session of a suitable water supply upon giving certain notices, &c., and if the defenders while acting "in pursuance, or execution, or intended execution of any such act, duty, or authority" had (as the pursuers alleged) been guilty or some irregularity or illegality.

LORD CULLEN—The defenders in support of their motion that the expenses awarded to them should be taxable as between agent and client in terms of the Act of 1893, represented the action as being one brought for an act done by them as local authority, the act done having consisted in an abstraction of water from the springs in question, which was alleged to be in excess of their rights and to encroach upon the rights of the pursuers. Now there are many cases where some act done may be said to be an ingredient in the reasons for bringing an action, but where the predominating character of the action may be such that it would be a misdescription of it to speak of it as an action brought for an act done. In the present case the defenders' abstraction of water complained of represented an established state of possession by them which the pursuers sought to invert through a construction put by them on the titles, and the case amounted in substance to a competition of heritable rights. The pursuers' summons contained, it is true, a conclusion for interdict, but that was consequental and ancillary, and it goes to form rather than to substance. The substantial and true issue might have been raised and determined in a pure action of declarator as to the meaning and effect of the titles which would have been equally well brought at the instance of either party. I accordingly agree with your Lordships in thinking that the motion should be refused.

LORD SANDS—According to the theory of our law a successful litigant is entitled to recover from his opponent the whole expenses to which he was necessarily put by the wrongous or mistaken action of his opponent in prosecuting or defending an action. To allow less would be unjust to the successful litigant, to allow more would be unjust to the unsuccessful litigant. The Legislature, however, has thought it proper to allow to public authorities, which, as part of the machinery of government, may be regarded as its local representatives, the peculiar privilege of recovering from an unsuccessful pursuer expenses upon a scale which would be regarded as unjust to the unsuccessful party in the case of a private litigation. The Court has no alternative but to allow this privilege, however disconsonant it may appear to be with the general principles of jurisprudence. But, in my view, the Court is warranted in jealously restricting the privilege within the narrowest limits compatible with compliance with statutory requirement strictly construed. When an action has failed which was brought for redress or reparation in respect of an alleged wrong committed by a local authority in the exercise of its statutory powers the Court is bound to award expenses upon the scale indicated in the Public Authorities Protection Act 1893. But, in my opinion, in considering whether this was truly the nature of the action the Court is warranted in having regard, not to any technicality, but to the substance of the matter. So regarded, I do not think that the present action falls within the statutory rule. It was in substance not an action of redress for anything done by the local authority, but an action to determine a question of competing claims to water under rival grants. I am accordingly of opinion that the Public Authorities Protection Act does not apply, and that the account should be taxed on the ordinary scale.

The Court refused the motion for expenses as between agent and client.

Counsel for the Pursuers and Respondents—Moncrieff, K.C.—Dykes. Agents—Macpherson & Mackay, W.S.

Counsel for the Defenders and Reclaimers—Chree, K.C.—A. R. Brown. Agents—Alex. Morison & Company, W.S.—Charles J. Macpherson, Solicitor, Dufftown.

Friday, July 18.

SECOND DIVISION.

[Lord Ashmore, Ordinary.

PARK *v.* ANDERSON BROTHERS.

Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *Second Schedule* 9 (*e*)—*Process—Memorandum of Agreement—Action of Reduction—Competency—Failure to Observe Statutory Requirements Relating to Recording of Memorandum—Cause of Action Emerging after Expiry of Statutory Six Months.*

The Workmen's Compensation Act 1906, Second Schedule 9 (*e*), enacts—"The judge may within six months after a memorandum of an agreement as to the redemption of a weekly payment by a lump sum, or of an agreement as to the amount of compensation payable to a person under any legal disability or to dependants has been recorded in the register, order that the record be removed from the register on proof to his satisfaction that the agreement was obtained by fraud or undue influence or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just."

In an action by a workman against his former employers for reduction of (1) a discharge granted by the pursuer of his claims under the Workmen's Compensation Act 1906 and (2) a recorded memorandum of agreement following upon the discharge, the pursuer averred that certain statutory requirements relating to the registration of the memorandum had not been complied with, and that the cause of action had not emerged until after the expiry of the

statutory period of six months. *Held* that the action was competent.

Mackinnon v. *Fairfield Shipbuilding and Engineering Company*, 1921, 2 S.L.T. 270, *followed*, *per* the Lord Justice-Clerk and Lord Anderson.

John Brown & Company, Limited v. *Orr*, 1910 S.C. 526, 47 S.L.R. 437, *distinguished*, *per* Lord Justice-Clerk, Lord Ormidale, and Lord Anderson.

Lord Hunter *reserved* his opinion.

Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58)—*Discharge—Memorandum of Agreement — Reduction — Essential Error as to Extent of Injury—Duty of Disclosure.*

A workman having fractured his leg as the result of an accident arising out of and in the course of his employment, a surgical operation was performed which involved the putting of metal plates in the leg. The workman received from his employers weekly payments of compensation under the Workmen's Compensation Act 1906 until he signed a discharge of all his claims under the Act at a date shortly before he was able to resume work. A memorandum of agreement was recorded. Five years afterwards, the presence of the plates in the leg having caused ulceration, the workman brought an action against his employers for reduction of the discharge and memorandum of agreement in which he averred that when he signed the discharge he was ignorant of the fact that plates had been put into his leg, but that the defenders or their representatives although they knew of the fact, and knew that it constituted a source of future danger, did not disclose their knowledge to the pursuer. *Held* (the Lord Justice-Clerk *dissenting*) that the pursuer's averments were irrelevant, and action *dismissed*.

Archibald Park, fitter, Coatbridge, *pursuer*, brought an action against Anderson Brothers, engineers, Coatbridge, *defenders*, for reduction of "(*first*) a pretended receipt and discharge signed by the pursuer on or about 13th October 1915 and purporting to discharge the defenders of all claims whatsoever that the pursuer might have against the defenders for the personal injury by accident sustained by him on or about 10th December 1914, and (*second*) a pretended memorandum of agreement purporting to record an agreement by the pursuer to discharge his whole claims whatsoever arising as aforesaid which pretended memorandum of agreement is recorded in the special register kept by the Sheriff-Clerk of Lanarkshire at Airdrie under and in terms of the Workmen's Compensation Act 1906 under date 22nd October 1915."

