for the same arbitrator to hold that, notwithstanding that the man was in receipt of wages, still he was not fully compensated, because the two payments together did not amount to the wages he had been earning before the accident occurred. I do not think that an arbitrator is compelled to make an abatement of the weekly payment merely because the workman happens to be earning a certain wage. I think that that suggestion is contrary both to the spirit and the words of the statute. The completeness of recovery, the resultant incapacity, and many other things, might enter into the consideration of the arbiter. There is only one rule fixed with regard to such a circumstance, and that is, that in an application for reconsideration of a weekly allowance it would not be consistent with the provisions of the statute for an arbitrator to award a sum which would, when added to the wages being earned, give the workman a larger weekly income than he was earning before the accident. I think that this is well settled, and on obvious and sufficient grounds. But when the compensation and the wages added together do not amount to as much as the workman was earning before the accident, I see no legal rule to lead us to interfere with the award that the arbiter has made. I therefore agree that the interlocutor should be such as your Lordship has suggested.

LORD MACKENZIE concurred.

LORD KINNEAR and LORD PEARSON were absent.

The Court pronounced this interlocutor—

"Find in answer to the question of law stated in the amended case that the award of the arbitrator is in conformity with the terms of the Workmen's Compensation Act 1897: Therefore dismiss the appeal, affirm the award of the arbitrator, and decern."

Counsel for the Appellant—Guthrie, K.C.—A. Moncreiff. Agents—W. & J. Burness, W.S.

Counsel for the Respondent—Johnston, K.C.—M. P. Fraser. Agents—W. & W. Finlay, W.S.

Tuesday, January 9, 1906.

SECOND DIVISION.

[Lord Dundas, Ordinary.

MUIR *v.* MUIRS.

Arbitration—Clause of Reference—Contract—Construction—Contract of Copartnery for Watchmaking Business—Disputes "in any way relating hereto" Referred to Arbitration—Dispute whether Proposed Additions Amount to a Different Business Held to Fall under Clause of Reference.

A contract of copartnery for the carrying on of a watchmaker's and jeweller's business provided, *inter alia*, "Any disputes that may arise between the partners, or between the heirs of a deceasing partner, in any way relating hereto, shall be referred to the amicable decision of an arbiter to be mutually chosen, whose decision shall be final."

A question having arisen as to whether certain proposed additions to the business fell within the scope of a watchmaker's and jeweller's business, for which alone the copartnery existed, *held* that the question was one relating to the construction of the contract, and fell accordingly under the clause of reference.

Thomas Muir, Airdrie, brought a note of suspension and interdict against his sons, Henry Muir and James Muir, watchmakers and jewellers, Glasgow, in which he sought to interdict them "from entering into an agreement with Simon L. Goodman, optician and sight tester, 182 Argyle Street and 1 Union Street, Glasgow, or with any other person, whereby the firm of Muir & Sons, carrying on a joint business as retail watchmakers and jewellers, 182 Argyle Street and 1 Union Street, Glasgow, agrees to carry on the business of opticians and sight testers in the firm's premises, 182 Argyle Street and 1 Union Street, Glasgow, or in any premises they may occupy, and also from in any way carrying on, as part of the business of the said firm of Muir & Sons, the business of opticians and sight testers."

The facts of the case sufficiently appear from the following narrative, which is taken from the opinion of the Lord Ordinary:—"The question which I have to decide is whether or not a dispute which has arisen between the complainer and the respondents falls within a clause of reference which is contained in their contract of copartnery. By that contract, which is dated 2nd July 1900, the complainer, as first party, and the respondents (and John Muir, since dead), his sons, as second parties, agreed to be copartners in carrying on a joint business as watchmakers and jewellers at 182 Argyle Street and 1 Union Street, Glasgow, for seven years from 26th January 1900, under the firm name of 'Muir & Sons.' By article *Seventh* it was provided that the sons should devote their whole time and attention to the business and management thereof, and should 'do their utmost to extend and promote the business'; but while the father should 'have the entire and uncontrolled oversight of the business and all its concerns,' he should not be bound to give any particular or stated time or attention thereto, his duties 'being merely those of supervision for the interest in and welfare of himself and his copartners.' Article *Eighth* provided that 'None of the partners shall, during the currency of the copartnery, directly or indirectly be engaged in any other business, profession, trade, or occupation, without the previous consent of the others in writing.' By article *Ninth* it was, *inter alia*, provided that the partners should conduct

