was "premises" and therefore a factory. It seems to me that a mill and locomotive pursuing a journey, not fitted or intended to do any work except haulage, cannot be a factory, and I am therefore of opinion that the question must be answered in the negative.

LORD ADAM—I agree with your Lordship. It appears to me that the Factory Act postulates that the work carried on shall be carried on in some particular premises or place.

In this case the factory does not come into existence until the mill and the engine are united. They may be united in more than one way, and they may be capable of becoming a factory when united; but when they are merely connected by ropes for haulage, I should never suppose that they would be capable of becoming a factory. I agree that in order to be a factory the combination must be capable of being worked as a mill, and not merely for transit, the haulage being by a traction engine, as it might be by horses.

I also agree that when the engine and mill are properly connected, if they are permanently in a particular place for their work, it may be a question whether that would not be "premises," or a place, within the meaning of the Act. But that is not what we have here. This mill was being hauled along a road, some miles, in order to do its work. It seems to me a startling proposition that as this machine was being hauled along every inch of the road became a factory for the time, and "premises" in the sense of the Factory Act. I think when the combination is connected in a particular place for the purpose of doing its work that may be within the Act; but "premises" in the Act does not mean any place which may be momentarily covered in the course of its journey by a traction engine hauling a mill. I agree therefore that here there were no "premises" in the sense of the Factory Act.

But then we have this circumstance, that in this particular case, when the accident happened the mill and engine were separate. If that was so it seems to me to follow that neither the one nor the other was a factory, and I think that sufficient for the decision of the case.

LORD M'LAREN—On the argument that was put in condensed form by counsel for the workman when he said that what he contended for was a peripatetic factory, I agree with your Lordship and Lord Adam. I think that the definition of factory in the Factory Act of 1878, which is incorporated by reference into the Workmen's Compensation Act, cannot be so extended as to include the case of a travelling apparatus which performs functions similar to those of a factory. I think in order to the conception of a factory under the statute it must be for the purpose of work carried on in some premises, place, or the curtilage or precincts thereof; and that phraseology is to my mind wholly inapplicable to the case of travelling mechanism. I understand the *locus* of a moving point or object when the *locus* is a line or orbit in which it moves, but I cannot understand the *locus* of a thing to mean wherever the owner chooses to take it.

I agree with what has been said by your Lordships about the difficulties that arise from the circumstances of the actual case. We do not have an engine and threshing-mill coupled together and at work, but only in transit from one place to another. These difficulties are rather consequential on the initial difficulty, showing the difficulty of working out the statute according to the extended meaning which is claimed for it, because if you suppose a proper factory, it would not appear to me to be an objection to the application of the Act that the working machinery was disconnected.

There is another difficulty (I do not think that it arises in this case) that if I could hold that a threshing-machine was a factory, then the person liable under the statute of 1897 would be the farmer, who would certainly be an undertaker under the statute. But that question is not raised, and probably never will be raised, because under the statute of 1900, which came into operation on 1st July in the present year, the question of travelling machines is specially dealt with, and is made an exception to the general rule as to the liability of "undertakers."

LORD KINNEAR concurred.

The Court answered the question in the negative.

Counsel for the Appellant—J. C. Watt—D. Anderson. Agent—William Considine, S.S.C.

Counsel for the Respondent—C. D. Murray—C. A. Macpherson. Agents—Macpherson & Mackay, S.S.C.

Tuesday, November 26.

SECOND DIVISION.

[Sheriff of Lanarkshire.

CAMMICK *v.* THE GLASGOW IRON AND STEEL COMPANY, LIMITED.

Reparation—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *Sched. II., sec.* 8—*A.S. 3rd June* 1898, *sec.* 7 (*a*), (*b*)—*Registration of Memorandum of Agreement—Application to Sheriff for Warrant—Appeal—Competency.*

In an application to a Sheriff for a special warrant to register a memorandum of agreement for periodical payments in respect of injuries, made in terms of Schedule II., section 8, of the Workmen's Compensation Act 1897, and section 7 (*a*) of the Act of Sederunt 3rd June 1898, the Sheriff is bound, if satisfied of the genuineness of the memorandum of agreement, to grant warrant for its registration without inquiry whether the employers are or

are not still liable to pay compensation under the agreement, the employers' remedy, if they are not so liable, being by way of application under Schedule I. (section 12) for review of the weekly payment.

Process—Appeal from Sheriff—Competency—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *Sched. II.* (8)—*A.S. 3rd June* 1898, *sec.* 7 (*a*), (*b*)—*Application for Warrant to Register Memorandum.*

Question — Whether appeal to the Court of Session from the Sheriff is competent in an application to register a memorandum of agreement under the Workmen's Compensation Act 1897.