The following narrative is taken from the opinion of Lord Ormidale infra:—"On 10th December 1914 the pursuer met with an accident arising out of and in the course of his employment with the defenders. The accident was caused by the fall of a crane, which in falling struck and fractured his left leg just above the ankle. After being in hospital for seven weeks he was discharged. At this time he was, he avers, "still" under treatment by Dr Murray, his own doctor. He was advised by him to return to hospital and have his leg re-set. This he did and was finally discharged in July 1915. He received weekly payments of compensation down to 13th October 1915 when he signed a receipt for £20 in full satisfaction and discharge of all his claims in respect of his injuries and of all moneys due "under the agreement between him and the defenders." A memorandum of agreement purporting to be signed by the pursuer on the same date was transmitted to the sheriff-clerk and duly recorded. About a month later the pursuer resumed work and continued to work with various employers until the end of 1920. His leg then began to trouble him. He again consulted Dr Murray who found that the leg was ulcerating and that the screws of a plate which had been attached to the leg bones were coming through the skin. He went into hospital on 27th March 1921 and the plate was removed. The pursuer was discharged on 29th April 1921. The present action was not raised until August 1923, but it appeared from an explanation given at the bar that the pursuer was not to blame for the delay."

The pursuer averred, *inter alia*—"(Cond. 6) On or about 13th October 1915 the pursuer went to the office of the defenders' insurance company, the London and Lancashire Insurance Company, Royal Exchange Square, Glasgow, who were making the weekly payments of compensation for and on behalf of the defenders. There a representative of the company stated to him that Dr Adams reported that the pursuer would be ready for work in about two months' time, but did not disclose to him certain material facts that were within the knowledge of the company and their representative, viz., that metal plates had been screwed to the bone of the pursuer's leg at the seat of the fracture, and that it was not unlikely that the leg would cause trouble in the future, and that an operation would be required to remove said metal plates before a permanent cure of the injury could be effected. Withholding said material facts from the knowledge of the pursuer the company's said representative, acting for and on behalf of and with the authority of the defenders, offered the pursuer the sum of £15 in full settlement of his claim. This offer was refused by the pursuer, and was then increased to £20. Relying on the statement made by the company's representative, and believing as he was justified in doing that the whole material facts in relation to the present and future condition of his injured leg had been disclosed to him, the pursuer accepted the offer of £20 and signed a receipt for that sum in full settlement. The pursuer received payment of said sum two or three days later. The said sum was grossly inadequate, as will appear from the circumstances after mentioned. (Cond. 8) From inquiries which the pursuer has made he has now ascertained that when he went into the said Alexander Hos-

pital about the middle of May 1915 it was found necessary to open up the tissues of the leg, and that plates were screwed on to the bones of his leg in order to effect a reunion of the fracture. The pursuer was of course aware that he had undergone an operation upon his leg, but he was not informed at the time nor subsequently and at no time was he aware, that metal plates had been used at said operation and had been left in the leg. The retention of said plates in the pursuer's leg was calculated to give trouble in the future, constituted a source of organic weakness, and was a source of danger either of immediate sepsis or at a later period of chronic abscess formation. These facts, although at no time known to the pursuer, were all along within the knowledge of the defenders and of the said insurance company and of their medical advisers. The only person who examined and advised the pursuer at the time of the alleged settlement as to the condition of his leg was the defenders' doctor, who did not disclose the above facts to the pursuer. The pursuer believes and specifically avers that the facts as to the condition of his leg were known to the representative of the said insurance company and were concealed by him from the pursuer. Relying upon the honesty and integrity of the said insurance company's representative, and having no reason to suspect that facts relevant and material to a consideration of a just settlement of his claims were being withheld from him, the pursuer was induced to grant the pretended discharge now sought to be reduced. It was the duty of the representative of the insurance company if he chose to make any disclosure to the pursuer to disclose to him the whole facts, and not to make as in fact he did a partial and misleading disclosure. The said representative was aware that the pursuer was not being independently advised. Had all the material facts been placed before the pursuer he would have taken steps to be separately advised by his legal and medical advisers, and he would then have been in a position to realise whether the plates which had been left in the leg were likely to affect his wage-earning capacity in the future, and generally as to his whole position in relation to the projected settlement. (Cond. 9) The memorandum of agreement under reduction was recorded in the Sheriff Court Books of Lanarkshire on or about 22nd October 1915. It was presented to the sheriff-clerk for registration by the defenders or some person acting on their behalf and was not presented for registration by the pursuer. No notice of the presentation of the memorandum was sent by the sheriff-clerk or any other person to the pursuer at the time when the memorandum was presented as aforesaid for registration. The first the pursuer learned of the recording of any agreement was in July 1921, when he applied for compensation in respect of his being in hospital and off work, caused through the said accident and the operation following thereupon. With reference to the defenders' averments in answer it is explained that about the time of the signing of the discharge the pursuer asked the clerk of the insurance company for a payment to account, and was told by him that the matter would require to go before the Sheriff. If the pursuer did sign an application to have the agreement recorded, which is denied, he did so in ignorance of the purpose of the document. The whole matter was transacted at one interview in the office of the insurance company, and no explanation was given to the pursuer as to the meaning, purpose, or effect of his signing any document or application, nor had he any independent legal advice in the matter. The pursuer did not understand that if he signed an application to have the agreement recorded, which in fact he denies, the matter would thereby be excluded from all review in the future. Throughout the interview referred to the representatives of the insurance company took advantage of the pursuer's inexperience to his prejudice and an attempted defeat of his legal rights.

The pursuer pleaded — "1. The pursuer having signed the pretended receipt under essential error, and/or having been induced to sign the said pretended receipt by the concealment by the defenders or their agents of material facts which they had a duty to disclose, is entitled to have the same reduced with expenses. 2. The memorandum under reduction having followed on the said pretended receipt, signed under essential error and/or induced as condescended on, should be reduced with expenses."

The defenders pleaded, *inter alia* — "1. The action being incompetent should be dismissed. 2. The pursuer's averments being irrelevant the action should be dismissed."

On 1st February 1924 the Lord Ordinary (ASHMORE) pronounced the following interlocutor: — "Repels the first plea-in-law for the defenders under reservation of the defenders' second plea-in-law: Assigns Tuesday, the 19th day of February 1924, as a diet for the adjustment of issues."

Opinion.— "At the discussion in the procedure roll counsel for the defenders argued that the action is incompetent. The argument seems to me to be inconsistent with the decision of the Inner House in *Mackinnon* v. *Fairfield Shipbuilding and Engineering Company, Limited*, 1920, 2 S.L.T. 118, and 1921, 2 S.L.T. 270.

