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

Road. The block plan shows the back-greens proposed to be provided for the four tenements for which a lining is now sought, and it also appears that it is intended to make a lane somewhat to the west of the middle of the block from Highbury Street northwards towards the back ground of the two-storey self-contained lodgings and the three-storey tenement already erected along the north side of the block fronting Albion Street. Apparently the lane is not and will not be open to the public, as it has no public terminus at the north end—in other words it seems to be merely a service-lane for the back premises of the buildings which have already been and will hereafter be built upon the block of ground. The part of the block to the east of the lane has not as yet been built upon or lined, but the block plan shows that it is intended to erect upon it tenements fronting Albert Street and Highbury Road, with back greens extending westward to the lane."

It was admitted that if only the back-green behind the tenements and the lane above-mentioned were included the amount of free space would not satisfy the requirements of section 170, and on the other hand, that if the ground beyond the lane and extending to the opposite row of houses were included, these requirements would be fully satisfied.

On 11th October 1901 the Magistrates pronounced an interlocutor by which they repelled the objections stated for the Burgh Surveyor, and granted the lining as craved.

Note.—[*After stating the facts*]—"The real question in this case is whether the back space required by section 170 of the Burgh Police (Scotland) Act 1892 has been provided by the petitioners. The terms of that section are—'Every building erected for the purpose of being used as a dwelling-house, or any building not previously used as a dwelling-house when the same is altered for the purpose of being so used, shall have all the rooms sufficiently lighted and ventilated 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, and such space shall be free from any erections thereon other than w.cs., ash-pits, coal-houses, or other conveniences, all which conveniences shall, as to height, position, and dimensions, be erected subject to the consent and approval of the Commissioners: Provided also, that in cases of conversion of a house into a building for business premises the Commissioners may sanction the erection of saloons upon such open space of such height and construction as to them shall seem proper, such saloons to continue so long only as such building is so used for business purposes only.'

"The construction of the section has given rise in the Court of Session, as well as in local Dean of Guild Courts in Burghs, and particularly in this Court, to questions of considerable difficulty, such as whether the words 'every building' in the section mean each separate tenement or building, or each block of buildings embraced in any one lining, in what sense such space may be said to be directly attached to a building, and in what shape it could be regarded as effectually providing the free space and ventilation required, and also whether one space which might be sufficient for a building (whether in the sense of one tenement or building or of a block embraced in one lining) can be made available for another tenement or building or another block of buildings, whether belonging to the same owner or to a different owner or owners.

"But for the decisions in the Court of Session, to which reference will be made, the Magistrates, in view of the object of the statute being to secure a certain minimum back space for light and ventilation—a matter which is of the greatest importance in dealing with tenements of considerable height, and often with a large number of separate occupancies in each flat—would have been inclined to take the view that the section of the Act required that each tenement or building, or at least each block, required its own statutory extent of free space, and that such space was not available for or could be reckoned in the space required for another building. Further, they would not have adopted the view that an extent of free space insufficient for two blocks of buildings being erected at one time by one petitioner fronting different streets and having the same open space between the buildings, could be made sufficient by taking each block of building separately, and treating the whole back ground as available for each block. It appears, however, from the case of *Hoy* v. *Magistrates of Portobello*, July 15, 1896, 23 R. 1039, that a different construction of the section has been adopted by the Court of Session. In that case a proprietor proposed to erect two rows of dwelling-houses parallel to each other, both facing public streets, and with unbuilt-on ground separating them behind. This back ground was less than one and a-half times the extent of the combined areas to be occupied by the two rows of houses, but it was greater than three-fourths of the area to be occupied by each row of buildings taken separately.

"The Court of Session held, reversing the judgment of the local Dean of Guild Court, that the whole of the back ground was open space directly attached to each of the rows of houses in the sense of section 170, and consequently that the statutory requirement of that section was satisfied.

"It does not appear from the report of this case whether the buildings formed (as will be the case here, when the other buildings are erected) a complete square, but it would rather appear that this was not so, and that there were no buildings at the ends of the parallel streets.

"Neither is it stated that the back space in *Hoy's* case formed one undivided whole, or was (as will be the case here) split up into small plots for the use of each of the tenements separately, while the lane will have a wall on each side of it.