Cochrane v. *Traill & Sons*, November 1, 1900, 3 F. 27, and 38 S.L.R. 18, *commented on* and *doubted.*

Schedule II. of the Workmen's Compensation Act 1897 (section 8), provides — "Where the amount of compensation under this Act shall have been ascertained or any weekly payment varied, or any other matter decided under this Act either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent in manner prescribed by rules of Court [Act of Sederunt] by the said committee or arbitrator, or by any party interested, to the Registrar of the County Court [sheriff-clerk] for the district in which any person entitled to such compensation resides, who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the said memorandum shall for all purposes be enforceable as a county court [sheriff court] judgment: Provided that the county court judge [sheriff] may at any time rectify such register." By section 14 it is provided that in the application of this Schedule to Scotland the words indicated in brackets shall be substituted for those in the text.

The First Schedule—(section 12)—provides —"Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall in default of agreement be settled by arbitration under this Act."

The Act of Sederunt of June 3rd 1898, sec. 7 (*a*), provides—"The memorandum as to any matter decided by . . . agreement . . . shall be as nearly as may be in the form set forth in Schedule (A) appended hereto. Where such memorandum purports to be signed by or on behalf of all the parties interested, . . . the sheriff-clerk shall proceed to record it in the special register to be kept by him for the purpose without further proof of its genuineness. In all other cases he shall before he records it send a copy . . . to the party or parties interested (other than the party from whom he received it) in a registered letter containing a request that he may be informed within a reasonable specified time whether the memorandum . . . is genuine, and if within the specified time he receives no information that the genuineness is disputed, then he shall record the memorandum without further proof, but if the genuineness is disputed he shall send a notification of the fact to the party from whom he received the memorandum, along with an intimation that the memorandum will not be recorded without a special warrant from the sheriff." Section 7 (*b*) provides—"A judgment of a sheriff disposing of an application made to him under the Act or a certified copy thereof shall be dealt with by the sheriff-clerk as if it were a memorandum as to a matter decided by an arbitrator agreed on by the parties duly signed by the arbitrator." . . .

On 10th December 1900 William Cammick, apprentice engineer, Motherwell, sent for registration to the Sheriff-Clerk at Hamilton a memorandum of agreement under Schedule II., section 8, of the Workmen's Compensation Act 1897, and section 7 (*a*) of the Act of Sederunt 3rd June 1898. The memorandum set forth that the applicant had been injured on 21st August 1899 while in the employment of the Glasgow Iron and Steel Company, Limited, Motherwell, that they had admitted liability, and had "agreed to pay to the applicant a sum of four shillings sterling per week, being the one-half or thereby of his weekly wages, during the periods of his incapacity to work at his ordinary employment as an engineer or boilermaker." After communicating with the company the Sheriff-Clerk refused to register the memorandum, in respect that the company objected, on the ground (1) that there was no existing agreement under which the company were bound to pay compensation to the applicant; and (2) that the applicant had resumed work and was earning more than his average wages before the accident. Thereupon Cammick presented this petition to the Sheriff-Substitute for a special warrant for registration.

The pursuer admitted that he had resumed work, and was earning more than his average wages before the accident, but averred that in consequence of his injuries he was liable from time to time to be wholly or partially incapacitated from work, and that his earning capacity was permanently affected.

The defenders on record denied the existence of the agreement alleged by the pursuer, but ultimately it was not disputed that such an agreement had at one time been in existence, although they maintained that it was now at an end owing to the recovery of the pursuer.

The defenders pleaded—"(5) If the claim made by the pursuer and the payments following thereon constituted an agreement in terms of the Workmen's Compensation Act, the same was entered into to continue only during the pursuer's incapacity, and as the incapacity is at an end the agreement is no longer existing. (6) There being no claim to enforce under the alleged agreement, the pursuer is not entitled to found on it."

On 18th March 1901 the Sheriff-Substitute (DAVIDSON) pronounced an interlocu-

tor directing the Clerk of Court to register the memorandum of agreement.

The defenders appealed to the Sheriff (BERRY) who, by interlocutor dated 24th June 1901, adhered to the interlocutor of the Sheriff-Substitute.