"It is unfortunate, especially having regard to the ambiguity of the statutory provisions and the absence of judicial authority, that there is no report of the opinions of their Lordships in the Inner House, but the reports which are given in the Scots Law Times seem to justify the inference drawn from them by counsel for the pursuer on the question of competency.

"The pursuer in *Mackinnon's* case like the pursuer in this case brought an action of reduction against his employers for the purpose of setting aside (1) a receipt which he had granted discharging all his claims in respect of personal injury sustained by him as the result of an accident, and (2) a memorandum of agreement bearing to be signed by him and recorded under the Workmen's Compensation Act 1906.

"The defenders in *Mackinnon's* case maintained that the action was incompetent, and the Lord Ordinary (Lord Anderson) sustained that plea and dismissed the action. His Lordship in giving judgment said — 'I must assume, in the absence of any averments by the pursuer to the contrary, that he received due notice of the proposed registration in terms of the statute and Act of Sederunt.'

"The pursuer reclaimed, and on the case being heard before the Second Division the Court allowed the record to be amended. The following amendment was made by the pursuer :—'No notice of the presentation of the memorandum was sent by the sheriff-clerk or by any person to the pursuer at the time when the memorandum was presented as aforesaid for registration.'

"The defenders also amended, adding the following plea-in-law : — 'The action is incompetent in respect that the arbiter, under the Workmen's Compensation Act, has privative jurisdiction in all matters relating to the liability or non-liability of an employer to pay compensation, including, *inter alia*, the determination of the validity of receipts, discharges, and memoranda of agreement signed by workmen with reference thereto.'

"The Court allowed these amendments, recalled *in hoc statu* the interlocutor reclaimed against, and remitted the cause back to the Lord Ordinary to proceed as accords. Thereupon the Lord Ordinary in view of the amendment, and in respect that it was conceded that the ground of his previous judgment had failed, held the action competent and relevant and allowed proof.

"In the present case the pursuer avers that the memorandum of agreement which he seeks to reduce was presented for registration by the defenders, and that no notice of this presentation was sent to him by the sheriff-clerk or any person. Moreover, although the application to have the memorandum recorded bears to be signed by him, he denies that he signed it.

"Having regard to the pursuer's averments and the case of *Mackinnon* I will repel the defenders' first plea-in-law—that is, their plea that the action being incompetent ought to be dismissed.

"I heard counsel also on the relevancy of the pursuer's averments, but *in hoc statu* I will reserve judgment on that question. Meantime in accordance with the motion made by the pursuer's counsel—a motion which counsel for the defenders intimated that he would oppose but as to which there was no discussion—I will also reserve the question of whether proof or jury trial is appropriate in the circumstances."

The pursuer proposed the following issue : — "Whether the pursuer was induced to sign the receipt and discharge dated 13th October 1915 by the concealment by the defenders or their agents of material facts which they had a duty to disclose."

On 27th February 1924 the Lord Ordinary pronounced the following interlocutor :— "Sustains the second plea-in-law for the defenders : Dismisses the action, and decerns. . . ."

Opinion—"In this case the pursuer is seeking to set aside a receipt which he granted to the defenders in October 1915, bearing that he accepted a sum of £20 in full settlement of his claims for injuries sustained by him as the result of an accident which happened to him when working in the defenders' employment.

"The general question now arising for determination relates to the relevancy of the pursuer's averments to the effect that he granted the receipt under essential error induced by the concealment on the part of the defenders of material facts which it was their duty to disclose.

"Before I deal with the case in its legal aspect it will be convenient to state briefly the circumstances under which the action has been brought.

"On 10th December 1914 the pursuer's left leg was fractured just above the ankle. He was taken to hospital, where the bone was set, and in seven weeks he was discharged. He continued under treatment, however, by his own doctor (Dr Murray) until May 1915, when on his doctor's advice he returned to the hospital to have the bone re-set. He was discharged from the hospital for the second time in July 1915.

"On 28th September 1915 he was examined by Dr Adams on behalf of the defenders.

"He was paid compensation under the Workmen's Compensation Act by the defenders, through an insurance company, down till 13th October 1915. On that day he went to the office of the insurance company for the usual weekly payment of compensation, and the following passage, taken verbatim from the pursuer's pleadings, gives the pursuer's account of what passed :—'There a representative of the company stated to him (the pursuer) that Dr Adams reported that the pursuer would be ready for work in about two months' time, but did not disclose to him certain material facts that were within the knowledge of the company and their representative, viz., that metal plates had been screwed to the bone of the pursuer's leg at the seat of the fracture, and that it was not unlikely that the leg would cause trouble in the future, and that an operation would be required to remove said metal plates before a permanent cure of the injury could be effected.'

"On the occasion referred to the representative of the insurance company, acting on behalf of the defenders, offered the pursuer £15 to settle his claims. The pursuer refused that offer but agreed to accept £20, and signed the receipt therefor which he now desires to have set aside.

"Within two months after granting the receipt the pursuer resumed work with the defenders, and continued in their employment till July 1916, when he went to work elsewhere.

"Towards the end of 1920 he began to suffer pain in his leg, and on examination it was found necessary to remove one of the metal plates.

"The pursuer avers that he had not been aware that metal plates had been left in his

leg in 1915. He also avers that these plates constituted a source of danger, that this was all along within the knowledge of the defenders and the insurance company and their medical adviser, and that it was the duty of the representative of the insurance company, if he chose to make any disclosure to the pursuer, to disclose the whole facts and not to make what the pursuer characterises as 'a partial and misleading disclosure.'

"I think that I have sufficiently indicated the nature of the case averred by the pursuer, and I proceed to regard the averments in their legal aspect.

"In the first place the pursuer does not aver that there was any misrepresentation or any concealment of anything that Dr Adams had reported to the defenders.

"In other words, so far as appears from the pursuer's averments, the statement made to the pursuer, viz., that Dr Adams had reported that the pursuer would be ready for work in about two months' time, represented accurately and fully what Dr Adams had in fact reported.

"In that state of the pursuer's averments this case falls to be distinguished from the case of *Crossan* v. *Caledon Shipbuilding and Engineering Company, Limited* (1906, 43 S.L.R. 852) on which counsel for the pursuer founded.

"In *Crossan's* case there was only a partial and fragmentary statement of what the doctor had reported and the withholding of that which was not stated made that which was stated absolutely false. There was a clear misrepresentation of what the doctor had actually stated in his written report.

