen's Compensation (War Addition) Acts 1917 and 1919: And further, considering that full compensation was duly paid to me, but in order to settle all future claims that I might be able to make successfully or otherwise in respect of said injury, I have requested the said John Brown & Company, Limited, to pay me a lump sum, and after negotiations the said John Brown & Company have offered, and I have agreed to accept, the sum of £35, together with £6, 6s. of expenses to my agent, and that in full settlement of all claims for compensation due or which might be due to me in respect of said accident; and now considering the said John Brown & Company, Limited, have made payment to me of the said sum of £35 of capital therefore I hereby discharge the said John Brown & Company, Limited, of and from all claims and demands competent to me in any manner of way in respect of said accident, whether at common law or under the Employers' Liability Act 1880, or under the Workmen's Compensation Act 1906, or the Workmen's Compensation (War Addition) Acts 1917 and 1919; and I warrant this discharge at all hands: In witness whereof these presents typed for Kerr & Barrie, writers, Glasgow, are (under the declaration that the word "my" occurring

in the second line hereof is written on erasure before subscription) subscribed by me across a sixpenny and a twopenny postage and revenue stamps at Glasgow, on the 31st day of December 1920, before these witnesses, John Hamilton Barrie and John Galbreath, both writers in Glasgow. —WILLIAM BAIRD. J. Hamilton Barrie, *witness.* John Galbreath, *witness.* Stamps 6d. and 2d.' (3) Letter by the workman—'18 Reid Street, Maryhill, 31st December 1920. To the Sheriff-Clerk, County Buildings, Dumbarton. Dear Sir — *William Baird—John Brown & Company, Ltd.* With reference to the memorandum of agreement entered into between us of this date, I, the claimant, hereby dispense with intimation thereof and consent to immediate registration.—I am, yours faithfully (signed) WILLIAM BAIRD.' And (4) Receipt—'Glasgow, 31st December 1920. Received from Messrs John Brown & Company, Limited, the sum of six pounds, six shillings (£6, 6s.) in payment of expenses in the case of William Baird, 18 Reid Street, Maryhill, Glasgow. £6, 6s. stg. (Signed) GALBREATH & FYFE.' Baird was spoken to by Galbreath as to the effect of signing the receipt and discharge, but what was said is not proved. Any explanation given of it was very brief and summary. Nothing was said to the workman about the allocation of the sum of £35 mentioned in the document as between past-due compensation and future compensation, or as apportioned to claims at common law, Employers' Liability Act, or Workmen's Compensation, or about its adequacy as a monetary consideration for the discharge of all or any of these claims. 19. If compensation had been continued to Baird as for total incapacity from 21st August, when its payment was stopped till the date of signing this document, a sum of about £33, 5s. would have been due in this respect to Baird. 20. The sum of £6, 6s. paid to Messrs Galbreath & Fyfe was paid in fulfilment of an undertaking by the employers' agents that 'there would be no trouble about the agents' fee.' There is no proof of the manner in which the money consideration to Baird and his agents was settled. 21. The workman's letter to the Sheriff-Clerk of 31st December 1920, above quoted, was forwarded along with the said memorandum to the Sheriff-Clerk, not by the agent Galbreath, who was present at the settlement as Baird's agent, but by the employers' agents, who endorsed on said memorandum a consent to immediate registration on behalf of the employers. After the signing of the documents in the office of the employers' agents Galbreath intervened no further as agent for Baird. There is no proof as to whether Galbreath asked Baird about the result of his visit to his society, or whether Baird said anything to Galbreath about the matter, or as to the state of Galbreath's knowledge on this point at the time of the settlement on 31st December. . . . 23. From the time of the signing of the memorandum of agreement and receipt and discharge on 31st December 1920 till the date of the proof on 12th January 1922 Baird's mental condition had steadily deteriorated. At the date of the proof his mental condition was such that there was a consensus of medical opinion that if necessary he could be certified as of unsound mind. 24. He had not recovered full wage-earning capacity on 21st August 1920. He is now as the result of the accident in question totally incapacitated as a workman from earning any wages, and has been so incapacitated since 15th April 1920. 25. On 31st December 1920, when he signed the memorandum of agreement, receipt, and discharge and covering letter to the Sheriff Clerk, he was mentally capable of understanding their purport only if very carefully explained to him and his attention pointedly and continuously directed to the alternatives open to him at the time under the Workmen's Compensation Act and the effect of these alternatives upon his decision as to signing said documents. Such explanation was not given, nor was his attention so directed to the alternatives by his former agent Galbreath. . . . 29. After receiving the money from the employers' agents on 31st December 1920 in return for his signature to the receipt and discharge, memorandum of agreement, and his covering letter to the Sheriff Clerk, Baird never consulted the agent Galbreath who represented him at the settlement on that date. The present proceedings have been raised and prosecuted by the agent Scott, whom the claimant consulted in December 1920 previous to the signing of the said documents. 30. There is no proof that Baird or anyone representing him at any time after 31st December 1920 homologated the transaction completed on that date as a settlement of his claims for compensation under the Workmen's Compensation Act 1906.

"On these facts I awarded the workman compensation at the rate of £1 per week under the Workmen's Compensation Act 1906 from 21st August 1920, and found him entitled to expenses of the proceedings in his application for an award of compensation."

The *questions of law* included the following:—"1. Was I right in finding that the workman was not barred by the said receipt and discharge from applying for an award of compensation? 2. Was I right, standing the said formal receipt and discharge unreduced, in deciding that a question had arisen for arbitration that was not 'settled by agreement' in terms of section 1, sub-section 3, of the Workmen's Compensation Act 1906? 3. Was I right in refusing to give effect to the said receipt and discharge on the ground that it was the conclusion of an agreement to contract out of the said Act in breach of section 3, sub-section 1? . . . 6. Was I bound to find that the discharge should be set aside in respect that the sum paid thereunder was inadequate as a lump sum for the redemption of the weekly compensation payable to the workman under the said Acts?"