the business with such assistants as might be necessary, and should keep a regular set of books, in which should be entered all transactions of the copartnery. Article *Fifteenth* is in these terms:—'Any disputes that may arise between the partners, or between the heirs of a deceasing partner, in any way relating hereto, the same shall be referred to the amicable decision of an arbiter to be mutually chosen, whose decision shall be final.' Since the date of the said contract the parties have carried on the business of retail watchmakers and jewellers, which has included the sale of barometers, opera glasses, spectacles, and other similar goods such as watchmakers and jewellers usually keep in stock. But the complainer avers that 'In the month of August last (1905) the respondents determined to add as an addition to the firm's joint business of watchmakers and jewellers aforesaid the business of opticians and sight testers, and brought in and employed a person named Goodman as an optician and sight tester, and had handbills printed and distributed that they were now carrying on the additional business of opticians and sight testers. Such a business is not part of a retail watchmaking and jewellery business—at all events of the retail watchmakers' and jewellers' business carried on by Muir & Sons—but is an entirely different and independent business, and had never been carried on by Muir & Sons.' The complainer further alleges that he objected and objects 'both to the new business and the person to be employed to carry it on,' but that the respondents are, in conjunction with Goodman, carrying on, in the firm's premises, an optician and sight-testing business without his written consent, and in spite of his opposition. He has accordingly brought this note of suspension and interdict to have the respondents prohibited from entering into an agreement with Goodman as above indicated, and 'from in any way carrying on, as part of the business of the said firm of Muir & Sons, the business of opticians and sight testers.' The draft agreement between 'Thomas Muir & Sons, watchmakers and jewellers,' as first parties, and 'Simon L Goodman, optician,' as second party, is produced, and it narrates, *inter alia*, that 'the second party has approached them' (*i.e.*, *the first* parties) 'with a proposal that they should add to their said business an additional branch as sight testers and opticians, and the first parties having considered said proposal favourably, they have decided to do so, and employ the second party as their assistant.' The draft agreement goes on to provide, *inter alia*, that the first parties shall fit up and furnish 'a sight-testing room as an optical part and branch of their said businesses as watchmakers and jewellers'; that the second party shall 'manage, conduct, and carry on, on behalf of the first parties, said optical parts or branch of their said businesses, and that part only'; that he shall 'keep a distinct set of books' relating to 'said optical branch'; that the first parties shall supply the necessary stock, &c., and that 'a balance-sheet of the sale and expenditure connected with said branch' of the business shall be periodically made up, and the profits realised from it applied and divided as specified in the agreement, during the currency and after the expiry of which it is provided that the trade, custom, and goodwill connected with or gained by the 'said branch' shall 'vest, belong, and remain' the exclusive property of the first parties, as well as the stock, fittings, materials, and utensils."

The respondents pleaded, *inter alia*—"(3) The present proceedings are excluded by the clause of reference quoted. (5) The respondents' actings being concerned with an ordinary matter connected with the partnership business, and having been decided upon by the firm or by the respondents as a majority of the partners, . . . the prayer of the note should be refused with expenses."

On 25th November 1905 the Lord Ordinary (DUNDAS), after hearing parties upon the closed record, pronounced the following interlocutor:—"Finds that the record discloses that a dispute has arisen between the partners relating to the contract of copartnery within the meaning of article fifteenth of said contract: Therefore, and with reference to said article, sists procedure in this action *in hoc statu*."

Opinion.—[*After the narrative of facts set forth above*]—"The respondents represent the proposed agreement as embodying not a business different to and independent of that of watchmakers and jewellers, but merely an extension and development of the optical branch of that business which they allege has all along existed; and they say that in this view of the matter they are entitled, as a majority of the partners, to act without the consent and against the wish of the complainer, who stands in a minority. But, *ante omnia*, the respondents maintain that the dispute, which has admittedly arisen amongst the partners, falls within the scope of the arbitration clause in the contract of copartnery, the terms of which I have quoted above.