"Accordingly the circumstances in this case are conspicuously different from those in the case of *Crossan*, and assuming that in this case the representative of the insurance company when he professed to communicate what Dr Adams had reported was bound to communicate to the pursuer all that was material in the report made by Dr Adams as to the duration and prospects of the pursuer's recovery, I am of opinion that there is no relevant averment that a full and fair communication was not made.

"In the second place, assuming the averments made by the pursuer as to the information possessed by the defenders to be true, it does not seem to me to follow that the defenders were bound to disclose that information to the pursuer. There is nothing in the circumstances as stated by the pursuer which raised any special duty on the part of the defenders to disclose that information. It is not even averred that the defenders knew or had any reason to think that the pursuer was ignorant that metal plates had been left in his leg and might have to be removed in the future, and in the absence of any averment to that effect I think that the defenders might reasonably assume that the pursuer himself would have got information as to these matters from his own medical man or otherwise. Moreover, the question is not what a sympathetic or outspoken person would or might have said, but what the defenders, whatever their personal qualities or whatever their attitude towards the pursuer, were legally bound to tell the pursuer.

"It must also be kept in view that according to the pursuer's averment the defenders had no precise or definite knowledge that the pursuer would have trouble from his leg in the future. What the pursuer says they knew was that 'it was not unlikely' that the leg would cause trouble in the future.

"The pursuer's averment on this branch of the argument reads as follows:—'Relying on the statement made by the company's representative, and believing, as he was justified in doing, that the whole material facts in relation to the present and future condition of his injured leg had been disclosed to him, the pursuer accepted the offer of £20 and signed a receipt for that sum in full settlement.'

"The assumption underlying the foregoing averment as to an absolute duty of disclosure of the kind referred to resting on the defenders seems to me to be unfounded and indeed extravagant, and I think that the arguments for the pursuer as to such a duty being incumbent on the defenders, viewed from a legal standpoint, are untenable and are inconsistent with the authorities—*Welsh* v. *G. & R. Cousin*, 1899, 2 F. 277; *North British Railway Company* v. *Wood*, 1891, 18 R. (H.L.) 27; *Irvine* v. *Kirkpatrick*, 1850, 7 Bell's App. 186.

"In my opinion the pursuer's averments do not disclose any essential error on the part of the pursuer which was induced by the defenders or any misrepresentation by them or any concealment of any material fact which it was their duty to disclose.

"For the reasons which I have given I will sustain the second plea-in-law for the defenders (their plea of irrelevancy) and dismiss the action."

The pursuer reclaimed, and argued—(1) The action was competent. The statutory requirements relating to the registration of the memorandum of agreement had not been complied with. Moreover, the cause of action did not arise until after the statutory period of six months had elapsed—*Mackinnon* v. *Fairfield Shipbuilding and Engineering Company, Limited*, 1920, 2 S.L.T. 118, *per* Lord Anderson (Ordinary) at 119 and 120, 1921, 2 S.L.T. 270. The cases of *John Brown & Company, Limited* v. *Orr*, 1910 S.C. 526, 47 S.L.R. 437; *Hughes* v. *Thistle Chemical Company*, 1907 S.C. 607, 44 S.L.R. 476; and *Binning* v. *Easton & Sons*, 1906, 8 F. 407, 43 S.L.R. 312, were also referred to. (2) The action was relevant. The relation which existed between a workman and his employers was special and the ordinary rules of contract were modified. The defenders concealed from the pursuer material facts. The partial disclosure which they made amounted in substance to concealment—*Royal Bank of Scotland* v. *Greenshields*, 1914 S.C. 259, 51 S.L.R. 260, *per* Lord Mackenzie at 1914 S.C. 271, 51 S.L.R. 266; *Crossan* v. *Caledon Shipbuilding and Engineering Company, Limited*, 1906, 43 S.L.R. 852, *per* Lord Stormonth Darling

(Ordinary) at 855, Lord Chancellor (Loreburn) at 857 and 858, and Lord Robertson at 859; *Redgrave* v. *Hurd*, (1881) L.R., 20 Ch. Div. 1; Gloag, Contract, p. 506; Bell's Prins., section 14. The cases of *Welsh* v. *Cousin*, 1899, 2 F. 277, 37 S.L.R. 199; *North British Railway Company* v. *Wood*, 1891, 18 R. (H.L.) 27, 28 S.L.R. 921; and *Irvine* v. *Kirkpatrick*, 1850, 7 Bell's Apps. 186, *per* Lord Brougham at 230, were also referred to.

Argued for the respondents — (1) The action was incompetent. Section 9 (*e*) of the Second Schedule of the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) created a statutory bar to the action. Both before and after the expiry of the statutory six months an action of reduction was incompetent — *John Brown & Company, Limited* v. *Orr* (*cit.*). The authorities showed that the general rule was that the statutory provisions were exhaustive of the remedies of the workman. Prior to 1906 actions of reduction were competent because under the Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37) the only remedy was rectification of the register—Second Schedule (8) of that Act. (2) The action was irrelevant. There was no averment that the defenders knew of the presence of the plates. The defenders were entitled to assume that the pursuer knew of the presence of the plates and their possible consequences. There was no concealment of facts. The concealment alleged was not a concealment of fact but of medical prognosis—*M'Guire* v. *Paterson & Company*, 1913 S.C. 400, 50 S.L.R. 289; *Hanley* v. *Niddrie & Benhar Coal Company, Limited*, 1910 S.C. 875, 47 S.L.R. 726; *Ellis* v. *Lochgelly Iron & Coal Company, Limited*, 1909 S.C. 1278, 46 S.L.R. 960; *Mathieson* v. *Hawthorns & Company, Limited*, 1899, 1 F. 468, 36 S.L.R. 356; *North British Railway Company* v. *Wood*, 1891, 18 R. (H.L.) 27, 28 S.L.R. 921; *Russell* v. *Rudd*, [1923] A.C. 309, *per* Lord Shaw at 328; *Archbold* v *Lord Howth*, (1866) L.R. Ir., 1 C.L. 608; Kerr, Fraud (5th ed.), p. 73. The cases of *Crossan* v. *Caledon Shipbuilding & Engineering Company, Limited* (*cit.*), *Welsh* v. *Cousin* (*cit.*), and *Redgrave* v. *Hurd* (*cit.*), were also referred to.