In a *note* to his interlocutor the arbitrator, *inter alia,* stated—". . . The first defence to the present claim for compensation arises out of the position taken up by the em-

ployers that the workman had in fact on 21st August 1920 entirely recovered from the effects of the accident, and that they were therefore entitled to stop payment of his compensation as from that date. . . .

"I reach the conclusion on the evidence that the employers have failed to prove that the workman had fully recovered his wage-earning capacity at 21st August 1920. . . .

"That he is now totally incapacitated for wage earning is admitted. The only question is—Is this condition a development of the incapacity he was still suffering from in December 1920 as a consequence of the accident on 15th April 1920? . . .

"I have no difficulty in concluding that the workman's present condition is the result of the accident.

"This brings me to the consideration of the second defence of the employers, viz., that the workman on 31st December 1920 validly discharged all future claims upon the employers, and that that discharge is a bar to the present proceedings.

"The document in question is quoted in full in my findings in fact. The workman seeks to set aside this document in these proceedings on two grounds—(1) essential error, and (2) mental incapacity at the time of executing the document. . . . The facts now available do not disclose anything that gives the document executed in this case a different legal quality from those in the cases of *Lochgelly Iron Company* v. *Ellis*, 1909, 2 S.L.T. 224; *Hanley* v. *Niddrie*, 1910 S.C. 875; and *Macandrew* v. *Gilhooley*, 1911, 1 S.L.T. 92.

"In these cases the documents in question *ex hypothesi* had the effect of discharges if not attacked on some ground of invalidity, and the question was only whether such a ground of invalidity could be competently settled in arbitration proceedings. The only difference in the present case is the probative nature and formal execution of the document. I am of opinion that these cases decide the present case against the plea of incompetency, and in this connection I would also refer to the proceedings in the recent case of *MacKinnon* v. *Fairfield*, 1921, 2 S.L.T. 270. As the attack upon the validity of the document in question is therefore open in these proceedings, the nature of the attack has to be considered. The first attack is on the ground of essential error. . . . I am convinced that the workman in this case gave no consideration whatever to the document he was signing, and therefore could not be in error as to its contents or nature. I am convinced that he would have signed any document put before him in consideration of getting immediate payment of such a sum as he was paid here. There being thus no essential error, no question of its being induced by innocent misrepresentation arises, and fraud is not suggested. . . . I cannot find in the evidence any proof of essential error on the part of the workman or of his law agent.

"The second ground of attack is the incapacity of the workman, through mental disorder, to understand the import and effect of the document that he signed, and to give a valid and intelligent consent thereto. I am quite clear upon the evidence that the workman had not the capacity at the time to understand the full import of the document that he signed—I do not believe he ever had the capacity to understand the import of such a document—but this incapacity arose, not from mental disorder at the time of signing, but from lack of technical knowledge. But he signed the document in question with the assistance and advice of a qualified technical adviser, and therefore cannot plead that incapacity. . . .

"But assuming that the document in question is to stand as a valid discharge, what does it discharge? It is put forward as a formal probative deed by the employers, and it must be interpreted as such. It narrates an injury to the back as the result of the accident, and 'in order to settle all future claims' competent to the workman as the result of the 'said injury' he discharges, in consideration of a payment to him, 'all claims and demands competent to me in any manner of way in respect of said accident.' Has he discharged all claims possibly arising out of the accident or only all claims arising out of the specific 'injury to his back' arising out of the accident? It was known to both parties at the time of the settlement that there were at least serious questions as to the result of injuries to the workman's head as well as to his back, and in the event these injuries to his head have become the crucial consideration in the case. I have no hesitation in concluding that all that has been discharged by this document are the claims for injury to the back. If other possible claims known to the employers were intended to be discharged (and at the time of the signing of the discharge the employers were fully advertised of the possible results of injury to the head) it was their duty, as it was their interest, to see that they were expressly discharged. The employers' agent admitted in debate on the proof that he was in fault in not having had the injuries to the workman's head expressly entered on the discharge, and the agent acting at the signing of the discharge for the workman agreed in his evidence with the suggestion that the document was not explicit enough. I believe the fact to be that neither agent gave any thought to this point in their anxiety to get a settlement of what was a troublesome matter to both of them. The document must be read against the employers and not against the workman, as to the extent of the discharge.

"The incapacity for which the workman now seeks an award of compensation is the result of injury to his head caused by the accident, and he is not in any case barred from taking these proceedings by anything in the document upon which the employers found. In the *North British Railway Company* v. *Wood* (2nd July 1891, 18 R. (H.L.) 27), which was founded upon by the employers, the discharge was quite general 'all claims competent in respect of injury and loss sustained in the accident,' and the supervening symptoms had not arisen so as to be in contemplation at the date of the discharge. In both these respects the present case is dif-

ferent. There was an expressly limited injury discharged, and there was in question at the time a different and separate injury which was not discharged. Had I reached a conclusion adverse to the workman upon the employers' plea that the document is a bar at common law to the present claim by the workman, I should still have to take judicial notice of the statutory direction (section 3, sub-section (1) of the Workmen's Compensation Act 1906) that 'the Act shall apply notwithstanding any contract to the contrary' with one exception. That exception deals with a scheme in substitution for the Act and agreed to by certain workmen and approved by the Registrar of Friendly Societies. Where this scheme is authorised the employer can contract with 'any of his workmen' that they shall be bound by its terms instead of by the terms of the Act. That exception does not affect this case. The workman in this case seeks to apply the Act to his circumstances. The document he has signed which is said to bar his present claim is a contract between him and his employers that, *inter alia*, he 'discharges all claims and demands competent to me in respect of said accident under the Workmen's Compensation Act 1906' against the employer. This seems to me to be plainly a contract that the Act shall not apply to the case of the workman signing it, and therefore to render it null and void under the Act in so far as it affects the workman's right to apply for compensation under the Act. Where the Act is sought to be applied by the institution of proceedings under it, section 1, subsection 3, admits of the question of the liability of the employer being settled by agreement in such proceedings. Such an agreement was upheld in the case of *Rawlings* v. *Hodgson*, 1918, 119 L.T. 137. No proceedings under the Act before these presents have ever been raised as to this accident, so that the agreement in question here is not the agreement permitted by section 1, sub-section 3, having been concluded before the initiation of any proceedings under the Act. I have examined the Act with some care to assure myself that this interpretation of the particular section of the Act that I have referred to is in consonance with the rest of the Act, and I am convinced that it is in consonance with it. The Act must be applied to in order that a workman shall have any claim for compensation for injury without an averment of fault. The Act permits of that compensation being given, whether the liability to pay compensation arises by decision of an arbitrator or by agreement, in one form only to an incapacitated workman. That form is a weekly payment. Section 1, sub-section (1), of the Act says that 'the employer shall be liable to pay compensation in accordance with the first schedule.' According to that schedule the compensation 'shall be' in the case of incapacity 'a weekly payment during the incapacity.' That weekly payment can be transformed into a capital sum in one way only. After payment of the weekly sum of compensation for six months, and then only, the weekly sum can be redeemed by payment of a lump sum in purchase of an annuity of a fixed amount, or of an amount fixed by an arbitrator under the Act, or by agreement between the workman and the employer (1st Schedule, section 17).