"In the case of *Brown* v. *Knox*, December 7, 1894, 2 S.L.T. 353, a decree of lining

had been granted by the Dean of Guild Court in Paisley for the erection by the defenders of a tenement of dwelling-houses at the corner of Niddrie Street and Abercorn Street there. The pursuer, a coterminous proprietor, had been called to the lining, and had opposed it on the ground that the building would injure the light and ventilation of his property, but his objections had been repelled and he had not appealed against the decree of lining. An action was raised to have the decree reduced on the ground that it was *ultra vires* and illegal, because it contravened section 170 of the Burgh Police Act 1892. The case is reported very shortly, but from a perusal of the copy record and the interlocutor of Lord Stormonth Darling it appears that the area to be built on was 1772¼ square feet; that behind this and extending beyond it in the shape of the letter L was an open space belonging to the defender measuring 2456 square feet, but the part of this space directly opposite the area to be built on was only 554 square feet. The pursuer contended that this latter part was the only part which could be reckoned in the sense of the Act as open space directly attached to the area of the intended buildings. The Lord Ordinary, rejecting the pursuer's view, held that the open space did not require to be precisely *ex adverso* of the intended building, but might run continuously and in any configuration from one or more of its sides so as to afford light and ventilation to the building itself, the Dean of Guild Court being the judge of the sufficiency of such light and ventilation, and he expressed the opinion that it was nothing to the purpose to say that a portion of the open space lay opposite to another building belonging to the defender, because the same space might quite well afford light and air to a number of tenements, and the Act could never mean that each individual tenement in a burgh was to have an open space of the prescribed dimensions all to itself. It does not appear to be clear what the Lord Ordinary meant by this latter expression of opinion—whether it was enough if the free space for a number of tenements extended to three-fourths of the total area of building and did not require to be divided off and specially allocated to each tenement, or whether the same open space might be made available and be reckoned for a number of tenements though the area of it was equal only to three-fourths of the area of building of any one of such tenements. This question did not arise for determination in this case. because the lining was only for one tenement, and the open space was undoubtedly in excess of the statutory requirement if it complied with the Act in the sense of being directly attached to the building.

"In the case of *M'Lelland* v. *Moncur*, December 2, 1897, 25 Rettie 238, an application was made to the Dean of Guild Court of Paisley for warrant to erect tenements of dwelling-houses and shops belonging to the petitioner. The lining was opposed on the ground, amongst others, that the open space required by section 170 of the Act was not provided. The petitioner pled that a bowling-green immediately contiguous to the open space belonging to the petitioner must be taken into account in calculating the space, and that together the two were more than sufficient in extent to comply with the section. The bowling-green did not belong to the petitioner. The Court, affirming the decision of the local Dean of Guild Court, held that the space allocated to the buildings in terms of section 170 must either belong wholly to the petitioner or consist in whole or in part of a public street or other ground, such as a links or a common, which no one could afterwards build upon, and they refused the lining.

"In the case of *Brown* v. *Young*, February 21, 1900, 2 Fraser 647, an application was made to the Dean of Guild Court, Coatbridge, for warrant to add a storey to an existing back building, and erect a block and a-half of dwelling-houses two storeys in height adjoining same. The lining was objected to by the Master of Works of the burgh, on the ground that the proposed alterations and erections would not comply with section 170 of the Act of 1892. The lining was refused by the local Court, in respect that from the character of the proposed buildings it was impossible that the provisions of the section could be complied with, as the ground to the east and south of the petitioner's property did not belong to him, nor was it a common which no one thereafter could build upon, but belonged to other parties, who might afterwards build upon it at any time. An appeal was taken to the Court of Session, and at the hearing the petitioner admitted that he could not light all the rooms of a proposed corner tenement by means of windows looking into the interior court, and he abandoned his petition so far as that tenement was concerned. On the other hand, the Master of Works did not dispute that each of the rooms of the remaining proposed buildings would have a window looking into the court. It was argued for the appellant that the Dean of Guild had proceeded on the view that there should be an open space of the specified area not only in front of the proposed buildings but also behind, and that the section of the Act only required that there should be an open space directly attached to the buildings belonging to the petitioner, and there was such a space provided. The Master of Works contended that the purpose of section 170 was to secure that houses should have all their rooms sufficiently lighted and ventilated, and the area of free space specified in the section was *prima facie* enough, but was not conclusively so, and the Dean of Guild Court had power to say whether or not the ventilation and lighting, or the free space, although of the statutory extent, was sufficient. The Court held that if the statutory extent of space was provided the Dean of Guild Court had no discretion, and that the objection was not well founded, and sustained the appeal. Lord Adam, who sat in the Second Division in that case, stated that he thought the provision in section 170 specified a minimum, and that