At advising—

LORD JUSTICE-CLERK (ALNESS)—The pursuer in this action was injured while in the employment of the defenders, and received compensation from them in respect of his injury under the Workmen's Compensation Act. The purpose of the present action is to reduce a discharge which the pursuer granted of his claims under that Act, and also a recorded memorandum following upon the discharge. The discharge was granted by the pursuer on the occasion of a visit paid by him on 13th October 1915, for the purpose of receiving his weekly payment of compensation, to the insurance company with whom the defenders were insured. On that date, after an interview with a clerk in the employment of the insurance company, the pursuer accepted a sum of £20 in full of all his claims against the defenders under the Act and granted an appropriate discharge.

The defenders maintain (1) that the action is incompetent, and (2) that the pursuer's averments in support of his claim are irrelevant. The Lord Ordinary repelled the first plea, but he sustained the second plea, and dismissed the action as irrelevant. The pursuer has reclaimed against that interlocutor, and the defenders have taken advantage of the pursuer's reclaiming note to maintain that the action is incompetent and that the Lord Ordinary was wrong in repelling their plea to that effect. Both parties accordingly are reclaiming against the Lord Ordinary's judgment.

It will be convenient, as it is certainly logical, to deal first with the plea to competency. The action is, as I have indicated, an action of reduction at common law. The procedure adopted by the pursuer is manifestly unobjectionable, unless he has been robbed by statute of his right to pursue a common law remedy. The defenders maintain that there is a statutory bar to the claim now made, and they profess to find it in the Second Schedule (9) (*e*) of the Workmen's Compensation Act 1906. That proviso is in these terms—[*Quoted in rubric*]. *Prima facie* the proviso appears to me to be of an enabling character, and its terms do not suggest to my mind that it is intended to confer a privative jurisdiction. However that may be, I regard the case of *Mackinnon* (1920, 2 S.L.T. 118; 1921, 2 S.L.T. 270) as a direct authority in favour of the competency of the pursuer's claim. There it was held, as I read the reports, that as the pursuer in that case had been denied the statutory opportunity afforded him of getting rid of the discharge which he granted, his common law right to sue an action of reduction remained unimpaired. The Lord Ordinary had held that, as the pursuer omitted to adopt the prescribed statutory procedure, his action was barred. But directly it appeared from the amended averments of the pursuer that the application to record the memorandum was not presented by him, that he had had no notice of it, and that he had no knowledge of the memorandum till after the expiry of six months from its date, the action was held to be competent and inquiry was allowed. Now all the averments which the pursuer added by way of amendment in that case are to be found in this case, and *prima facie* accordingly this action is competent.

But it was argued for the defenders that the edge is taken off these averments by the admission made by the pursuer in this case that he may have signed the application to record the memorandum. He must therefore, say the defenders, be held to be affected with knowledge of the statutory procedure. But then the pursuer avers (*a*) that he was unaware of the purpose of the paper which he signed, if he did sign it, which he denies, and he further avers (*b*) that he was ignorant of the finality attaching to a recorded memorandum of agreement. The defenders maintain that these averments are irrelevant to bring the pursuer within the ambit of the decision in *Mackinnon's* case. But then the pursuer's averments in this regard are merely ancillary to those which support his main case,

and they appear to me to be sufficient to bring the action within the principle of the decision in *Mackinnon*. If these averments are proved, then the pursuer in this case, like the pursuer in *Mackinnon's* case, was unaware of the opportunity afforded him by the statute to obtain relief, and his common law right accordingly is not destroyed. In any event I am not prepared to hold *ab ante* that if the pursuer's averments are proved his claim is necessarily barred. It may turn out to be so, but I think it would be infinitely more satisfactory and safer first to ascertain the facts.

The defenders founded upon certain observations by Lord President Dunedin in the case of *Brown* (1910 S.C. 526) as supporting the view for which they contended. They suggested that these observations imply that the pursuer in a case such as this has a statutory remedy and no other. But what Lord Dunedin said must be taken *secundum subjectam materiem*. The decision in *Brown* appears to me to amount to no more than this, that the question of law there raised was appropriate for determination only by way of stated case. Lord Dunedin's observations do not appear to me to have any bearing on a question of fact such as that with which we are here concerned. I am of opinion that this case falls within the ambit of *Mackinnon* and outside the ambit of *Brown*.

I may add that if the defenders' plea is sound, then where knowledge of an objection by the pursuer to a discharge granted by him is acquired by him after the expiry of six months, he is excluded from all remedy, even though it were clear that the discharge had been obtained from him by gross fraud. I should be slow to reach that conclusion unless compelled to do so by irrefragable reasoning. The reasoning in this case does not appear to me to be of that quality. I am disposed to think that the right conferred on a workman by the proviso to which I have referred is a new and summary right, and that it does not by implication, any more than it does expressly, deprive him of his old common law right to sue an action of reduction, at any rate after six months have expired from the date of recording the memorandum. This view is fortified, I think, by the reasoning which underlay the decision in *Schofield*, [1913] 2 K.B. 103. But I proceed on the view which the Lord Ordinary has accepted that the case is covered by *Mackinnon*, and that the defenders have not succeeded in distinguishing that case from this. My opinion therefore is that the Lord Ordinary was right in repelling the defenders' plea to the competency of the action.

If the pursuer's claim is competent, does it fail because it is irrelevant? The Lord Ordinary thinks so, but I cannot, for reasons to be stated, adopt that view. The pursuer's case is that the defenders—I refer to the insurance company, but of course the defenders are identified with them—in order to obtain a settlement of the pursuer's claim essayed to inform him of his future prospects. They truly informed him of his prospects during the ensuing two months by stating that he would be fit for work at the end of that period; but it is averred that they withheld information which was within their possession, though not within the possession of the pursuer, regarding the period beyond the two months which profoundly modified the information which they gave. The information said to have been withheld related to the contingent complications which were likely to ensue from the presence in the pursuer's leg of certain metal plates which had been placed there during his infirmary treatment. The pursuer admits that the defenders might have, without objection, remained silent on the topic of his future prospects, but he says that as they elected to speak they were bound to tell him the truth, the whole truth, and nothing but the truth. He argues that if the defenders had two material facts within their knowledge, as he says they had, they were not entitled, as he says they did in order to induce him to sign a discharge, to disclose the one and to suppress the other.