"Where the lump sum is fixed by agreement a memorandum of the agreement must be sent to the Sheriff Clerk under section 9 of the Second Schedule, if the workman desires to be able to enforce payment or the employers desire to be protected from a claim for the continuation of the compensation payable. Notice must also be given to the parties interested by the Sheriff Clerk after application to record. Thereafter a wide discretion is given to the Sheriff Clerk to review the adequacy of the capital sum into which the weekly compensation has been transformed, and if not satisfied as to its adequacy he is directed to refer the question for decision to the arbitrator under the Act. Such a provision could not have had a place in an Act which intended to allow the workmen to contract to take any consideration, however inadequate, in lieu of his right to claim the compensation due to him under the Act unless that intention was clear. But on the contrary the Act expressly bars any contract to relinquish the right to claim under the Act. All this seems to make it plain that the right vested in the workman by the Act to claim compensation under the Act by the procedure provided by the Act cannot be barred by any private contract between the workman and the employer. I am confirmed in this conclusion by the terms of section 15 of the Act of 1906. There two things are sharply contrasted—on the one hand a scheme of compensation under section 3 (1) of the Act of 1897, which may be continued if freshly authorised as a scheme under section 3 (1) of the Act of 1906, but may only thus be continued.

"On the other hand 'a contract by which a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment' is automatically brought to an end by force of the Act of 1906. Now that contract so defined by the Act is the contract which under section 3, sub-section (1), of the Act of 1906 cannot be validly made after the commencement of that Act. Such being what seems to me the plain direction of the Act I am unable to find any authority against that interpretation of the Act.

"That the question is of 'great importance' to the position of employers and workmen was recognised in the case of *Hunter* v. *Brown & Company, Limited*, 1912 S.C. 996, in Scotland. In England it is referred to in the Court of Appeal by Atkin, L.J., as 'the important point that a valid agreement cannot be made in discharge of all liability under the Workmen's Compensation Act 1906 except under provisions of Schedule I, clause 17, dealing with the redemption of weekly payments, and subject to the protection given by Schedule II, clause 9'—*Williams* v. *Minister of Munitions*, 1919, 121 L.T., at 345.

"While there is no decision upon this 'important point' there is the unqualified dictum of Cozens-Hardy, M.R., in *Ryan* v. *Hartley* (1912, 106 L.T. 702) that there is nothing in the Workmen's Compensation Act 1906 to prevent a workman, not under disability, from entering into such an agreement with his employer as will bar him from the right to compensation under the Act. Now in that case the only question decided was that the agreement was not an agreement requiring to be registered under section 10 of the second schedule of the Act, as it was neither an agreement for the redemption of a weekly sum nor an agreement by a person under disability. The question of the validity of the agreement as a bar to the workman's application under section 3, sub-section (1), was never referred to by Bench or Bar, and does not appear to have been in the contemplation of the Court when the dictum in question was given. On the other hand there are the dicta of Lords Sumner and Wrenbury in *Clawley* v. *Carlton* (1918, 119 L.T. 715, at p. 719) which deal expressly with the effect of section 3 (1). And to appreciate the value of these dicta it is necessary to keep in mind the nature of the agreement that they referred to. It was an agreement made between the employer and the workman as a settlement of an application made to the statutory arbitrator by the workman for compensation under the Act, which settlement bound the employer in certain obligations other than the payment of a weekly sum of money as compensation. That being the nature of the agreement the noble Lords in their joint speech dealing expressly with the effect of section 3, sub-section (1), say—'The existence of the agreement is no impediment to a resort to the provisions of the Act to ascertain what is the statutory weekly payment.'

"Further, there is the pronounced opinion of Scrutton, L.J., in the later case of *Haydock* v. *Goodier* (1921, 125 L.T. at p. 75) dealing with the cases of *Ryan* v. *Hartley* and *Williams* v. *Ministry of Munitions* above referred to. The opinion of the Lord Justice is to the effect that section 3, sub-section (1), of the Workmen's Compensation Act of 1906 (which is a re-enactment of section 3, sub-section (1), of the Act of 1897) was introduced to meet the decision of *Griffiths* v. *Lord Dudley* (1882, 47 L.T. 10) under the Employers' Liability Act, which decided that the employee might contract out of that Act, as the Act only protected him from the implication of an agreement to accept the risks of his employment. The sub-section of the Act of 1906 therefore must, in the opinion of the Lord Justice, be read as rendering any contract outwith the Act to bar the workman from claiming his statutory rights under the Act null and void. But he follows the other members of the Court in a decision to the contrary in subjection to the cases of *Ryans* and *Williams* above cited on this ground—'The Court has given decisions on the Act, which includes that provision, and I must take it that they gave their decisions after reading the provisions of the Act. They do not mention the exact effect that they give to that provision.'

"I have awarded £1 a week to the workman as ordinary compensation under the Workmen's Compensation Act 1906, leaving any question of bonuses to be settled by parties in accordance with the respective statutes dealing with them. The award has been made to date unconditionally from 21st August 1920, to which date it is admitted that all compensation due was paid. I do not consider that I am able in these proceedings to decide what part, if any, of the £35 paid to the workman on 31st December 1920 was paid to him in respect of his claim under the Workmen's Compensation Act as apart from the other claims discharged for the same consideration." . . .