"I am of opinion that the respondents contention upon this last point is well founded. I think that the words 'relating hereto,' which occur in the arbitration clause, are equivalent to 'relating to these presents,' *i.e.*, to the contract of copartnery of which the clause forms part, and that therefore a dispute involving, as in my judgment the present dispute necessarily involves, a question as to the proper construction to be put upon that contract, must be decided by the arbiter, and not by this Court. The complainer's counsel ingeniously argued that that 'relating thereto' really means relating to the conduct of the business of watchmakers and jewellers which is the subject of the contract of copartnery, and that in order to ascertain whether or not the present dispute truly falls within the scope of the arbitration clause, it would be necessary to have a proof, the evidence in which would disclose whether (as the complainer avers), the pro-

posed change amounts to the constitution of a new and additional business, or (as the respondents contend) involves merely the extension and development of an existing branch of the business of retail watchmakers and jewellers. If the latter view were established by the proof, the complainer's counsel admitted that the matter would fall within the arbitration clause, but if the former view were proved to be correct, then he maintained that it would be for the Court to grant interdict as craved. This is, in my judgment, an unsound and a too finical reading of article *Fifteenth* of the contract. I think that whichever of the alternative views of the matter may turn out to be the true one, a question of construction of the contract, and particularly of article *Seventh* thereof, above quoted, is involved, and that the matter of construction is referred to the arbiter by article *Fifteenth*. Indeed, the complainer's own averment at the end of statement 3 is that 'this addition to the retail watchmaking and jewellery business of an optician and sight-testing business constitutes a change in the nature of the said partnership business for which the said contract of copartnership does not provide.' This, in my judgment, amounts to a frank confession that the question turns upon a construction of the contract. Similarly, the respondents' counter averments appear to me to raise sharply questions as to the meaning of the contract, and especially of article *Eighth* thereof. In my opinion, then, the record discloses the existence of a dispute between the partners relating to the contract of copartnery, which must be decided by the arbiter, and upon the merits of which therefore I refrain from expressing any opinion.

"While, however, I agree so far with the respondents' contention, I am not prepared to sustain their third plea-in-law to its full extent. That plea is that 'the present proceedings are excluded by the clause of reference quoted.' I think that the proper course is not to refuse the note *de plano*, but to sist proceedings *in hoc statu*, in respect that the dispute between the parties falls, in my judgment, within the terms of article *Fifteenth* of the contract of copartnery."

The complainer reclaimed, and argued—(1) The present proceedings were not excluded by the clause of arbitration, which only ousted the jurisdiction of the Court in "disputes relating hereto," *i.e.*, to the deed of copartnery. There was here no dispute as to the contract of copartnery, which dealt only with the watchmaking business, but a dispute upon a question of fact outwith the contract altogether, viz., whether the new business was or was not a watchmaking business. That was a question of fact to be decided by the Court after proof—*Roddan* v. *M'Cowan*, June 26, 1890, 17 R. 1056, 27 S.L.R. 984; *Ransohoff & Wissler* v. *Burrell*, December 10, 1897, 25 R. 284, 35 S.L.R. 229. (2) In any event the complainer was, under article 7, invested with a complete power of veto.

Argued for the respondents—(1) The parties were not at issue upon any question of fact. There was no dispute as to what the new proposals were, but merely as to whether they fell or did not fall within the scope of the contract, and that such was a dispute "relating to" the contract, and therefore one for the arbiter. (2) The question as to the complainer's right of veto was purely one of the construction of the contract, and therefore for the arbiter.

LORD KYLLACHY — The first question which we have to decide is whether the complainer is entitled to have a proof as to the exact nature of this proposed new business, such proof being said to be necessary as a preliminary towards determining the question whether the dispute between the parties falls under the clause of reference in the contract.

If the parties had been at all at issue upon the facts, such proof would be proper and necessary. But it is, I think, quite plain that with respect to the nature and extent of the proposed new departure there is no dispute. The sole question is whether upon the admitted facts the kind of business proposed to be added to the concern falls within the business of watchmakers and jewellers in the sense of the contract of copartnery. And that being so, it seems to me that it is a question as to the construction of the contract and nothing else.

The other point, viz., as to whether the complainer is under the 7th article entitled to exercise a veto upon what is proposed, is also clearly a question upon the construction of the contract. It is a point not perhaps free from difficulty, but it is one entirely for the arbiter.

LORD JUSTICE-CLERK—I agree with the judgment of the Lord Ordinary, and with the reasons which he has stated.

LORD STORMONTH DARLING and LORD LOW concurred.

The Court adhered.

Counsel for the Reclaimer — Graham Stewart — Morton. Agent — W. A. Farquharson, S.S.C.

Counsel for the Respondents — Cullen, K.C. — Macmillan. Agents — Cowan & Stewart, W.S.

Thursday, January 11.

SECOND DIVISION.

[Lord Dundas, Ordinary.

WALKER'S TRUSTEES *v.* AMEY AND OTHERS.

Trust—Inter vivos Disposition—Right to Revoke.

A lady in a trust-disposition (on the narrative that owing to delicate health, and in order to make provision for herself in the event of continued illness or incapacity) declared that she instantly made over to A and B, as