The defenders maintained (*a*) that they were entitled to assume that the pursuer knew all about the plates in his leg and their possible consequences from his own medical adviser; and (*b*) that at any rate the suppression of which they are accused was with regard not to fact but with regard to medical prognosis. As regards (*a*) it may well be that when the full facts are known the defenders' contention will be established. But I am not prepared to hold, on averment, that this will necessarily be so. The pursuer's complaint, as I read it, refers rather to the potential mischief resulting from the presence of metal plates in his leg than to their mere presence there. In this connection certain averments of the pursuer appear to me to be material and indeed vital. They are these—"The retention of the said plates in the pursuer's leg was calculated to give trouble in the future, constituted a source of organic weakness, and was a source of danger, either of immediate sepsis or, at a later period, of chronic abscess formation. These facts, although at no time known to the pursuer, were all along within the knowledge of the defenders and of the said insurance company and of their medical advisers." If these averments are proved I am not prepared to hold that the result of the argument which I am considering is that the pursuer is deprived of the remedy which he seeks. As regards (*b*) it is to be observed that all the information which the defenders communicated to the pursuer, in a sense, referred to medical prognosis. The prediction which the defenders elected to make that the pursuer would be able to resume work in two months, was as much or as little a matter of fact as was the prediction which it is alleged they omitted to make, that the metal plates in his leg would probably cause him trouble in the future. Moreover, what the defenders neglected to say, just as much as what they chose to say, was vital to the bargain which the pursuer was invited to conclude; and I am not prepared to hold without inquiry

that the concealment attributed by the pursuer to the defenders, if proved, may not afford him the remedy which he seeks.

The pursuer's case would appear to be this—(1) That he was a working man without skilled representation—a fact of which the defenders are alleged to have been aware; (2) that the defenders invited him under these circumstances to transact with them; (3) that they proposed to him, not so much that he should make a bargain with them as that he should undo a bargain which had been already struck between them, and should surrender a valuable statutory right with which he was vested; (4) that the defenders were fully aware of the subsequent complications above narrated which the presence of the metal plates in the pursuer's leg entailed, but that he was unaware of these; and (5) that the defenders accordingly kept the pursuer in the dark regarding a matter which was vital to the bargain which they invited him to conclude, and which they were therefore bound to reveal.

I am not prepared to affirm here and now that if these facts are proved there was not a duty on the defenders to disclose to the pursuer all that they knew of his future prospects. If that be so, then I think it is sufficient for the disposal of the case. It may well be, as I have already indicated, that on the evidence the defenders may be able to establish that the pursuer knew or should have known all about the plates in his leg and their possible consequences If they do so, they will probably win their case. But I am not prepared at this stage to make the assumption in favour of the defenders which they invite me to make, and to hold without inquiry in a type of case where the Court has been in use rigorously to scrutinise the circumstances which surround a bargain like that with which we are here concerned, that the pursuer must be denied the opportunity of proving the specific averments which he has made. Such a course appears to be unprecedented, and I certainly think that to adopt it in this instance would be unsafe. At the same time I confess that I am not without sympathy with the defenders, who eight years after the event have to face a claim which involves ripping up a stale bargain. But I am afraid that that is a risk incidental to bargains effected as this one was. In any case I feel constrained by the averments which the pursuer has made to afford him the opportunity for inquiry which he seeks.

All the pursuer asks is a proof before answer. It is a modest request, and I am in favour of granting it. My view is that the Lord Ordinary has gone too fast, that his interlocutor, for the reasons which I have stated, should be recalled, and that a remit should be made to him to allow the pursuer a proof before answer of his averments.

LORD ORMIDALE—[*After the narrative quoted supra*]—The pursuer now seeks to have reduced the receipt and the recorded memorandum of agreement. It is pleaded by the defender (first) that the action is incompetent, and (second) that the pursuer's averments are irrelevant. The Lord Ordinary has held that the action was competent, but has sustained the plea to relevancy and dismissed the action.

On the question of competency the defenders rely on the Workmen's Compensation Act 1906, Second Schedule (9) (*e*), and the case of *John Brown & Company* v. *Orr*, 1910 S.C. 526. These, they maintain, establish that the Sheriff had a privative jurisdiction in the matter, and that unless he was applied to within six months of the recording of the memorandum to remove the record from the register, such a question as the present is finally determined and the common law remedy of reduction is excluded. The pursuer relies (first) on the case of *Mackinnon* (1921, 2 S.L.T. 270), and points out that as in that case so here, there is an averment that no notice was sent to him of the presentation of the memorandum for registration; and (second) on his averment that the ground for setting aside the memorandum, viz., the supervening trouble in his leg and the existence of the plates, only came to his knowledge long after the expiry of the six months, the time limited in sub-section (*e*) for applying to the Sheriff. I agree with the Lord Ordinary that the action is competent. While I have some difficulty in holding that the pursuer's averments are, in the whole circumstances stated by him, relevant to infer a want of sufficient notice, I am unable to sustain a plea to the competency of the action where on the pursuer's averments the ground for setting aside the memorandum only came to light several years after the memorandum was recorded. The power given to the sheriff to adjudicate upon the question is a power given only for a limited time, but it does not appear to me to follow of necessity that the jurisdiction of any other competent tribunal is thereby superseded. As Hamilton, L.J., says in *Schofield*, [1913] 2 K.B. 103, at p. 110, in which a not dissimilar question was considered—"Still it cannot be said that the reference to the County Court is so exclusive and comprehensive that it ousts the jurisdiction of any other tribunal to do plain justice by setting right something that cannot be remedied under the statutory jurisdiction." The Master of the Rolls, Cozens-Hardy, and Buckley, L.J., made observations to the same effect. In the case of *John Brown & Company*, on the other hand, the employers raised their action of reduction within six months of the recording and after they had been heard by the Sheriff on an objection to the genuineness of the memorandum which he rejected. They might have applied for a stated case, but did not do so. The circumstances therefore were entirely different to those in the present case. Sub-section (*e*) was not founded on or referred to, and the concluding part of the Lord President's opinion must, I think, be read with reference to the special circumstances.