Argued for the appellants—There was no contract made between this workman and his employers that the Act was not to apply. The discharge which was signed by the workman did not constitute an attempt to contract out of the Act. The only compromise made was as to the employers' liability under the Act, and this was quite possible as soon as proceedings had begun under Schedule II(9), which provided that an agreement such as the present one could be recorded and used as an enforceable agreement. The agreement here consisted of a composition of liability by a lump sum, not of the redemption of weekly payments. The term "proceedings" in section 1 (3) of the Act did not denote judicial proceedings or arbitrations alone—*Powell* v. *Main Colliery Company, Limited*, (1900) A.C. 366; *Field* v. *Langden & Sons*, (1902) 1 K.B. 47. There being no claim outstanding the agreement barred any further claim to arbitration—*Hunter* v. *John Brown & Company, Limited*, 1912 S.C. 996, 49 S.L.R. 695; *Fox* v. *Battersea Borough Council*, 1911, 4 B.W.C.C. 261; *Ryan* v. *Hartley*, (1912) 2 K.B. 150. Nothing in the Act prevented a workman from accepting a compromise in settlement of his claim, and such an agreement as the present one was by a long series of decisions clearly demonstrated to be permissible. Counsel referred to the following cases—*Hudson* v. *Camberwell Borough Council*, 1917 B.W.C.C. 400; *Rawlings* v. *Hodgson*, 1918, 119 L.T. 137; *Clawley* v. *Carlton Main Colliery Company, Limited*, (1918) A.C. 744; *Williams* v. *Minister of Munitions*, 1919, 121 L.T. 341; *Park* v. *Hudspith*, 1920, 13 B.W.C.C. 289; *Russell* v. *Rudd*, 1922, 15 B.W.C.C. 58; *Haydock* v. *Goodier*, (1921) 2 K.B. 384, *per* Sterndale, M.R., at p. 390; *British and South American Steam Navigation Company, Limited* v. *Neil*, 1910, 3 B.W.C.C. 413; *Dornan* v. *Allan & Son*, 1900, 3 F. 112, 38 S.L.R. 70.

Argued for the respondent—On the facts found proved the arbitrator was entitled to find that the workman was not capable of giving his consent to the agreement, and that he did not in fact do so, not being able to understand the effect of the agreement which he signed. The whole circumstances of the present case rendered it inequitable that the workman should be bound by the discharge he had signed—*Valenti* v. *Dixon*,

1907 S.C. 695, *per* Lord Stormonth-Darling at p. 698, 44 S.L.R. 532; *Macandrew* v. *Gilhooley*, 1911 S.C. 448, 48 S.L.R. 511. A lump sum having been substituted for weekly compensation which had been paid for a period of four months, the agreement here really amounted to a redemption of weekly payments. Payments under the Act in respect of incapacity had to end either by arbitration proceedings or by agreement, and even although there was no written agreement the employers could always make an application for review—*Southhook Fireclay Company, Limited* v. *Laughland*, 1908 S.C. 831, 45 S.L.R. 664; *Nelson* v. *Summerlee Iron Company, Limited*, 1910 S.C. 360, 47 S.L.R. 344. The English cases cited by the appellants, which were all founded on the case of *Ryan* v. *Hartley* (*cit.*), were inapplicable to the circumstances of the present case. The agreement here, moreover, really amounted to a contracting out of the Act. The workman was always under the statutory protection of the arbitrator, and any new step such as the redemption of weekly payments fell to be recorded. It was outwith the power of the parties to agree to anything that the arbitrator was not in a position to review—*Haydock* v. *Goodier* (*cit.*), *per* Sterndale, M.R., at p. 389. Whenever there was an agreement made the workman might record a memorandum—*M'Ewan* v. *Baird & Company, Limited*, 1910 S.C. 436, 47 S.L.R, 430. The appellants were here attempting to obtain redemption or to end the workman's right to compensation by a method contrary to the provisions of the Act. The case of *Dornan* v. *Allan & Son* (*cit.*) was distinguishable as it did not come under the Act at all and only dealt with essential error.

At advising—

LORD PRESIDENT — The workman was injured by the fall of a ship's plate while acting as a riveter in the appellants' employment on 20th April 1920. He claimed compensation under the Act as for total incapacity. The employers admitted their liability and paid him compensation at the full statutory rate of £1 per week, plus the corresponding war addition of 15s. per week, up to 21st August 1920, when their works doctor certified that he had recovered capacity. The employers then offered him work, but he refused it on the ground that he was still totally incapacitated as the result of his injuries, and put his case in the hands of several solicitors in succession. Numerous medical examinations of the workman were made by professional men acting on the instructions of one or other of the parties. These had more or less conflicting results. After some negotiation between parties' solicitors the workman on 31st December 1920 signed a discharge of all his claims (including those under the War Additions Acts 1917 and 1919) subsequent to 21st August 1920 for £35. On 5th January 1921 the employers sent a memorandum of agreement to the Sheriff-Clerk to be recorded. The memorandum was to the effect that "a lump-sum payment amounting to £35 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 said accident." On 6th January 1921 an approved society under the National Health Insurance Acts, of which the workman was a member, appeared and objected to the recording of the memorandum on two grounds—(1) that the sum payable thereunder was inadequate, (2) that the workman at the date of signing the discharge was mentally unsound. The employers objected to his *locus standi*, and referred to *Bonney* v. *Joshua Hoyle & Sons* ([1914] 2 K.B. 257), but the agent of the approved society stated that he appeared not only for the society but for the workman also. (I should say that the circumstance narrated in this last sentence is derived not from the case but from a joint minute for the parties which was lodged in answer to a question put by me with reference to section 11 (1) of the National Insurance Act 1911.) Acting on the information submitted to the Sheriff-Clerk in support of the objections to the recording of the memorandum, the Sheriff-Clerk refused to record it, and referred the matter by minute to the Sheriff-Substitute as arbitrator. This procedure apparently followed paragraph (9) (*d*) of the Second Schedule to the Act. If so, it assumed that the discharge was "an agreement as to the redemption of a weekly payment by a lump sum" within the meaning of paragraph (17) of the First Schedule to the Act. Before anything more had been done the workman on 2nd March 1921 raised arbitration proceedings for an award of compensation against the employers. To this the employers replied by founding on the discharge. The learned arbitrator thereupon sisted proceedings in the employers' application to have the memorandum recorded, and allowed a general proof in the workman's application for an award of compensation. Some delay was occasioned by an unsuccessful attempt on the part of the employers to bring this order under review, and the proof was not actually taken until January 1922. The learned arbitrator after the conclusion of the proof found, *inter alia*, (*a*) that on 21st August 1920 (the date at which the appellants ceased paying compensation) the workman was still incapacitated, and (*b*) that he is now totally incapacitated as the result of the injuries which he received at the time of the accident, and assessed compensation at £1 per week.

