after a large sum had been saved out of the earnings from the hotel business, but I think that the circumstances as they existed at the date of the disposition itself practically exclude the idea of its being of the character of a remuneratory donation.

I therefore am of opinion that the Lord Ordinary's interlocutor in the second action should also be adhered to.

LORD STORMONTH DARLING and LORD LOW concurred.

The Court adhered.

Counsel for the Reclaimers—M'Lennan, K.C. — Hamilton. Agent — Andrew H. Hogg, S.S.C.

Counsel for the Respondent — Wilson, K.C.—Constable—R. S. Brown. Agent—Henry Wakelin, Solicitor.

Thursday, June 20.

FIRST DIVISION.

(SINGLE BILLS.)

[Lord Mackenzie, Ordinary.

MOFFAT MAGISTRATES *v.* JARDINE.

Process—Reclaiming Note—Competency—"Whole Subject Matter of the Cause"—Decree of Declarator in Action of Declarator and Interdict—Court of Session Act 1868 (31 *and* 32 *Vict. c.* 100), *sec.* 53.

In an action of declarator and interdict the Lord Ordinary on 28th May 1907 pronounced an interlocutor in which he granted decree of declarator but "superseded in the meantime further consideration of the conclusion for interdict." A reclaiming note was boxed on 17th June 1907.

Held that as the interlocutor did not dispose of the whole subject-matter of the cause it could only be reclaimed against within ten days of its date, and note *refused.*

Kirkwood v. *Park*, July 14, 1874, 1 R. 1190, *distinguished.*

The Court of Session Act 1868 (31 and 32 Vict. cap. 100), section 53, enacts—"It shall be held that the whole cause has been decided in the Outer House when an interlocutor has been pronounced by the Lord Ordinary which, either by itself or taken along with a previous interlocutor or interlocutors, disposes of the whole subject-matter of the cause, or of the competition between the parties in a process of competition, although judgment shall not have been pronounced upon all the questions of law or fact raised in the cause. . . ."

On 28th January 1907 Mrs Murray Jardine, wife of Arthur Murray Jardine, Esquire, of Granton in the county of Dumfries, and infeft therein as trustee under a disposition and conveyance in trust, raised an action, with the consent of her husband, against the Provost, Magistrates, and Councillors of the burgh of Moffat, in which she sought declarator that the defenders were not entitled to supply water taken from the Granton estate under a certain disposition therein mentioned, except to houses within the burgh. There was a corresponding conclusion for interdict.

On 28th May 1907 the Lord Ordinary (MACKENZIE) pronounced the following interlocutor:—" . . . Finds and declares in terms of the declaratory conclusion of the summons, and decerns: Supersedes in the meantime further consideration of the conclusion for interdict: Finds the pursuers entitled to expenses: Allows an account to be lodged, and remits the same to the Auditor to tax and report: Grants leave to reclaim."

The defenders reclaimed.

The reclaiming note was boxed on 17th June.

On the case appearing in the Single Bills counsel for the respondents objected to the note as not having been timeously presented, and argued—The Lord Ordinary, in order to give the burgh an opportunity of coming to some arrangement as to its water supply, had not disposed of the conclusion for interdict. The interlocutor therefore was not a final one and should have been reclaimed against within ten days.

Argued for reclaimers — Although the conclusion for interdict had meantime been superseded, the interlocutor really disposed of the whole subject-matter of the cause. That was clear from the opinion of the Lord Ordinary. [LORD KINNEAR—You cannot reclaim against his opinion.] What remained was merely executorial. That being so, this was a final interlocutor which could be reclaimed against within twenty-one days — Court of Session Act 1868 (31 and 32 Vict. c. 100), sec. 53; *Kirkwood* v. *Park*, July 14, 1874, 1 R. 1190; *Caledonian Railway Company* v. *Corporation of Glasgow*, May 17, 1900, 2 F. 871, 37 S.L.R. 672.

LORD M'LAREN—It is perfectly clear that this reclaiming-note has not been presented within the statutory time. It was maintained that the whole subject-matter of the cause had been disposed of by the Lord Ordinary. Now there are conclusions for declarator and also for interdict. The conclusion for interdict has not been disposed of in any definite way. The Lord Ordinary after granting the declarator asked for superseded consideration of the conclusion for interdict, either that the parties might have a chance of coming to an arrangement, or because he thought it might be unfair to grant interdict without allowing time for making new arrangements consequential on his decision. In either case the conclusion for interdict is undisposed of, and in these circumstances it is vain to contend that this is a final interlocutor.