Note.—"I take it not to be seriously disputed that there was at one time—that is, prior to 1900—an agreement whereof a memorandum was registrable under section 8 of the Second Schedule of the Workmen's Compensation Act. But it is contended for the defenders that since that date things have in certain respects so altered as to make it inequitable and unjust that the memorandum should be recorded now. I think, however, that there is nothing in the statute to justify a refusal to record the memorandum on the ground of supervening events, and certainly no time is limited within which registration is competent. My conclusion is that the Sheriff-Substitute is right in directing the Clerk of Court to record the memorandum as he has done."

The defenders appealed to the Court of Session, and argued—The Sheriff ought not to have granted warrant to register the memorandum without inquiring whether the agreement still subsisted. It was clear that it did not, since the pursuer was admittedly able for his work and was earning higher wages than before the accident. By section 8 of the second schedule to the Act a recorded memorandum was equivalent to an operative decree, upon which the defenders might be charged—*Cochrane* v. *Traill & Sons*, March 16, 1900, 2 F. 794, 37 S.L.R. 662. But as the pursuer was now earning higher wages the defenders' liability was at an end, and therefore warrant should be refused—*Pomphrey* v. *Southwark Press* (1901), 1 K.B. 86, *per* A. L. Smith, M.R. The pursuer's objection to the competency of the appeal was ill-founded—*Cochrane* v. *Traill & Sons*, November 1, 1900, 3 F. 27, 38 S.L.R. 18; July 19, 1901, 38 S.L.R. 848.

Argued for the pursuer and respondent—The appeal was incompetent, in respect that the jurisdiction of the Sheriff in directing registration was that of an arbitrator under the Act. The opinion expressed in *Cochrane* v. *Traill & Sons*, Nov. 1, 1900, 3 F. 27, 38 S.L.R. 18, that in such a matter the Sheriff was exercising his ordinary jurisdiction, was inconsistent with the provisions of sec. 7 (*b*) of the Act of Sederunt of 3rd June 1898. On the merits, the Sheriffs were right. The pursuer's injuries might incapacitate him at some future time, and he was entitled to have the defenders' liability recorded—*Chandler* v. *Smith* (1899), 2 Q.B. 506; *Freeland* v. *Macfarlane, Lang, & Company*, March 20, 1900, 2 F. 832, 37 S.L.R. 599. The defenders' apprehension that they might be charged upon the registered memorandum was baseless. The agreement was for payment only during the pursuer's incapacity, and the pursuer would have to prove that fact, and also what was due in respect of his reduced wage-earning capacity. Moreover, the defenders could immediately move the Sheriff to rectify the register by ending or diminishing the weekly payments—Sched. I., sec. 12.

At advising—

LORD JUSTICE-CLERK—In this case the respondent applied under the Workmen's Compensation Act to have an alleged agreement registered under the Act so as to make it enforcible. The Sheriff-Substitute before whom the case came ordered the memorandum of agreement to be registered, and that decision was taken by appeal to the Sheriff, and on his affirming the judgment an appeal was taken to this Court. I have the strongest doubt whether it was a competent proceeding to appeal such a decision. The Act does not seem to give any countenance to such a proceeding. The placing of a memorandum of agreement on the register is of the nature of a ministerial and administrative act by which while it subsists it can be made legally operative. It in no way prejudices the rights of parties, for a party can at once apply to have the arrangement made by it modified or put an end to if grounds can be stated for doing so. And it would tend very much to make the summary proceeding of registering an agreement nugatory if it could be converted into a litigation in ordinary form, with an appeal to the Sheriff and to this Court.

But in this case, assuming that an appeal was competent, I should have no difficulty in holding that the Sheriff-Substitute was right in directing the registration, it being of course competent at once to the defenders to take steps to have the arrangement under it brought to an end for any competent reason that they might state. For the registration can fix nothing for the future, but can only fix what was the agreement made in the previously existing circumstances.

LORD TRAYNER—I entertain very serious doubts of the competency of this appeal, and am not prepared as at present advised to concur in the view expressed in the case of *Cochrane* (3 F. 31) that an application to the Sheriff to register an agreement under the provisions of the Workmen's Compensation Act is "an application to the Sheriff in the exercise of his ordinary common law jurisdiction." That view does not appear to me to be consistent with the terms of section 7 (*b*) of the Act of Sederunt of 3rd June 1898. It is not, however, necessary to decide that question at present, for assuming the competency of the appeal I think it should be dismissed.

The Sheriff has held that there was an agreement between the parties, the terms of which are correctly set forth in the memorandum, for the registration of which he has been asked to grant a warrant. These are findings of fact with which we have no power to deal, although if we had I should have no hesitation in concurring with the Sheriff. But granting these findings, I think the Sheriff was bound to grant the warrant asked. The appellant is not thereby prejudiced. If he can show any good ground why he

should no longer be held bound by the agreement, he has his remedy under the Act by applying to the Sheriff to rectify the register, and to deal with the agreed-on payment by having it "ended or diminished."

