cannot revoke her security by his sole act—I am of opinion that the true effect of the last purpose is that the trust is not revocable without Mrs Gillon's consent. Now, as Mrs Gillon has given her consent to the supersession of the trust, and is here as a party supporting her husband, it follows that the defenders should be assoilzied on relieving the pursuers of their liabilities, or, which is the same in effect, that decree should be given in terms of the second alternative of the summons.

The LORD PRESIDENT, LORD ADAM, and LORD KINNEAR concurred.

The Court pronounced this interlocutor:—

"The Lords having considered the reclaiming-note for the defender Henry Gillon against the interlocutor of Lord Stormonth Darling, dated 5th March 1902, and heard counsel for the parties, Recal the said interlocutor: Find that the said defender is not entitled to revoke the trust-disposition of 25th November 1897 mentioned in the summons without the consent of Mrs Amy Anne Blanche Hemans or Gillon, his wife: Find that the said Mrs Gillon has consented to the revocation of said trust-disposition: Find, in terms of the second and alternative conclusion of the summons, that the pursuers, the trustees under said trust-disposition are not bound to denude themselves of the trust until they are relieved of all obligations properly undertaken by them on account of the defender or in the management and administration of the trust, and are reimbursed of all payments properly made and obligations properly undertaken by them in relation thereto: *Quoad ultra* assoilzie the defenders from the conclusions of the summons, and decern: Find the pursuers and respondents, the trustees, entitled to their expenses as between agent and client out of the trust estate, and remit the account thereof to the Auditor to tax and to report to the Lord Ordinary, and remit to his Lordship to proceed as may be just, with power to decern for the taxed amount of said expenses."

Thereafter on March 11th the pursuers presented a note in which they stated that the interlocutor above quoted did not correctly represent the judgment of the Court, and moved that an interlocutor in terms drafted by them should be substituted. The defenders consented to this.

The Court pronounced this interlocutor:—

"The Lords having considered the reclaiming-note for the defender Henry Gillon against the interlocutor of Lord Stormonth Darling dated 5th March 1902, and heard counsel for the parties, Recal said interlocutor: Find that the said defender is entitled to revoke the trust-disposition of 25th November 1897 mentioned in the summons with the consent of Mrs Amy Anne Blanche Hemans or Gillon, his wife: Find that the said Mrs Gillon has consented to the revocation of said trust-disposition: Assoilzie the defender from the first conclusion of the summons: Find, in terms of the second and alternative conclusion of the summons, that the pursuers, the trustees under said trust-disposition, are bound to denude themselves of the trust upon being relieved of all obligations properly undertaken by them on account of the defender or in the management and administration of the trust, and on being reimbursed of all payments properly made and obligations properly undertaken by them in relation thereto, but until the pursuers are so relieved and reimbursed they are not bound to denude themselves of said trust; and particularly the pursuers are not bound to denude themselves of said trust until they have been reimbursed and paid the sum of £1139, 2s., with interest thereon, or such other sum as shall be ascertained to have been the amount expended by the pursuers on account of the said defender, or in the management and administration of the said trust, and decern: And find the pursuers and respondents, the trustees, entitled to their expenses as between agent and client out of the trust estate, and remit the account thereof to the Auditor to tax and to report, and remit to his Lordship to proceed as may be just, with power to decern for the taxed amount of said expenses."

Counsel for the Pursuers and Respondents—Campbell, K.C.—Dewar. Agents—Cornillon, Craig, & Thomas, S.S.C.

Counsel for the Defender and Reclaimer—Guthrie, K.C.—Craigie. Agents—Millar Robson, & M'Lean, W.S.

Wednesday, March 17.

FIRST DIVISION.

[Sheriff-Substitute at Edinburgh.

PUMPHERSTON OIL COMPANY, LIMITED *v.* CAVANEY.

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37)—*Appeal—Refusal of Sheriff to State Case—Point at Issue Covered by Prior Decision—A. S., June* 3, 1898, *sec.* 9.

In an arbitration under the Workmen's Compensation Act 1897 the Sheriff refused to state a case for appeal, on the ground that the question of law involved was settled by a prior decision of the Court. It was admitted that the decision in question could not be distinguished.

Circumstances in which the Court *remitted* to the Sheriff to state a case.

This was an application on behalf of the Pumpherston Oil Company, Limited, for

an order on John Cavaney, pit-head labourer, East Calder, Midlothian, to show cause why a case for appeal should not be stated in an arbitration between him and the said company, under the Workmen's Compensation Act 1897.