no building could be erected unless it had at least a certain amount of space around it, but he could quite understand the Dean of Guild Court saying that, looking to the situation of these buildings; looking, it might be, to the height of the buildings around them; looking to the character of the tenements, viz.—single-room tenements—the minimum area specified by the Act was not sufficient, and there should be a larger area around the building to afford proper means of ventilating and lighting, but the Dean of Guild had not said so, and had put his judgment so as to raise the question of law whether, even supposing the adjoining ground to be built on close up to the margin of the petitioner's property, there would still be the statutory area, and it was not disputed that there would be that area. Lord Trayner expressed the opinion that if there was the prescribed open space adjoining the proposed tenements the statutory requirement was satisfied and the Dean of Guild Court had no right to require more; and the Lord Justice-Clerk appeared to be of the same opinion.

"The petitioners in the present case found upon the decision in the case of *Hoy* v. *Magistrates of Portobello*. The Magistrates feel bound by the judgment of the superior Court in that case, and are therefore reluctantly compelled to grant the present lining. In view, however, of the importance of the question, and the far-reaching results, they would respectfully point out that, if the principle laid down in *Hoy's* case is to be followed, an open space which is only sufficient for one tenement in a square block to be erected by one builder may, if only a lining for one tenement is applied for at a time, be made available and reckoned for each of the other tenements erected by the same owner, with the result that when the whole square has been built the only back space is the small part in the centre, and of an extent sufficient for one separate tenement. On the other hand, if any part of the square belongs to a different owner, the Court would be bound by the judgment in *M'Lelland* v. *Moncur* to hold that the space was not available as the ground did not belong to him. Again, if only one lining were presented for the whole of such a square, the Magistrates assume (though *Hoy's* case may be regarded as an authority to the contrary) that they would be entitled to refuse the application if the total free space did not extend to three-fourths of the full building area. The curious result, therefore, would appear to follow, that, while in the one case the space would be sufficient, in the other the same space would be insufficient. In effect, the sufficiency or insufficiency of the space would depend, not on its extent in relation to the area of building and the necessity for light and ventilation, but on the mere accident of the ownership of the open space, or on the question whether the lining embraced the whole buildings in a square in one petition, or was dealt with under separate petitions. It respectfully appears to the Magistrates that such a view of the Act will lead to most unsatisfactory results from a public health point of view, but, as the judgments stand the Magistrates do not see how these results can be avoided.

"If an application for lining for the tenements to front Albert Street is presented by a different owner, or if the present buildings, or any of them, are sold before the petitioners ask a lining, a difficulty will arise that the whole back ground does not belong to the same owners, and the petitioners cannot therefore provide the necessary back space,

"It has been urged on the Magistrates that if this question had arisen in Glasgow, the back space would be regarded as sufficient, and the case of *Allan* v. *White*, 20th December 1890, 18 R. 332, is relied on in support of that view. It may be pointed out that the terms of the Glasgow Police Act of 1866 are different from the provisions of the Act of 1892. Under the Glasgow Act it is provided, section 370, that 'except as aftermentioned, it shall not be lawful for any proprietor to let, or for any person to take in lease, or to use, or suffer to be used, for the purpose of sleeping in, any apartment, unless one-third at least of its height is above the level of the turnpike road or public or private street or court adjoining, or near to it, and unless there be in front of at least one-third of every window in such apartment, including any turnpike road or public or private street or court, a free space equal to at least three-fourths of the height of the wall in which it is placed, measuring such space in a straight line from and at right angles to the plane of the window, and measuring such wall from the floor of the apartment to where the roof of the building rests upon such wall.'

"A comparison of this clause with section 170 of the Police Act will at once show the great difference between the provisions of the two sections.