LORD MONCREIFF—In the course of the discussion it became apparent that the appellants' real objection to the Sheriff's order is not that there was not originally an agreement between them and the respondent as to the amount of compensation, but that the Sheriff was not entitled to grant warrant for recording the memorandum in respect that at the date of the application the respondent had recovered from his injuries and returned to work.

It may seriously be questioned whether any proceedings under section 7(*a*) of the Act of Sederunt of 3rd June 1898 are open to review by this Court in any way, and in particular by way of appeal. But assuming the competency of this appeal I am of opinion that the Sheriff had no alternative but to direct the memorandum to be recorded. This becomes apparent when it is considered that the Sheriff's intervention is only invoked when the genuineness of the memorandum is impugned. If the genuineness of the memorandum is not disputed the Sheriff-Clerk is bound to record it, and I apprehend that he would not be entitled to refuse to record the memorandum on any other ground.

Therefore as the genuineness of the memorandum is not now disputed there was really no necessity for the Sheriff's intervention, and I think the case must be dealt with just as if the genuineness had been originally admitted and the Clerk had at his own hand recorded the memorandum in terms of the Act of Sederunt.

The appellants have really no interest to object to this being done, because there is nothing to prevent them applying at once to the Sheriff to review the weekly payment agreed on, and to end or diminish it in the event of the respondent endeavouring to enforce it. (Schedule i. sec. 12).

The appellants are all the more secure looking to the terms of the memorandum, which merely records that the appellants on 21st August 1899 agreed to pay a certain weekly sum during the respondent's incapacity. This memorandum could scarcely without further procedure be extracted and enforced as a decree.

On the whole matter I am for refusing the appeal.

LORD YOUNG was absent.

The Court dismissed the appeal, and affirmed the interlocutors appealed against: of new repelled the defences, and directed the Clerk of the Sheriff Court to record the memorandum of agreement.

Counsel for the Pursuer and Respondent —Ure, K.C.—Hamilton. Agents—Adamson, Gulland, & Stuart, S.S.C.

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

Thursday, November 28.

FIRST DIVISION.

[Dean of Guild Court, Partick.

BRYCE *v.* LINDSAY & MILLER.

Burgh—Dean of Guild—Building Regulations—Open Space Attached to Dwelling-Houses—Burgh Police (Scotland) Act 1892 (55 *and* 56 *Vict. cap.* 55), *sec.* 170.

The Burgh Police (Scotland) Act 1892, section 170, enacts, *inter alia*—"Every building erected for the purpose of being used as a dwelling-house . . . shall have all the rooms sufficiently lighted from an adjoining street or other open space directly attached thereto equal to at least three-fourths of the area to be occupied by the intended building."

Held that this provision was complied with in the case of two parallel rows of houses, both facing public streets, and on ground belonging to the same person, if the open space left between the backs of the houses was equal to three-fourths of the area to be occupied by the wider house.

Hoy v. *Magistrates of Portobello*, July 15, 1896, 23 R. 1039, 33 S.L.R. 763, *approved* and *followed*.

John Lindsay and William Miller, builders, Partick, applied to the Dean of Guild Court of that burgh for a lining for four houses which they proposed to build on ground belonging to them there. In pursuance of the application they produced a plan of the proposed buildings.

John Bryce, Burgh Surveyor of Partick, lodged answers, in which he objected to the proposed lining on the ground that the plan showed that the proposed buildings did not satisfy the provisions of section 170 of the Burgh Police (Scotland) Act 1892 (quoted in rubric).

The nature of the proposed buildings as shown by the plan is stated in the following extract from the opinion of the Lord President—"The ground upon which the respondents ask authority to erect the buildings forms part of a block of 7210 square yards to which the respondent Mr Lindsay has right under a minute of agreement between the Dowanhill Estate Company Limited and him, although he has not completed a feudal title to it. That block of ground is bounded by Albion Street on the north, Dowanhill Street on the west, Highbury Road on the south, and Albert Street on the east. It has already been built upon by the respondents along its frontage to Albion Street, where five self-contained lodgings, each two storeys high, and a tenement three storeys high have been erected. A three storey tenement has also been erected on the west side of the block fronting Dowanhill Street, and the authority now craved is to erect three three-storey tenements and one four-storey tenement so as to complete the building of the frontage to Dowanhill Street. The four-storey tenement will also front Highbury