The first query addressed to us is whether the workman was not barred by the discharge from applying for an award of compensation? Using the note appended to the case, as it was held legitimate in *Espie* v. *British Basket Company* (1920 S.C. 655, *per* Lord Justice-Clerk Scott Dickson at p. 657), see also *Scrimgeour* v. *Thomson & Company* (1922 S.C. (H.L.) 64), to do, it is possible to discover from it the various *rationes* of the learned arbitrator's decision. He held (1) that the discharge was unassailable so far as the workman's mental capacity as at its date was concerned, (2) that the discharge could not be set aside on the ground of essen-

tial error, but (3) that on a sound construction of the terms of the discharge (with particular reference to the narrative of injury to the workman's back) it dealt only with such part of his claim as was directly attributable to the impact of the plate on his *back* as distinct from his *head*. On this ground the learned arbitrator held that the workman's application for an award of compensation was not barred. As regards the first of these *rationes* we heard a certain amount of argument, but it is, I think, clear that the learned arbitrator's conclusion was one which he might not unreasonably reach on the facts which he held proved. For while it is found in the 23rd finding that the workman was of unsound mind at the date of the proof in January 1922, and that his mental condition had steadily deteriorated since the date when he signed the discharge (31st December 1920), there is no finding that the workman was of other than sound mind at the last-mentioned date. By the 25th finding, indeed, it is found that he was then mentally capable of understanding the discharge (with reference to the alternatives open to him under the Act of 1906) only after careful explanation and with sustained mental effort—a finding which I am unwilling to read as inferring any serious criticism on the workman's sanity. In the same finding the learned arbitrator finds that the solicitor who had been originally employed by the workman in connection with his claim, and who was actually advising him at the time, did not sufficiently explain the position to him. But even if the solicitor in question were held to have failed in duty that would only result in an action of damages against him, and does not seem to me to be relevant to the query addressed to us. The learned arbitrator's conclusion on essential error was not traversed, and his limited construction of the discharge was, I think, not maintained at the debate before us. But as the latter point formed one of the grounds of the learned arbitrator's judgment, I may point out that the fourth finding discloses that the workman was struck a sidelong blow over the whole side and back of his body and head, and that there is no finding to justify any discrimination between his brain and his spine as the original source of the traumatic neurasthenia which still incapacitated him on 21st August 1920, and which developed into insanity by January 1922. This ratio of the learned arbitrator's judgment is in my opinion far-fetched and unsound so far as founded on the terms of the discharge, and unwarranted by anything in the circumstances held to be proved.

The generality of the first query is not, however, exhausted by these considerations, but, on the contrary, covers the particular questions as to the effect of the discharge in excluding the workman's claim to an award of compensation raised in queries 2, 3, and 6. The parties withdrew queries 4 and 5. Accordingly what remains of query 1 and queries 2, 3, and 6 can conveniently be discussed together, because they are all concerned with the ascertainment of the true legal character and effect of the discharge. Was it, as question 2 suggests, a settlement by agreement of a question or questions arising in proceedings under the Act within the meaning of section 1 (3)? If so, it will bar the workman's application for an award of compensation. Or was it, as question 3 suggests, a contract that the Act should not apply to the workman's case, and therefore ineffectual to bar his application for an award, in accordance with the final provision of section 3 (1) of the Act? Or again, was it, as question 6 suggests, an agreement for the redemption of a weekly payment by a lump sum within the meaning of the proviso to paragraph (17) of the First Schedule to the Act? If so, its adequacy will be examinable under paragraph (9) (*d*) of the Second Schedule to the Act, and it may afford no obstacle to an award of suitable compensation.

A salient feature of the discharge is that it does not deal with the workman's rights under the Act of 1906 only but with all his possible claims, and particularly with his right to an additional weekly payment under the War Additions Acts 1917 and 1919. I do not regard the reference to claims under the Employers' Liability Act 1880 and at common law as of any importance, because section 1 (2) (*b*) of the 1906 Act puts the workman to his option as between a claim for an award of compensation in accordance with its own provisions and proceedings for the recovery of damages under the Act of 1880 or at common law, and it could hardly be contended on the facts of the present case that the workman had not exercised his option in favour of the Act of 1906. In my view the reference in the discharge to the Act of 1880 and the common law were really surplusage. But the lumping together of the compensation provided by the Act of 1906 and the additional weekly payments under the War Additions Acts is important. For these additional weekly payments are entirely distinct from the statutory compensation. They apply only to total incapacity; they cease if total becomes partial incapacity; and they continue payable even though the statutory compensation has been redeemed.

