prescribed, less is brought out than £150, nevertheless decree may be given for that sum. The question is, whether that ratio can be applied in a case where, although the workman had entered on the employment, no right to any earnings had arisen before the death. I confess that but for the view that has been taken in the highest Court of Review that the schedule of the Act only provides a mode of ascertaining damages, and does not exclude damages where the circumstances prevent its application, thus practically indicating that where the schedule will not apply, compensation may be ascertained notwithstanding, I should have felt great difficulty in agreeing with the Sheriff's finding. But I take it that the decision of the House of Lords amounts to an instruction that a sound interpretation of the Act involves the right to compensation where there has been employment and accident in the employment. Accepting that, as I feel bound to do, I find that means are given by the statute for fixing £150 in the case of a death where the application of the rules as to computation of earnings would not bring out so large a sum. Here, dealing with earnings, no sum can be brought out at all, and I think that the Sheriff was justified, looking to the decision I have referred to, in fixing the sum according to the alternative given in the Act.

LORD TRAYNER—The appellants' contention here is this—that compensation under the Act can only be claimed by an injured workman who has earned wages in the employer's service, or by the representative of a deceased workman who had earned wages; that in this case the deceased had not earned anything in the service of the appellants, and that therefore the respondent's claim was excluded by, or at all events not provided for in the Act. I think the construction put upon the Act in the case of *Lysons* excludes the appellants' contention. The respondent's husband met his death in a mine belonging to the appellants and in the course of his employment. His case therefore fell within the leading provision of the Act, and that leading provision is not derogated from (according to the construction approved by the House of Lords) by the fact that the precise terms of the schedule which prescribes the mode in which the award of compensation is to be determined cannot be exactly applied to the particular circumstances of this case. I think, on the authority of the case referred to, the appeal should be dismissed.

LORD MONCREIFF—It logically follows from the judgment of the House of Lords in the case of *Lysons*, and our own judgment to-day in the case of *Nelson* (*supra*, p. 645), that the respondent's husband having been killed while in the employment of the appellants, and in consequence of an accident arising out of his employment, the respondent as his widow is entitled to the alternative sum of £150, although he died before he had time to earn any wages. This is an extreme case, but the grounds of judgment on which the House of Lords proceeded, in my opinion, cover it. The right to compensation does not depend upon the length of service, but on the fact that the workman was injured while in the employment of the undertaker through an accident arising out of the employment.

LORD YOUNG was absent.

The Court pronounced this interlocutor:—

"Find in answer to the question of law therein stated that the respondent is entitled to compensation under the First Schedule, section 1, sub-section (*a*) (i) of the Workmen's Compensation Act 1897: Therefore dismiss the appeal and affirm the award of the arbitrator and decern."

Counsel for the Appellants—Campbell, K.C.—Hunter. Agents—W. & J. Burness, W.S.

Counsel for the Respondent—Salvesen, K.C. — Moncrieff. Agents — Simpson & Marwick, W.S.

Wednesday, June 5.

SECOND DIVISION.

POLICE COMMISSIONERS OF HAWICK *v.* WILLIAM WATSON & SONS.

Local Government — Burgh — Water Supply—Assessment—Manufactories—Assessment of Manufactories on One-Fourth of Annual Value—Burgh Police (Scotland) Act 1892 (55 *and* 56 *Vict. cap.* 55), *sec.* 347 *—Public Health (Scotland) Act* 1897 (60 *and* 61 *Vict. cap.* 38), *secs.* 134 *and* 136.

The police commissioners of a burgh as local authority under the Public Health (Scotland) Act 1867, introduced in 1882 an additional supply of water into the burgh, under the powers conferred by that Act.

By the Burgh Police (Scotland) Act 1892, sec. 21, the whole powers and duties of local authorities under the Public Health Acts in burghs, together with all existing waterworks, and relative debts and obligations, were transferred to the commissioners under the Burgh Police Act.

Section 347 of the Burgh Police Act 1892 provides, that "where the commissioners shall have supplied, or resolved to supply, the burgh with water in terms of this Act, the annual value of all . . . manufactories within the burgh shall, as regards the burgh general assessment, so far as is applicable to water, . . . be held to be one-fourth of the annual value thereof entered in the valuation roll."

Held that the owners and occupiers of manufactories within the burgh fell to be assessed for water rates only on one-fourth of the value of their premises, in respect that the water supply in question was being supplied by the commissioners "in terms of this Act"

within the meaning of section 347 of the Burgh Police Act 1892.