"In *Allan's* case the Dean of Guild Court refused the lining in respect the petitioners had not the free space behind their proposed building required by the Act to entitle them to occupy a room or kitchen marked on the plans as a sleeping apartment. The petitioner appealed to the Court of Session. It was admitted that the petitioners had not upon their own ground the free space required by the Act to entitle them to occupy the room as a sleeping apartment, but there was free space over ground belonging to a different proprietor *ex adverso* of their tenement which added to the amount of free space upon their ground gave more than the Act required, and they maintained that they were entitled to reckon this free space. The Court gave effect to this view, but the Lord President made it plain that the Glasgow Act only required that at the time when the room was being used as a sleeping apartment it should have a certain free space behind or adjoining it, and that the moment that free ground came to be built upon, if it was ever built upon, there would arise the question whether there was sufficient free space, and it would

be the duty of the Dean of Guild Court, on the application of the Procurator-Fiscal, to prohibit its use as a sleeping apartment, but, until that occurred, he did not see how the statute could be enforced. Lord M'Laren also gave expression to a similar view, and further indicated that, if there were depending at the same time an application from the proprietor of the unoccupied ground for authority to build on this ground, or if it was brought to the knowledge of the Dean of Guild Court that it was in immediate contemplation to build on such ground, these were circumstances which would be taken into account in disposing of the application, and it would certainly not be proper to grant a warrant for the use of the apartment as a sleeping place in the knowledge that the ground shown on the plan as air space was about to be built upon.

"Under the Act of 1892 there appears to be no power on the part of the Court or Local Authority to prohibit the use of any sleeping apartment which has been deprived subsequent to the lining being granted of the required free space, and no penalty is attached to the use of such apartments."

The Burgh Surveyor appealed to the Court of Session.

The arguments sufficiently appear from the opinion of the Lord President, *infra.*

At advising—

Lord President—The question in this case is whether certain buildings which the respondents propose to erect upon ground in Glasgow to which the respondent Mr Lindsay has right, would, if erected in accordance with the plans submitted by them, satisfy the requirements of section 170 of the Burgh Police (Scotland) Act 1892, with respect to the lighting and ventilation of the rooms.

[*His Lordship then stated the nature of the plans, ut supra*].

Section 170 of the Burgh Police (Scotland) Act 1892 provides, *inter alia*, that every building erected for the purpose of being used as a dwelling-house "shall have all the rooms sufficiently lighted and ventilated 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, and such space shall be free from any erections thereon other than water-closets, ashpits, coal-houses, or other conveniences, all which conveniences shall, as to height, position, and dimensions, be erected subject to the consent and approval of the commissioners." The antecedent to which the word "thereto" relates appears to be "building." The words of the section last quoted show that a space is not rendered unfit or unsuitable for the purpose of providing light and ventilation by having water-closets, ashpits, coal-houses, or other conveniences upon it.

The four tenements for which a lining is sought will occupy an area of 1497 square yards, three-fourths of which is 1122¾ square yards, and the area of the back ground appropriated to them, including the whole width of the lane above mentioned, would be only 919 square yards, leaving a deficiency of 203 square yards or thereby. The back-ground and the lane are thus insufficient to provide the open space required by section 170 of the Act of 1892, though an addition of about 203 square yards would make them sufficient. The petitioners maintain that they are entitled to satisfy the requirements of that section by including in the area to be taken into account the ground which will be left unbuilt on to the east of the lane and to the west of the building still to be erected fronting Albert Street and Highbury Road, or 203 yards of that ground. If the parts of that area which will be required to provide back ground for the buildings intended to front Albert Street cannot also be taken into account—at all events to the extent already mentioned—in providing light and ventilation for the buildings now in question there would not be enough open space for these buildings, but if the area proposed to be left unbuilt upon behind Albert Street and Highbury Road can, even to the small extent just mentioned, be taken into account in the present question as well as in a question relating to the Albert Street and Highbury Road buildings, the provisions of section 170 will be satisfied.

The question depends upon whether any part of the area east of the lane is open space "directly attached" to the buildings for which a lining is now sought in the sense of section 170. The word "attached" as used in that section is not very precise, but I think its primary and most obvious meaning is that the space shall be in contact with the buildings, and thus with the rooms for which it is to provide light and ventilation, and it appears to me that it may be reasonably held to be so where it (the space) belongs to the owner of the ground on which the buildings are to be erected, and extends from the backs of the proposed buildings for the requisite distance eastward. In the present case the ground constituting the back-greens of the houses in question, the lane and the ground to the east of it, all belong to Mr Lindsay, and I therefore think that they may all be counted towards providing an open space three-fourths of the area on which the buildings are to be erected.

But although the words "attached to" the buildings include the case of the open space being the property of the owner of these buildings, I do not think that it is the only case which they include. This is well proved by the fact that the first typical instance of an open space providing light and ventilation mentioned in the section is an adjoining street, which would presumably not belong in property to the owner of the building. It would thus seem to be sufficient if the open space either belongs to the owner of the buildings, or he has such a restraint upon it, either by its being public, as a public street or common, or by servitude or other restriction in the titles, that he could prevent it from being built upon, the provision of section 170 might possibly be satisfied in

other ways. The first condition, viz., that of continuous and unbroken ownership is, in my judgment, fulfilled in the present case.