With regard to the question of relevancy, I concur in the grounds of the Lord Ordinary's judgment. The fact that the parties are employer and employee does not appear to me to instruct in any true sense a special

relationship of confidence or influence, although I agree that the Court will scrutinise very carefully the circumstances in which the settlement of an injured workman's statutory claim to compensation is concluded. There is no trace, as I read the pursuer's averments, of any unfair advantage being taken of him. There is no suggestion that he was not fully able to appreciate all that was said and done. The accident was ten months old and the pursuer had recovered from the immediate effects of it. A month later he was able to resume work, and he continued in employment without interruption for a period of five years. In such a state of matters a settlement for a sum equal to from twenty-eight to thirty weekly payments does not on the face of it appear to be an unreasonable settlement. It is said, however, to have proved to be so because of the trouble which supervened in 1921. Treating the parties as having negotiated at arm's length, the averments of the pursuer do not, in my opinion, disclose any concealment by the defenders or their agent of material facts which they had any duty to disclose. No positive mis-statement of the truth is imputed to them. Their agent stated that Dr Adams had reported that the pursuer would be ready for work in a couple of months. It is not said that that statement was anything but accurate, and it is not said that it was not all that Dr Adams reported. There was no half truth about it. The only charge is that the defenders and their representatives knew about the existence of the plates attached to the pursuer's left leg and that it was not unlikely that the leg would cause trouble in the future, and so on. One must, of course, accept this averment as true, and also the further averment that the pursuer was himself in ignorance of the plates having been attached to the bones of his leg. If in fact he was, then that was the fault, if there be blame in the matter, of his own medical adviser under whose treatment he had remained until he was for the second time discharged from hospital in July 1915. It is very difficult to conceive of an injured man not being made aware in a case of this sort of the nature of the operation to which he had been subjected, and I think that the defenders were entitled to assume that the pursuer knew just as much about the plates as they did, and that unless they were aware that he was in ignorance of them, which is not averred, they were in breach of no duty which they owed to him in remaining silent. It is to be noted that the pursuer does not say that if he had been informed about them by the defenders he would have refused to accept the sum of £20, but only that he would have consulted his own doctor.

Accordingly I think the reclaiming note should be refused.

LORD HUNTER—The defenders maintain (*first*) that the action is incompetent, and (*second*) that in any event the averments of the pursuer are not relevant, The Lord Ordinary repelled the first of these pleas, but sustained the second. In repelling the plea to the competency of the action the Lord Ordinary gave effect to what he considered had been decided by the Inner House in *Mackinnon* v. *Fairfield Company*, 1920 2 S.L.T. 118, 1921 S.L.T. 270. In that case an action of reduction of a registered memorandum of agreement, under which an injured workman discharged all claim to compensation during incapacity for payment of a lump sum, was held competent. A plea by the defenders to the effect that the action was incompetent in respect that the arbiter under the Workmen's Compensation Act had privative jurisdiction in all matters relating to the liability or non-liability of an employer to pay compensation, including, *inter alia*, the determination of the validity of receipts, discharges, and memoranda of agreement signed by workmen with reference thereto, was repelled. This plea was founded upon the terms of section 9 of the Second Schedule to the Workmen's Compensation Act 1906. The pursuer, however, averred that no notice of the presentation of the memorandum was sent by the sheriff-clerk or by any person to him at the time when the memorandum was presented for registration. It appears to have been on the strength of this averment that the Court held that the action was not excluded. In *John Brown & Company, Limited* (1910 S.C. 526) it was decided that an action of reduction of a registered memorandum of agreement was incompetent in respect that as the act of the Sheriff in recording the memorandum was a judicial act in arbitration proceedings under the Act, it fell under the provisions for appeal by way of stated case, and that the common law remedies were excluded. The defenders maintained that the present action was governed by the decision in *Brown* rather than by that in *Mackinnon*. As, however, I have formed a clear opinion that the Lord Ordinary was right in dismissing the action as irrelevant, I find it unnecessary to express a final opinion upon this point.

So far as relevancy is concerned, I am content to put my decision upon the reasons stated by the Lord Ordinary. The ground of action is concealment of material facts from the pursuer at the date of settlement. There does not appear to have existed such a relationship between the parties as imposed a duty of disclosure of everything within the knowledge of the defenders. At the same time the Court would readily set aside a settlement where there was anything in the nature of unfairness on the part of the employers or an insurance company in transacting with a workman. Further, I agree with the pursuer's contention that a partial disclosure may be objectionable as amounting in substance to fraudulent concealment. In the present case, however, there is an entire absence of any such case. At the time of the settlement the pursuer was being attended to and advised by his own medical practitioner. The defenders' statements to him were in entire accord with the information obtained by them in the report of

the doctor who examined the pursuer on their behalf. They were neither incomplete nor misleading. It is not said that the defenders knew that the pursuer was in ignorance of the circumstance that the surgical operation performed on him involved the putting of metal plates in his leg. Presumably these plates were put there to strengthen his leg and not with the intention of their being afterwards removed. It may well be that whether they had been inserted or not the pursuer was more liable to future incapacity in consequence of the accident than if he had never been injured. The pursuer does not say that if the information had been given him about the metal plates being in his leg he would not have accepted the defenders' terms, but only that he would have consulted his medical or legal adviser before effecting the settlement which he did. He received a sum which represented many weeks' payment of compensation in addition to what was payable to him before he restarted work. I see no ground upon which it can be maintained that after the lapse of several years he is entitled to set aside the settlement because one of the plates inserted in the leg gave trouble.

LORD ANDERSON—Two points were argued on the reclaiming note—(1) competency, (2) relevancy.

(1) *Competency*—The Lord Ordinary has held that in the circumstances the common law action of reduction is competent. I agree with the Lord Ordinary on this point. The pursuer contends that these special circumstances make the action competent—(1) that certain statutory requirements relating to the registration of the memorandum of agreement were not observed; and (2) that the cause of action did not emerge until long after the expiry of the statutory period of six months. The case of *Mackinnon* (1920, 2 S.L.T. 118, 1921, 2 S.L.T. 270) decided that a common law action of reduction was competent after the expiry of six months from the date of recording the memorandum of agreement if the statutory procedure in recording had not been followed. That procedure is prescribed by the Workmen's Compensation Act 1906, Second Schedule (9), and C.A.S., book L, cap. xiii, sec. 11. In the present case it is averred (1) that the pursuer never signed the application to record; (2) that if he signed a document he was unaware that it was an application to record; and (3) that the sheriff-clerk did not send him, as prescribed by the Codifying Act of Sederunt, a copy of the memorandum proposed to be recorded. This last point is countered by the defenders by the contention that the pursuer was the party from whom the sheriff-clerk received the memorandum (who by the Act of Sederunt does not require to have the document sent to him), the insurance company, it was maintained, having acted as his agents in sending the document to the sheriff-clerk. This allegation is disputed by the pursuer and thus remains matter of doubt. Formally, therefore, the present case seems to resemble and be ruled by the case of *Mackinnon*, although in this case it can scarcely be affirmed that any prejudice resulted from the non-observance of the provisions of the Act of Sederunt. If a copy of the memorandum of agreement had been sent to the pursuer nothing would have followed, as he was then and for long after the expiry of the six months well satisfied with the agreement. The pursuer maintained as his second contention as to competency that inasmuch as the cause of action did not arise until after the statutory period of six months had passed, an action of reduction at common law was competent. On this part of the case the defenders relied on the case of *John Brown & Company, Limited* (1910 S.C. 526), which they read as deciding that both before and after the expiry of the six months a common law action of reduction to set aside a recorded agreement is incompetent. I am unable to hold that that case has this signification. The facts of the case show that an action of reduction was raised within the statutory period of six months. The Court decided that a stated case should have been applied for. The case, in other words, as I understand it, decided that where the statutory machinery is available it must be used, and that a common law action is then incompetent. But it decided nothing with reference to a cause of action arising after the period of six months had passed, and it did not lay down that with reference to such a set of circumstances the common law right of reduction had been abrogated. If in the seventh month it is ascertained for the first time that an agreement has been effected by means of the grossest fraud, is there no remedy in law? I am unable so to hold. In the present case, therefore, as the cause of action arose long after the statutory period had elapsed, I am of opinion that a common law action of reduction is competent.