The circumstances were set forth in the appellants' note as follows:—"Upon 31st October 1901 the respondent, while in the employment of the appellants, met with an injury to his left hand, which at the time totally incapacitated him from earning wages. His average weekly wages for the twelve months prior to that date were 38s., and the appellants agreed to pay the respondent 19s. per week as compensation, and paid him said compensation up to 28th March 1902, when they ceased making payments thereof, on the ground that the respondent was from that date fitted to return to work.

"On 8th July 1902 the respondents lodged a memorandum of the foresaid agreement between him and the appellants for payment of compensation at the foresaid rate, which memorandum was recorded on 21st July 1902, and on 25th July 1902 the appellants lodged a minute craving that the weekly payments of the foresaid compensation should be reviewed and, in respect that the respondent was no longer, and since 28th March 1902 had not been, incapacitated for work, that the said weekly payments should, from and after such date as the Court should appoint, either be ended or at all events reduced to such sum per week as to the Court should seem right.

"The respondent's total incapacity ceased on 2nd April 1902, and from 8th May following to the date of the proof after mentioned he has been working, and during that period has been earning 23s. a-week as a pit-head labourer.

"A proof was led before the Sheriff-Substitute (HENDERSON), and parties were heard upon 19th November 1902, and thereupon the following interlocutor was pronounced:—'*Edinburgh, 26th December* 1902.—The Sheriff-Substitute having heard the agents for the parties, and having considered the minute of 25th July 1902, the answers thereto for the claimant Cavaney, with the whole productions and the evidence adduced—Finds (1) that by the memorandum of agreement, dated 6th December 1901, and recorded in the special register kept for that purpose on 21st July 1902, the Pumpherston Oil Company, Limited, undertook to pay Cavaney, in respect of bodily injury caused to him by accident arising out of and in the course of his employment by them on 31st October 1901, compensation at the rate of 19s. per week, the rate being half of Cavaney's average weekly wages for the twelve months prior to 31st October 1901; (2) that the company continued to make payment of 19s. weekly to Cavaney until 28th March 1902, when they ceased to make any more payments on the ground that Cavaney was from that date fitted to return to work; (3) that Cavaney did endeavour to do some light work from 7th May 1902, and has for some time been, and is now, earning 23s. per week as a pit-head labourer; (4) that Cavaney's earning capacity since he met with the accident has been considerably diminished, and that he is at all events at present unable to follow his former occupation: Therefore finds Cavaney entitled to continued compensation from the Pumpherston Oil Company, Limited: Fixes the same at 8s. per week, and to the extent of 11s. per week diminishes the weekly payments payable under the recorded memorandum, and that from the date of this deliverance.'"

The Pumpherston Oil Company applied to the Sheriff-Substitute to state and sign a case for appeal.

The questions of law proposed were—"(1) Are the appellants, under section 12 of the First Schedule of the Act, entitled to have respondent's rate of compensation reviewed as from 8th May 1902, it having been proved that respondent's total incapacity did not extend beyond that date, and that from and after that date the respondent has earned 23s. a-week, his average weekly earnings before the accident having been 38s. per week? (2) If not, are the appellants entitled to review as from 25th July 1902, the date of their application for review?"

The Sheriff refused to state a case, and granted the following certificate of refusal:—"The Sheriff-Substitute having been moved by the agent for the minuters to settle a stated case for the parties for the opinion of the Court of Session—refuses to state such a case under the provisions of section 9, sub-section (*c*), of the Act of Sederunt of 3rd June 1898, on the ground that in his opinion the application for a case is frivolous, the questions in law asked to be stated having been definitely settled by the judgment of the Second Division of the Court of Session in the *Oakbank Oil Company* v. *Steel*, December 16, 1902, 40 S.L.R. 205."

In their reasons why a case should be stated the appellants submitted, *inter alia*—"That assuming the view of the Sheriff to be sound, that the questions of law are covered by the judgment of the majority of the Second Division in the *Oakbank Oil Company* v. *Steel*, 40 S.L.R. 205, the appellants are interested in requesting, and entitled to request, the reconsideration of the questions there determined by a Court of Seven Judges."

Answers were lodged for Cavaney.

At the bar counsel for the appellants admitted that they could not distinguish *Oakbank Oil Company* v. *Steel*, December 16, 1902, 40 S.L.R. 205, but stated that the point involved had been decided in their favour in England in *Morton & Company* v. *Woodward* (1902), 2 K.B. 276.

The Court pronounced this interlocutor—

"The Lords having considered the note for the Pumpherston Oil Company, Limited, with the answers for the respondent John Cavaney, and heard counsel for the parties, Remit to the Sheriff-Substitute to settle a case under the Workmen's Compensation Act 1897

for the opinion of this Court, and decern."