For the reasons now given I consider that if the question is to be decided upon the condition of matters at present existing the requisites of section 170 are satisfied, the petitioners having right to an ample area, including the ground fronting Albert Street which is not yet built upon. But even if buildings should be erected fronting Albert Street, as is proposed, there would be sufficient open space left if the ground behind the proposed buildings in Albert Street could be counted as light and ventilation space both for the purposes of these buildings and of the tenements now in question. It is contended by the appellant that an open space can do duty for one set of buidings only, but I am unable to assent to this view, as the space being open could provide light and ventilation for more sets of buildings than one. Again, in the typical case given in section 170, viz., that of a public street, the contemplation is that the street may serve as an open space for buildings on both sides of it. There is no indication in the section that for the purposes of a question relative to the lighting and ventilation of a house on one side of a street only the area up to the middle of the street can be counted. A street can provide light and air for buildings on both sides of it or all round it, and so can any other open space. But if the same area of open space in a public street or other public place can satisfy the requirements of section 170 as regards both sides of the street, and as regards buildings all round the place, I see no reason why the whole space behind and between both the tenements for which the lining is now sought and those which may hereafter be erected fronting Albert Street should not be counted as available for both. If it had been intended that an open space should only be allowed to provide light and ventilation for one building, it is to be assumed that this would have been expressly declared in the Act of 1892, but I find no indication of such an intention in that Act.

The views now expressed are in accordance with the decision in the case of *Hoy* v. *Magistrates of Portobello*, 23 R. 1039, 33 S.L.R. 763, a decision which appears to me to be right, and I have only gone into the matter somewhat fully because we were told that the present case was appealed for the purpose of obtaining a reconsideration of the general and important question which it involves. It must be borne in mind that in order to be effectual any restriction of the uses to which a proprietor is entitled to put his property must be unequivocally expressed, whether in an Act of Parliament or in any other instrument. For these reasons I am of opinion that the appeal should be dismissed, and that the judgment of the Magistrates should be affirmed.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court refused the appeal.

Counsel for the Appellant—Ure, K.C.—A. S. D. Thomson. Agents—Simpson & Marwick, W.S.

Counsel for the Respondents—Campbell, K.C.—Munro. Agents—Robertson, Dods, & Rhind, W.S.

Wednesday, November 27.

SECOND DIVISION.

[Sheriff-Substitute at Greenock.

DUNLOP *v.* RANKIN & BLACKMORE.

Reparation—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 1 (3), *Sched. II. sec.* 8—*Agreement — Recovery of Workman—Registration of Memorandum of Agreement.*

A workman who was injured in the course of his employment received from his employers a letter in these terms—"We admit liability under the Workmen's Compensation Act 1897, and are prepared to pay compensation at the rate of 12s. 8d. during incapacity in terms thereof." The employers having paid compensation at this rate for some months, discontinued the payments upon the workman recovering from his injuries. The workman thereupon applied to the Sheriff for arbitration under the Workmen's Compensation Act, and maintained that he was entitled to obtain a declaration of his employers' liability so as to provide against the event of supervening incapacity. The Sheriff assoilzied the defenders.

Held, in an appeal, that the letter above quoted was an agreement of which a memorandum could be recorded in terms of the Workmen s Compensation Act 1897; that it was still competent to record a memorandum in terms thereof, notwithstanding the recovery of the workman and the decree of absolvitor pronounced by the Sheriff; and that consequently the application fell to be *dismissed.*

This was an appeal in an arbitration under the Workmen's Compensation Act 1897 before the Sheriff-Substitute at Greenock (GLEGG), between Patrick Dunlop, holder-on, appellant, and Rankin & Blackmore, engineers, Greenock, respondents.

The case set forth the following facts:—"This is an arbitration in which the appellant seeks compensation for the loss of an eye, sustained on 4th February 1901, while in the employment of the respondents. It was admitted that the accident occurred in the course of the employment, and that the respondents were liable to pay compensation so long as the appellant was disabled as the result of the accident. The respondents paid the appellant compensation at the rate of 12s. 8d. per week, being his half wages, down to 3rd June, when, after some abortive overtures for a settlement, they stopped the payments. The appellant raised the present application on 29th May,