Opinion (*per* Lord Moncreiff) that the same result would have followed if the water supply had been introduced and the assessment levied under the Public Health Act 1897.

This was a special case presented for the opinion and judgment of the Court by (1) the Police Commissioners of the burgh of Hawick, parties of the first part, and (2) William Watson & Sons, owners and occupiers of a manufactory in Hawick, parties of the second part, for the determination of the question whether the assessments upon manufactories within the burgh in respect of water supply fell to be levied upon the whole value or only upon one-fourth thereof.

In 1882 the Police Commissioners, as local authority under the Public Health (Scotland) Act 1867, introduced an additional water supply into the burgh, under the powers conferred by that Act, at a cost of £24,000. This sum was borrowed in terms of their powers, and was being redeemed by annual instalments, the amount remaining due at Whitsunday 1900 being £14,950.

By the first section of the Public Health Amendment Act 1871 it was provided that the annual value of manufactories should, for the purposes of assessment, be ascertained in the same manner as the value of mines and minerals and quarries was directed to be ascertained in section 94 of the Public Health (Scotland) Act 1867. The said 94th section of said Act provided that mines, minerals and quarries should be assessed only on one-fourth of their annual value; and accordingly until the year 1898 the first parties levied assessments upon the second parties in respect of their said manufactory as occupiers only, and to the extent of one-fourth of the value thereof.

By the Public Health (Scotland) Act 1897 the whole of the Public Health Acts of 1867 and 1871 were repealed and, *inter alia*, the following provisions were made regarding water supply and the assessments therefor:—Sec. 134—"In any burgh . . . the expense incurred by the local authority for water supply within the same or for the purposes thereof, and the sums necessary for the payment of any money borrowed therefor, either before or after the passing of the Act, together with the interest thereof, shall be paid out of a special water assessment which the local authority shall raise and levy on and within such burgh . . . in the same manner and with the same remedies and modes of recovery as are hereinafter provided for the Public Health General Assessment." . . . Sec. 136—"With respect to burghs subject to the provisions of the Burgh Police (Scotland) Act 1892, or having a local Act for police purposes—all charges and expenses incurred by, or devolving on the local authority, in executing this Act or any of the Acts hereby repealed, and not recovered as hereinbefore provided, may be defrayed out of an assessment (in this Act referred to as the Public Health General Assessment), to be levied by the local authority along with but as a separate assessment from the assessment hereinafter mentioned; that is to say, the said assessment shall be assessed, levied, and recovered in like manner and under the like powers, but without any limit, except as in the immediately succeeding section provided, as the General Improvement Rate under the Burgh Police (Scotland) Act 1892, or, when there is no such rate, by a rate levied in like manner as the General Improvement Rate under the last-mentioned Act."

The Burgh Police (Scotland) Act 1892, sec. 21, provides—"Wherever the boundaries of any burgh have been determined in terms of this Act, the whole powers and duties (including the rights to levy assessments) exerciseable by any local authority acting under the Public Health (Scotland) Act 1867 and Acts amending the same within the district or districts comprehended within such burgh shall cease and determine, and the same shall be transferred to and vested in the commissioners under this Act, and all drainage, water, and other works executed in such district or districts by such local authority in the performance of its powers and duties under the said Acts shall be taken over by the commissioners under this Act, who shall be liable for the whole debts and obligations of such local authority applicable to such district or districts." The Act authorises (sec. 340) an assessment called "the Burgh General Assessment." It provides further (sec. 347)—"And where the commissioners shall have supplied, or resolved to supply, the burgh with water in terms of this Act, the annual value of all quarries and manufactories within the burgh shall, as regards the Burgh General Assessment, so far as is applicable to water, subject to the exception hereinafter provided, be held to be one-fourth of the annual value thereof entered in the valuation roll." . . . Sec. 359—"Whenever the commissioners in any burgh shall resolve, in manner hereinbefore provided for, to make provision for the general improvement of the burgh, it shall be lawful for them to charge, in equal proportions, all owners and occupiers of lands or premises within such burgh, with reference to the said valuation roll, and to all the provisions of this Act applicable to the Burgh General Assessment, which shall apply to the Improvement Assessment as if they were here repeated, with a special assessment not exceeding threepence in the pound of the gross rent or yearly value of such lands or premises, over and above any other assessment or rate to which such persons may be liable under this Act; and such special assessment shall, for the purposes of this Act, be called 'the General Improvement Rate,' and shall be leviable either from the owner or occupier of such lands or premises, in equal proportions, or in whole from the occupiers thereof, but in the latter case the occupier shall be entitled, on payment thereof, to deduct from his rent the proportion payable by the owner; and such assessment, so far as the occupier is concerned, shall be recoverable in the same manner as the Burgh General Assess-

ment is authorised to be recovered."