If the discharge had been silent as to the workman's right to the war additions, I should have arrived at the conclusion that what the employers did was to redeem their liability for a weekly payment of statutory compensation—subsequent to 21st August 1920—for a lump sum under the proviso to paragraph (17) of the First Schedule. The employers had originally admitted their liability under the Act, and had paid the full statutory weekly compensation of £1 for four months. Prior to 21st August 1920 the conditions required to justify the workman in asking that a memorandum of agreement to pay him that sum as for total incapacity had been fully satisfied—*Freeland* v. *Summerlee Iron Company*, 1913 S.C. (H.L.) 8, [1913] A.C. 231. The only question that arose between the parties at 21st August 1920 was as to whether the workman's incapacity had ceased or not. The employers maintained he was fit to come back to work, the workman contended he was still under

total incapacity. If therefore the discharge had not brought in the war additions, I should have thought it clear that the lump sum was a redemption of the employers' liability to go on paying the full statutory compensation of £1 per week. The employers' case is that the discharge was a compromise and not a redemption. But many agreements to redeem must be inspired by the spirit of compromise, for in many if not in most cases it must be impossible to foretell how long a state of incapacity will continue. It is, no doubt, on account of that element of uncertainty or contingency that paragraph (9) (*d*) of the Second Schedule to the Act makes such agreements examinable. Discharges in similarly comprehensive terms—but not dealing with war additions—and granted in similar circumstances, have been regarded in this Court as agreements for redemption by a lump sum within the meaning of the proviso to paragraph (17) of the First Schedule. *Burns* v. *William Baird & Company* (1913 S.C. 358) is an example. It is true, no doubt, that in that and similar cases the parties concerned concurred in so treating them. But as the only form of redemption authorised by the Act is that which is applicable to the statutory weekly compensation, the discharge in the present case must be ruled out of that category.

If then the discharge does not vouch a redemption agreement, does it vouch an agreement within the meaning of section 1 (3)? If so, it must be held to constitute a bar against resort to arbitration unless, indeed, it be found to be struck at by section 3 (1) of the Act. I have found both of these questions difficult, but the conclusion at which I have arrived is that the discharge does constitute an agreement within the meaning of section 1 (3) and is not struck at by section 3 (1). Section 1 (3) assumes that a question has arisen in "proceedings under the Act" with regard to "the liability to pay compensation under this Act . . . or as to the amount or duration of compensation under this Act." This condition was satisfied in the present case. Then the section goes on to provide for the disposal of such question by arbitration "if not settled by agreement." These last words are as general as could be. The question which arose in the present case was as to the workman's continued incapacity after 21st August 1920, and as to the employers' consequent obligation to go on paying £1 per week. I ask myself, was that question any the less "settled by agreement" because the agreement dealt also with the workman's right to the weekly payments under the War Additions Acts, or because the consideration paid by the employers was a lump sum—incapable of severance as between claims under the 1906 Act on the one hand, and under the Acts of 1917 and 1919 on the other hand? I think a negative is the only possible answer to this question. The Workmen's Compensation Act gives a generous measure of protection to workmen and their advisers if they stick close by the statutory scheme of compensation, but unless they come within the prohibition against contracting out contained in section 3 (1) they are not hampered in the exercise of the natural right to dispose of accrued legal rights under the Act as they please, by compromise or bargain: they are, in short, free to "settle them by agreement." A compromise for a sum down is just such an agreement, and as I have already said, is not less so because the sum down is accepted in full of other legal claims besides the claim to compensation under the Act. No question as to the recording of a memorandum of this agreement is before us in the present appeal.

Section 3 (1) sanctions contracts between employers and workmen for the substitution of approved compensation schemes in place of the provisions of the Act, and enacts that otherwise the Act is to apply "notwithstanding any contract to the contrary made after the commencement of this Act." In the present case the Act did apply to the workman's accident, there being no substitution of any approved scheme in place of the provisions of the Act. The agreement or compromise which was effected did not prevent the application of the Act. On the contrary, if the reasoning of this opinion is correct, it was made in full compliance with its terms.

I am therefore for answering questions 1, 2, 3, and 6 in the negative.

LORD SKERRINGTON—This Stated Case has not been prepared in accordance with the directions contained in Book I., chapter 13, paragraph 17 (*d*) of the Codifying Act of Sederunt 1913, and in the model form of Stated Case which will be found in the appendix to that chapter. Neither of the parties, however, moved that it should be remitted to the arbitrator for the purpose of being put into proper shape. As it is possible at the cost of some trouble to discover the facts which the arbitrator held to have been admitted or proved, and also the questions of law which he determined and which it is now our duty to determine, it is not necessary to put the parties to the expense of a remit.

The first question of law which we have to determine is whether the facts as admitted or proved entitled the arbitrator to repel two extrinsic objections stated on behalf of the workman to the validity of a receipt and discharge, dated 31st December 1920, by which the latter purported in consideration of a lump sum of £35 paid to him by his former employers to discharge all his claims against them in respect of personal injuries caused by the accident which befell him in their shipbuilding yard on 20th April 1920. The second question is whether the arbitrator was entitled to construe this document as applying solely to the workman's claim in respect of injuries to his back, and as reserving intact his claim in respect of injuries to other parts of his body caused by the same accident. As regards the first question it is unnecessary to say more than that the arbitrator was entitled to decide that the workman (who was represented in the transaction by a solicitor) was not mentally incapable of

granting such a discharge, and that the workman's consent thereto was not vitiated by essential error. As regards the second question it is enough to say that the arbitrator's construction of the document was not supported by any argument on the part of the workman's counsel, and that it is plainly unsound.