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

Counsel for the Respondent—C. N. Johnston, K.C. — Macrobert. Agent—J. Ross Smith, S.S.C.

Wednesday, March 18.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

BROXBURN OIL COMPANY, LIMITED *v.* MORRISON.

Process—Proof—Judicial Remit—Competency when Opposed—Poor—Poor-Rates—Deduction for Expense of Repairs.

In a suspension raising the question of the amount of deductions to be allowed for annual repairs on an oil company's works in fixing their assessment for poor-rates, the company moved for a remit to a man of skill. The collector of rates opposed this motion, and asked for an allowance of proof. The Lord Ordinary refused to remit, on the ground that he had no power to make a remit against the wishes of one of the parties. On a reclaiming-note, *held* (*dub.* Lord Kinnear) that the Court had power to remit even when that course was opposed; that in this class of cases to remit was the usual and appropriate course; and that in the circumstances a remit should be made.

The Broxburn Oil Company were assessed for parish rates in respect of their Roman Camp and Broxburn works, situated in the parish of Uphall, Linlithgowshire, on a valuation amounting in all to £17,156. Difficulties having arisen as to the deductions to be made from this valuation in fixing the assessment for poor-rates under section 37 of the Poor Law Act 1845 (quoted in the opinion of the Lord Ordinary, *infra*), for the probable annual average cost of repairs on their works, George S. Morrison, collector of rates for the parish of Uphall, intimated that he proposed to apply for a warrant for poinding, and the Broxburn Oil Company brought the present note of suspension.

After the record was closed the complainers, the Broxburn Oil Company, moved for a remit to a man of skill. The respondent opposed this motion, and moved for a proof.

On 27th February 1903 the Lord Ordinary (KINCAIRNEY) pronounced an interlocutor, by which he refused the motion of the complainers for a remit to a man of skill.

Opinion.—"This case is a suspension by the Broxburn Oil Company, Limited, of a threatened poinding by the collector of rates for the Parish Council of Uphall for recovery of £694, 8s. 1d., as the amount of parish rates due by the Broxburn Oil Company. The collector has based his assessment on the valuation roll, which is not disputed. But the question is, what are the deductions which must be made from that valuation under the 37th section of the Poor Law Act in order to ascertain the assessable value. These are stated in the Act to be 'deductions 'of the probable annual average cost of the repairs, insurance, and other expenses, if any, necessary to maintain such lands and heritages in their actual state, and all rates, taxes, and public charges payable in respect of the same.' There is no objection to the competency of the suspension, and it is therefore, of course, necessary to ascertain the amount of these deductions. That may be done either by a remit to a man of skill or by a proof at large.

"The Broxburn Oil Company moved for a remit to a man of skill, following and relying on the recent case of the *Pumpherston Oil Company Limited* v. *Watson*, July 19, 1901, 3 F. 1099, in which a deduction of no less than 90 per cent. of the gross value was allowed. The collector, greatly alarmed by that result, strongly opposed that motion, and moved for a proof at large.

"The complainers, the Broxburn Oil Company, cited the *Edinburgh and Glasgow Railway Company* v. *Adamson*, March 10, 1853, 15 D. 537; *Glasgow Gas-Works Company* v. *Adamson*, March 23, 1863, 1 Macph. 727, 728; and the *Edinburgh and Glasgow Railway Company* v. *Hall*, January 19, 1866, 4 Macph. 301, 303—all of which cases related to the deductions under the 37th section of the Poor Law Act. But no objection was taken to the remit in these cases, and there is nothing to show that the result of that mode of procedure was unsatisfactory in any of these cases. There is nothing in the report of the *Pumpherston Oil Company* to show that any opposition was made to the remit in that case, although it was stated from the bar that at an early stage of that case the remit was objected to. In that case Lord Kinnear, delivering the opinion of the Court, observed that the proper course for ascertaining the amount of the deductions had been adopted. These were said to be the only cases about the ascertainment of the deductions under the Poor Law Act.

"The collector of rates referred to various cases, of which it seems unnecessary to notice more than two—*Quin* v. *Gardner*, June 22, 1888, 15 R. 776, and *Kilmarnock* v. *Reid*, January 22, 1897, 24 R. 388. In the former case, which was about the construction of a railway, a remit by the Lord Ordinary to a man of skill was recalled in the Inner House, on the ground that, as it involved questions of law as well as of fact, it was inexpedient, if not incompetent. In that case, while the competency of a remit was affirmed in certain cases, although opposed by one of the parties, yet the Lord President (Inglis) observed that he was not for forcing remits upon unwilling parties to an extent beyond what had been granted by the Court in previous cases.