The first parties had assessed the second parties for water rates on the full annual value of their manufactory since the passing of the Public Health (Scotland) Act 1897, and claimed that they were entitled to continue to assess on that footing. In these circumstances questions arose between the parties as to the proper water assessment leviable by the first parties and payable by the second parties. The first parties maintained that the second parties were assessable on the full value of their premises as appearing in the valuation roll, in respect (1) that the restriction by the 1871 Act to one-fourth was repealed by the 1897 Act, (2) that the water provisions of the 1892 Act did not apply, and (3) that in any case the abatement to factories under section 347 of the 1892 Act was limited to water supplies brought in under that Act, or at all events was limited to the Burgh General Assessment, and did not extend to the general improvement rate, which was specially stated to be on the gross rental. On the other hand the second parties maintained that they were only assessable on one-fourth of said value in terms of the sections already set forth.

The questions of law were as follows—"(1) Ought the owners and occupiers of manufactories within the said burgh to be assesssed for water rates only on one-fourth of the value of such manufactories as the same appears in the valuation roll? or (2) On the full value?"

Argued for the second parties—All the powers of the local authority were now vested in the Commissioners of the burgh, in virtue of the Burgh Police Act, and they were therefore supplying the burgh with water within the meaning of section 347. The assessment on manufactories fell accordingly to be made on one-fourth of the annual value, in terms of that section. Even if the assessment were to be levied under the Public Health Act, the special water assessment thereunder was to be levied in the same way and under the same conditions as the Burgh General Assessment, so that the same result was reached.

Argued for the first parties—Section 347 of the Burgh Police Act applied only to the case of the commissioners supplying the burgh with water "in terms of this Act," and did not apply to the case of a water supply introduced under any other Act, as was done here. The first parties were therefore entitled to assess upon the full value of the subjects.

LORD TRAYNER—I think the question before us can be decided on a consideration of the terms of the 347th section of the Act of 1892, and without reference to the other Acts of Parliament to which attention was called in the course of the debate.

The water supply in question was introduced into the burgh of Hawick by the local authority under the Public Health Act, but the whole powers and obligations vested in and incumbent upon that local authority are now, as we are informed, transferred to the Police Commissioners of the burgh under and by virtue of the 21st section of the Act of 1892. That being so, the water supply in question is now being (and since 1892 has been) supplied by the Commissioners. Now, the section I first referred to (section 347) provides that manufactories, such as the second parties have, when assessed in respect of such water supply, shall be assessed therefor on "one-fourth of the annual value" of their subjects appearing in the valuation roll. It appears therefore to me that this section affords the answer to the question put to us. The same result may probably be reached on the other statutory provisions referred to in the discussion, but in my view it is not necessary to inquire into or decide that. I am therefore for answering the first question in the affirmative and the second in the negative.

LORD MONCREIFF — I am of the same opinion. I would add that even if this could be regarded as a water supply established under the Public Health Act 1897, I should also be of opinion that the assessment fell to be made upon one-fourth, and not upon the whole annual value of the subjects. It is plain, on reading clauses 134 and 136 of the Public Health Act 1897, that they are to be taken in connection with clauses 347 and 359 of the Burgh Police Act 1892. The special water assessment authorised by the Public Health Act 1897 is to be raised and levied in the same manner as the Public Health General Assessment; and the Public Health General Assessment is to be levied as a separate assessment, and to be assessed, levied, and recovered in like manner with the General Improvement Rate under the Burgh Police Act 1892, and under like powers. On going back to that Act we find that the General Improvement Rate is to be levied as a separate assessment upon owners and occupiers, but with reference to all the provisions of the Act applicable to the Burgh General Assessment. Turning, therefore, to section 347 of the Act, we find that one of the conditions applicable to the Burgh General Assessment is, that for that assessment the annual value of manufactories, &c. shall be held to be one-fourth of the annual value appearing in the valuation roll. It is plain, therefore, that if the assessment were to be regarded as laid under the Public Health Act 1897, it should be only upon one-fourth of the annual value.

I am of opinion that the first question should be answered in the affirmative.

The LORD JUSTICE-CLERK concurred.

LORD YOUNG was absent.

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

Counsel for the First Parties—Guthrie, K.C.—Dewar. Agents—W. & J. L. Officer, W.S.

Counsel for the Second Parties—Wilson, K.C.—W. Thomson. Agents—Steedman & Ramage, W.S.