The third question is whether the arbitrator was entitled to decide that the receipt and discharge gave effect to an agreement to contract out of the Workmen's Compensation Act 1906, contrary to section 3 (1) thereof, and whether he was therefore entitled to disregard the agreement and to award to the workman statutory compensation at the rate of £1 per week. The material facts, so far as bearing on this question, are that the workman's claim for compensation under the Workmen's Compensation Act 1906 was admitted by his employers; and that he remained in bed under medical treatment for five weeks after the accident from which it appears that total incapacity for work resulted from his injuries. The following findings are also important:—"(5) Compensation in respect of said accident was paid by the employers to Baird from the date of said accident at the rate of 35s. per week, being the amount for which they were liable to Baird under the Workmen's Compensation Act 1906, for total incapacity caused by the accident, along with statutory war bonuses till 21st August 1920. (6) No agreement thereanent had been presented by either party for recording. (7) On 21st August 1920 the employers ceased to pay any compensation to Baird, there position being that he had then fully recovered from the injury caused by the said accident." From these statements and findings it will be seen that there was not at 31st December 1920 any question between the parties in regard to what section 1, sub-section (1), of the Workmen's Compensation Act 1906 describes as the employers' liability to "pay compensation in accordance with the First Schedule to this Act," and what sub-section (3) of the same section describes as the employer's "liability to pay compensation under this Act (including any question as to whether the person injured is a workman to whom this Act applies)." The workman's right to compensation under the Act had been admitted, and by accepting payment of such compensation he had renounced any right which he might otherwise have had to sue for damages at common law or under the Employers' Liability Act 1880. On the other hand, the employers maintained that their statutory liability had come to an end in consequence of the workman having, as they alleged, fully recovered from his injuries at 21st August 1920. This contention was disputed by the workman. It was in these circumstances that the parties agreed upon a lump sum of £35 which was to be paid once for all by the employers to the workman in order to extinguish and redeem their statutory liability to pay compensation to him in accordance with the First Schedule of the Act. This agreement may, I think, be regarded as an agreement made with the intention of settling both "the amount" and the "duration" of the compensation within the meaning of section 1 (3) of the Act of 1906. I am confirmed in this view by the proviso at the end of paragraph (17) of the First Schedule, which appears to me to assume that an agreement "made for the redemption of a weekly payment by a lump sum" will be binding and effectual, provided of course, that it complies with the statutory requirements applicable to agreements of this description. Counsel for the employers argued that there could be no redemption agreement within the meaning of paragraph (17) of Schedule I and paragraph (9) of Schedule II unless the weekly sum which the workman was for the time being entitled to receive, and which it was proposed to redeem, had been defined either by award or by agreement. I reserve my opinion as to this point because there is a separate and clearer ground upon which, as it seems to me, the parties must be held to have failed to make an agreement which was authorised by the statute. It is in my opinion an essential requirement of Schedule II, paragraph (9) (*d*) that the precise amount of the lump sum to be paid by the employer as the purchase or redemption price of the workman's right to a weekly payment shall be ascertainable so that the Sheriff-Clerk may be in a position to form an opinion as to its adequacy, and if he thinks proper, may report the matter to the Sheriff. In the present case it is impossible to discover what proportion of the sum of £35 mentioned in the receipt and discharge was applicable to the redemption of the workman's right under the Act of 1906, and what proportion to the redemption (if that be competent) of his right under the Workmen's Compensation (War Additions) Acts 1917 and 1919. The nature of these two rights and the conditions upon which they were respectively conferred differ materially, and accordingly the lump sum of £35 cannot be allocated according to the rule of three. The reference in the document to the workman's right to compensation at common law and under the Employers' Liability Act 1880 is mere surplusage and may be disregarded.

If the foregoing reasoning is correct, it follows that the agreement of 31st December 1920, whatever may have been the intention of the contracting parties, was not an agreement of the kind contemplated by the Act, or an agreement by which, in the words of paragraph (9) of Schedule II, some "matter" was "decided under this Act." On the contrary, it was a contract that certain safeguards devised by the statute for the protection of workmen should not apply to a particular workman who was admittedly entitled to all the benefits of the Act. It was therefore a contract which section 3 (1) of the Act required the arbitrator to ignore and override. The opposite view would mean that the parties had by agreement, and without complying with the requirements of section 3 (1), effectually substituted a scheme of compensation which was materially different from that provided by the statute. Thus the lump

sum which the workman agreed to accept would not be open to the criticism of the Sheriff-Clerk and Sheriff in terms of paragraph (9) (*d*) of Schedule II, and it would not be protected from creditors, &c., in terms of paragraph (19) of Schedule I of the Act. If I rightly appreciated the argument addressed to us on behalf of the employers, the best title which this agreement possesses to be regarded as valid is its failure to comply with the conditions which Parliament considered to be necessary when a workman renounces his right to receive a weekly payment (of fluctuating amount and indefinite duration but protected by various statutory safeguards) in return for the tempting offer of a lump sum. These conditions are very simple, viz., that the price which the employer agrees to pay in order to purchase freedom or redemption from his liability for a weekly sum (and perhaps also the amount for the time being of that weekly sum) shall be fixed and ascertainable so as to enable a judge to determine whether the price is adequate. For my own part I do not understand how it can be supposed that an agreement which a judge may in his discretion refuse to enforce if he thinks the consideration inadequate, can be converted into an agreement which he must enforce *ex debito justitiæ* if the parties are sufficiently careless or sufficiently astute to make their bargain in such a way that the amount, and therefore the adequacy, of the consideration are uncertain. It was argued that the receipt and discharge proceeded upon and gave effect to a compromise, but I do not see the relevancy of this fact even if it be true. In a sense, no doubt, there was a compromise, just the same compromise as there would have been if the parties being (as we know) radically at variance in regard to the workman's physical condition and its causes had walked by the card, and had first fixed a defined sum to be paid to him every week, and had then fixed another defined sum as the price for its redemption. It is not necessary in the present case to express any opinion in regard to the conditions (if any) for the validity of an agreement arising out of a dispute as to whether the person injured was a workman to whom the Workmen's Compensation Act 1906 applied, or as to whether he was injured in such circumstances as to impose upon his employers or upon some other person liability to pay compensation to him in accordance with its provisions.

The opinion which I have expressed upon the legal question decided by the arbitrator is, as I venture to think, supported by passages in the speech of Lord Wrenbury (concurred in by Lord Sumner) in *Clawley* v. *Carlton Main Colliery Company*, [1918] A.C. 744, pp. 758-9. On the other hand I do not pretend to reconcile my construction of the statute with certain English decisions which were cited to us. In view of these decisions, which are entitled to the highest respect, I do not feel much confidence in the soundness of my opinion. At the same time it should be noted that in the latest of these cases—*Haydock* v. *Goodier* ([1921] 2 K.B. 384) —Scrutton, L.J., appears to have concurred in the judgment solely because he did not consider himself at liberty to do otherwise in view of previous decisions by the same Court.