LORD KINNEAR—I am of the same opinion. I think the case of *Kirkwood* is altogether inapplicable, and for the reasons given in the opinions of the Lord President and of Lord Deas in that case. The interlocutor there reclaimed against ordained the defen-

der to erect certain buildings within a certain time, and found the defender liable in the expenses of the action. The question was whether that interlocutor did or did not dispose of the whole merits of the action, because as the Lord President pointed out—"If this decree is implemented there is an end of the case, and nothing remains but to take the action formally out of Court;" and as Lord Deas added—"If these buildings are erected the operation cannot be undone, so the subject-matter is clearly exhausted by this judgment." The question arose in that case from the fact that there was in the summons an alternative conclusion for payment of a sum of £1500 in the event of the defender failing to complete the buildings in question within a certain time. The Lord Ordinary did not dispose of that alternative conclusion in terms, but he gave decree in terms of the first alternative, and therefore by his interlocutor the whole merits of the case were disposed of.

LORD PEARSON—I am of the same opinion. I think that this is clearly a ten days' interlocutor.

The LORD PRESIDENT was absent.

The Court refused the reclaiming note.

Counsel for Pursuers (Respondents)—Cullen, K.C.—Strain. Agents—Pairman, Easson, & Miller, S.S.C.

Counsel for Defenders (Reclaimers)—W. J. Robertson. Agents—Cuthbert & Marchbank, S.S.C.

Friday, June 21.

SECOND DIVISION.

LOCHGELLY IRON AND COAL COMPANY *v.* SINCLAIR.

Master and Servant — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 1 (3)—*Schedule I*, 12—*Schedule II*, 8—*Memorandum of Agreement—Application for Arbitration—Petition for Review.*

A workman injured on 12th October 1904, was, under an agreement between him and his employers, paid compensation until 26th January 1905, when the employers stopped the payments on the ground (not admitted by the workman) that he had recovered from his injuries. The workman thereupon presented an application to the Sheriff for warrant to record a memorandum of the agreement, which was granted after considerable procedure, pending which the employers presented an application for arbitration, in which they requested the Sheriff to find that their liability to compensate the workman ended on 25th January 1905, and to grant an order declaring his right to compensation to have ended at that date, or, alternatively, to ascertain and fix such weekly payments as might be due under the Act, and to grant an award finding the workman entitled to such weekly payments, beginning the first payment on 1st February 1905 for the preceding week.

Held that the application for arbitration was incompetent, on the grounds (1) that as an original application for arbitration it was excluded by the agreement, of which a memorandum had been recorded—*Dunlop* v. *Rankin & Blackmore*, November 27, 1901, 4 F. 203, 39 S.L.R. 146, *followed*; (2) that, as framed, it could not be treated as a petition for review under Schedule I (12).

The Workmen's Compensation Act 1897 section 1 (3) enacts—"If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the employment is one to which this Act applies), or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First Schedule to this Act, be settled by arbitration in accordance with the Second Schedule to this Act." Schedule I (12)—"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."

This was an appeal by stated case against a decision of the Sheriff-Substitute (SHENNAN) in an application for arbitration raised in the Sheriff Court at Dunfermline at the instance of the Lochgelly Iron and Coal Company, Limited (appellants), against Daniel Sinclair, miner (respondent).

The case set forth—"This is an application for arbitration in which the appellants requested the Sheriff as arbiter to find that the appellants' liability to compensate the respondent in respect of an injury sustained by him on or about 12th October 1904, while employed as a miner in the appellants' Lochhead Pit, Raith Colliery, near Lochgelly, came to an end on 25th January 1905, and to grant an order declaring the respondent's right to compensation to have ended as from and after said last-mentioned date, or, alternatively, to ascertain and fix such weekly payments as might be due to the respondent under the Workmen's Compensation Act 1897 in respect of such injury, and to grant an award against the appellants finding the respondent entitled to such weekly payments, beginning the first payment on 1st February 1905 for the week preceding that date, and so on weekly thereafter until such weekly payments are varied or ended by the Court.

"It was admitted that on or about 12th October 1904, and for some time prior thereto, the respondent was in the employment of the appellants as a miner in their