(2) *Relevancy*—As to the question of relevancy I have had some difficulty, but I have ultimately reached the conclusion that the Lord Ordinary's decision is right. If I had thought that there was a special relationship between the parties to the bargain, importing, as in the contract of insurance, *uberrima fides* on the part of the defenders, I might have reached a different conclusion on this part of the case. But although the agreement was in point of fact effected by a representative of the insurance company, it is treated in law as a contract between the employers and the workman. There is thus, in my opinion, no special relationship based on confidence involved, and the parties transact at arm's length. The principles laid down in *Wood* (18 R. (H.L.) 27) would thus seem to apply. There was therefore, in my opinion, no duty on the defenders' representative to disclose what he might reasonably assume was known to the pursuer or what the pursuer had equal opportunity with the defenders of ascertaining. The defenders' representative was entitled to assume (if the matter entered his mind at all) that the pursuer was aware that there were metal plates in his leg. The

pursuer does not aver that the defenders knew that he was ignorant of the presence of these plates. As to any risks or contingencies connected with the presence of these plates in his leg, the pursuer was not entitled to expect or rely on information obtained from the defenders, but was bound to consult his own doctor with reference thereto.

I therefore agree with the judgment which has been proposed.

The Court adhered.

Counsel for the Reclaimer (Pursuer)—Aitchison, K.C.—N. M. L. Walker. Agent—George Forsyth, S.S.C.

Counsel for the Respondents (Defenders)—Mackay, K.C.—J. Stevenson. Agents—Blackstock, Rose, & Company, S.S.C.

Friday, June 27.

FIRST DIVISION.

[Sheriff Court of Lanarkshire.

BENT COLLIERY COMPANY, LIMITED *v.* O'HARE.

CADZOW COAL COMPANY, LIMITED *v.* HASSAN.

JOHN WATSON LIMITED *v.* FITZPATRICK.

JOHN WATSON LIMITED *v.* SCULLION.

M'ANDREW & COMPANY, LIMITED *v.* BARKAUSAS.

JOHN WATSON LIMITED *v.* COLLINS.

Workmen's Compensation Acts 1906 *to* 1923—*Workmen's Compensation Act* 1923 (13 *and* 14 *Geo. V, cap.* 42), *sec.* 14—*Termination of Payments*—"*End or Diminish*"—*Employer Terminating Payments at His Own Hand—Interim Award of Compensation—Suspension, Pending Review, of Charge on Award.*

An employer who is liable to pay compensation under the Workmen's Compensation Acts is only entitled to terminate or reduce the payments by agreement or arbitration or under the special provisions of section 14 of the Act of 1923, and where he terminates or reduces the payments at his own hand on the ground that the workman has in fact totally or partially recovered an interim award of compensation may be made in an arbitration to fix compensation or review an award. An employer who is applying for review of an award is not entitled, pending review, to suspend a charge under the award.

The Workmen's Compensation Act 1923 enacts—Section 14—"An employer shall not be entitled otherwise than in pursuance of an agreement or arbitration to end or diminish a weekly payment under the principal Act except in the following cases:—(*a*) Where a workman in receipt of a weekly payment in respect of total incapacity has actually returned to work. (*b*) Where the weekly earnings of a workman in receipt of a weekly payment in respect of partial incapacity have actually been increased. (*c*) Where the medical practitioner, who has examined the workman under paragraph (14) of the First Schedule to the principal Act, has certified that the workman has wholly or partially recovered or that the incapacity is no longer due in whole or in part to the accident, and a copy of the certificate (which shall set out the grounds of the opinion of the medical practitioner) together with notice of the intention of the employer at the expiration of ten clear days from the date of the service of the notice to end the weekly payment, or to diminish it by such amount as is stated in the notice, has been served by the employer upon the workman: Provided that—(i) In the last-mentioned case, if before the expiration of the said ten clear days the workman sends to the employer the report of a duly qualified medical practitioner (which report shall set out the grounds of his opinion) disagreeing with the certificate so served by the employer, the weekly payment shall not be ended or diminished except in accordance with such report, or, if and so far as the employer disputes such report, except in accordance with the certificate given by a medical referee in pursuance of paragraph (15) of the said schedule as amended by this Act; and (ii) where an application has been made in pursuance of the said paragraph (15) as so amended to refer the dispute to a medical referee it shall be lawful for the employer, pending the settlement of the dispute, to pay into court, (*a*) where the notice was a notice to end the weekly payment, the whole of each weekly payment becoming payable in the meantime; (*b*) where the notice was a notice to diminish the weekly payment, so much of each weekly payment so payable as is in dispute; and the sums so paid into court shall, on the settlement of the dispute, be paid to the employer or to the workman according to the effect of the certificate of the medical referee, or if the effect of that certificate is disputed as in default of agreement may be determined by the registrar or, on appeal, the judge; (iii) nothing in this section shall be construed as authorising an employer to end or diminish a weekly payment in any case in which, or to an extent to which, apart from this section he would not be entitled to do so."

The Bent Colliery Company, Limited, *appellants*, being dissatisfied with an interim award by the Sheriff-Substitute at Hamilton (SHENNAN) in an arbitration to determine the rate of compensation payable to John O'Hare, *respondent*, under the Workmen's Compensation Acts 1906 to 1923, appealed to the Court of Session by Stated Case.

Similar appeals were made in arbitrations under the said Acts between Cadzow Coal Company, Limited, *appellants*, and Charles Hassan, *respondent*; John Watson Limited, *appellants*, and Patrick Fitzpatrick, *respon-*