For the foregoing reasons I think that the arbitrator came to a right conclusion, and that he was entitled to award to the workman compensation at the rate of £1 per week under the Workmen's Compensation Act 1906. As the point was not argued, I do not require to consider whether he ought to have made some deduction in respect of the lump sum of £35 paid to the workman by the employers on 31st December 1920. A passage in the note appended to the Stated Case suggests that he proceeded upon the ground that he was unable to decide what part, if any, of the £35 was paid in respect of the workman's claims under that Act.

The questions of law put to us by the arbitrator ought, in my judgment, to be answered as follows:—With reference to the first question of law, find (1) that the arbitrator was entitled to decide that the receipt and discharge purporting to have been granted by the respondent in favour of the appellants on 31st December 1920 is not challengeable upon the ground of mental incapacity or of essential error; (2) that the arbitrator was not entitled to decide that the said receipt and discharge applied only to claims by the respondent against the appellants in respect of injuries to his back, but that he ought to have decided that it applied to claims by the respondent against the appellants in respect of personal injuries of every kind caused by the accident to the respondent on 20th April 1920; and (3) that the arbitrator was entitled to decide that the said receipt and discharge was not legally enforceable by the appellants in so far as it purported to discharge the respondent's right to compensation in terms of the Workmen's Compensation Act 1906 in respect of the said personal injuries, and that the arbitrator was therefore entitled to award to the respondent compensation at the rate of £1 per week under the said statute: Find it unnecessary to answer the second question of law: Answer the third question of law in the affirmative: Find it unnecessary to answer the fourth and fifth questions of law in respect that they were withdrawn by the parties on the understanding that failing agreement the appellants' liability (if any) under the Workmen's Compensation (War Additions) Acts 1917 and 1919 would be settled in some other process: Find it unnecessary to answer the sixth question of law.

LORD CULLEN—I agree with your Lordships in the view that the agreement of 31st December 1920 was not an agreement for the redemption of a weekly payment within the meaning of the Act of 1906. Apart from other questions raised in this connection, the agreement fails, I think, to answer to the statutory conception of a redemption agreement in respect that the lump sum accepted by the workman covers indiscriminately claims under the Act of 1906 and claims not under that Act.

On that footing the respondent maintains

that the agreement is of a kind forbidden by the Act. The only ground for this view advanced by his counsel was the provision at the end of section 3, sub-section (1). I do not think that provision prohibits such an agreement. A contract that the Act shall not apply to the relations between a particular employer and his workman is one thing. A contract making a settlement of claims by a workman on the footing that the Act does apply to the relations between him and his employer is another and different thing. The agreement here in question appears to me to belong to the latter class.

While section 3 (1) forbids, except under certain defined conditions, contracts excluding the application of the Act, section 1 (3) freely allows of agreements for the amicable settlement of questions arising as to compensation under the Act. It expressly sanctions such amicable agreements where in any proceedings a question arises (1) as to liability of an employer to pay compensation, or (2) as to the amount or duration of compensation. These heads of possible agreement appear to me to embrace all questions relating to an employer's liability for and the workman's corresponding right to compensation under the Act.

While section 1 (3) thus freely allows of claims under the Act being settled by agreement, it neither prescribes nor prohibits particular forms or conditions of agreement. It says that the parties may agree so as to avoid litigation before an arbitrator, and it says no more. It might be, notwithstanding, that in some other part of the Act there was to be found a restriction of the parties' contractual capacity—of employer and workman alike—under section 1 (3). It certainly is not to be found in section 3 (1), the concluding provision of which is not in any way aimed at adding to or modifying section 1 (3), but relates to contracts whereby section 1 (3) along with the rest of the Act has been sought to be ruled out altogether.

If a question arises in a particular case as to the employer's liability to pay compensation under the Act, section 1 (3) permits of it being settled either way by agreement. The workman may agree that the employer is not liable. If he may make such an agreement I can see nothing in section 1 (3) to prohibit an agreement whereby the workman receives a lump sum and in respect thereof discharges any claim he may have. Any such agreement on the radical question of liability necessarily covers all subordinate questions as to amount and duration of compensation which might have arisen if the employer's liability had been established. Again, if the liability is admitted or otherwise established, and questions as to the amount or duration of compensation ensue, I find nothing in section 1 (3) to prohibit a lump sum agreement. The sub-section says the parties may agree, and so avoid arbitration and it says no more. If such a prohibition is to be read into the sub-section, it must, I think, be by some process other than the legitimate process of construing the words of the Act according to their ordinary and natural meaning.

The nature of the agreement of 31st December 1920 was as follows:—The workman, following on the accident, presented a claim under the Act. The Stated Case contains no finding that the parties entered into an agreement. The employer, however, admitted liability, and paid full compensation weekly for a certain period. Thereafter a question arose whether the incapacity had ceased. The employer maintained that it had, and the workman the contrary. This question seems to me to have been clearly one within the scope of section 1 (3) as competent to form the subject of an amicable agreement avoiding arbitration. It was made the subject of the agreement of 31st December 1920 whereby the workman agreed to take the lump sum of £35 in full of his claims under the Act and under the War Additions Acts. If the workman made a bad bargain, that is irrelevant to his argument, which would have been equally applicable or inapplicable if the employer had made a bad bargain. For the argument is that under the Act freedom of contract, on both sides equally, was restricted under section 1 (3) so as to disable the parties from effectually binding themselves by the stipulations, *hinc inde*, of such an agreement, however favourable or unfavourable to the one or the other. I am unable to find any such restriction on freedom of contract in the Act. A restriction on freedom of contract is not to be lightly presumed. If it had been intended to impose it so as to restrict in some particular way the general freedom allowed or recognised by section 1 (3), that would, presumably, have been made the subject of express provision, which is conspicuously absent.

As regards the other questions raised in the case, I concur in the opinion of your Lordship in the chair.

LORD SANDS had not at the date of the hearing taken his seat in the Division.

The Court (*diss.* Lord Skerrington) answered the first, second, third, and sixth questions of law in the negative.

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Counsel for the Respondent—Wark, K.C. — Macgregor Mitchell. Agent — W. T. Forrester, Solicitor.