been hard pressed for money, and that he made a confession to his brother Thomas which, although not in terms acknowledging that he had forged the bond, made it perfectly apparent that he had made use of his aunt's property for the purpose of raising money. It is equally clear that Miss Muir herself did not pay any interest on the bond, and that William Bowie did, and accordingly, as the Lord Ordinary says, it is too clear for argument that Miss Muir's name had been forged upon this bond by William Bowie.

But then it is said that if she did not adopt the forgery, at any rate there are circumstances which show that she must be barred from saying that she did not adopt it. That she adopted it in the way of doing anything positive is certainly not the case. The case of *Blackburn* was pressed upon our attention as sufficient to show that there is good ground for the plea of bar, because the knowledge of the nephew Thomas Bowie is to be deemed for the purposes of this case to be her knowledge. In one of the cases, I think *Blackburn*, it was pointed out that the wrong use of the word "agent" had caused a good deal of confusion in these cases. I think that when the facts in regard to the so-called agency here are examined they amount to no more than your Lordship has already described, that Thomas Bowie was used for the purpose of taking a message to the Inland Revenue to ask why they were making the charge of £1, 1s. 10d. The subsequent structure is built upon that one fact. Now when one compares that with the state of facts in *Blackburn*, they are utterly different. *Blackburn's* case had relation to a contract of marine insurance, and of course in all such contracts of insurance it is a condition-precedent that the insurer shall make a full disclosure of all facts which materially affect the risk which are within his knowledge when the contract is made. In the particular case the agent whose knowledge was sought to be fixed upon the principal had dropped out of the case; but it is quite clearly pointed out that the reason why, if that broker had effected the insurance, his knowledge, unless he communicated it, would have been fatal to the policy, was because his agency was to effect an insurance. That is quite clearly pointed out in the judgment of Lord Halsbury, and therefore it seems to me necessary to read the expression "agency to know" along with the passage in which it is apparent that Lord Halsbury was referring to a person who was acting as agent in effecting an insurance. That is quite different, and has no application to the facts in the present case. Accordingly I am of opinion that the arguments of the defenders cannot prevail, and that we should adhere to the interlocutor of the Lord Ordinary.

LORD PRESIDENT—LORD CULLEN also concurs in this judgment.

LORD KINNEAR and LORD JOHNSTON did not hear the case.

The Court adhered.

Counsel for Pursuers (Respondents)—Horne, K.C.—Paton. Agents—J. W. & J. Mackenzie, W.S.

Counsel for Defenders (Reclaimers)—Morison, K.C. — MacRobert. Agents—Lister Shand & Lindsay, S.S.C.

Friday, December 13.

SECOND DIVISION.

[Lord Ormidale, Ordinary.

M'GUIRE *v.* G. PATERSON & COMPANY.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58)—*Agreement for Redemption of Weekly Payment — Registration — Validity — Denial of Accident by Employers—Essential Error.*

At the request of a workman's law agent there was duly registered in the register kept under the Workmen's Compensation Act 1906 a memorandum of agreement under "Workmen's Compensation Act 1906," whereby on the narrative that the workman had been injured by accident in his employment he agreed to accept a sum "in full settlement of all claims in respect of said accident." The employers really, while willing to settle, denied that there had been any accident. Both parties had in contemplation that the workman would be incapacitated for a few weeks, but in this greatly underestimated his injuries, which eventually caused him the loss of a thumb, forefinger, and part of his second finger.

Held, in an action by the workman to have the memorandum reduced and the record thereof expunged, (1) that the denial of the accident by the employers did not prevent the agreement from being one under the Act entitling it to be recorded, and (2) that the underestimate of the injuries did not amount to essential error.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *Schedule II* (9)—*Memorandum of Agreement—Registration—Sheriff-Clerk—Obtaining Information as to Inadequacy of Payment.*

The Workmen's Compensation Act 1906, Schedule II. (9), enacts—"Where the amount of compensation under this Act has been ascertained, or any weekly payment varied, or any other matter decided under this Act . . . a memorandum thereof shall be sent . . . to the [*sheriff-clerk*], who shall, subject to such Act of Sederunt, on being satisfied as to its genuineness, record such memorandum in a special register . . . Provided that . . . (*d*)—Where it appears to the [*sheriff-clerk*],

on any information which he considers sufficient, that an agreement as to the redemption of a weekly payment by a lump sum . . . . ought not to be registered by reason of the inadequacy of the sum . . . or by reason of the agreement having been obtained by fraud or undue influence, or other improper means, he may refuse to record the memorandum of the agreement sent to him for registration, and refer the matter to the [*sheriff*], who shall, in accordance with Act of Sederunt, make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just.

Held that a sheriff-clerk is not bound before registering a memorandum of agreement in terms of the Workmen's Compensation Act 1906, Schedule II (9), to institute inquiries *ex proprio motu* to obtain information as to the adequacy of the payment made thereunder.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), Schedule II (9), with proviso (*d*), quoted *supra in rubric.*

Proviso (*e*)—"The [*sheriff*] may, within six months after a memorandum of an agreement as to the redemption of a weekly payment by a lump sum . . . has been recorded in the register, order that the record be removed from the register on proof to his satisfaction that the agreement was obtained by fraud or undue influence, or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just."

The Act of Sederunt, 26th June 1907, provides—Section 11 (1)—". . . The sheriff-clerk shall forthwith send a copy [*of the memorandum*] . . . 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 and . . . agreement set forth therein are genuine, or are objected to, and if within the specified time he receives no intimation that the genuineness is disputed, or that the recording is objected to, then he shall, but not sooner than seven days after the dispatch of such letter of request, record the memorandum in the special register to be kept by him for the purpose, unless he himself refuses to record it under paragraph 9 (*d*) of the said Second Schedule, but if the genuineness is disputed, or the recording is objected to, 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 12—"When the genuineness of a memorandum under paragraph 9 of the Second Schedule appended to the Act is disputed, or when an employer objects to the recording of such memorandum under sub-section (*b*) of said paragraph, or the sheriff-clerk refuses under sub-section (*d*) of said paragraph to record such memorandum, the person disputing the genuineness, or the employer or the sheriff-clerk, as the case may be, shall lodge a minute stating clearly all the grounds for his action, and the memorandum shall thereupon be dealt with as if it were an application to the sheriff for settlement by arbitration of the questions raised by the minute."

Bernard M'Guire, labourer, Govan, *pursuer*, brought an action against G. Paterson & Company, plasterers, Rutherglen, *defenders*, for reduction of a memorandum of agreement recorded in the register kept by the sheriff-clerk of Lanarkshire, and for declarator that no agreement as to compensation to be paid to the pursuer, under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), had been concluded between the pursuer and the defenders.

The following *narrative* is taken from the opinion of Lord Salvesen (*infra*):—"This is an action of reduction of a memorandum of agreement dated 9th, and recorded in the register kept by the sheriff-clerk at Glasgow on 19th, November 1909, which bears that the pursuer accepted the sum of £6 sterling in full settlement of all claims in respect of an accident which happened to him while in the defenders' employment. The pursuer also seeks a declarator that no agreement as to compensation to be paid to the pursuer under the Workmen's Compensation Act 1909, in respect of the injuries so sustained, has been concluded between the parties. On the facts averred, the sole ground of reduction is that the parties were in error at the time when the agreement was made as to the extent of the pursuer's injuries; that at the time it was thought that recovery would be complete within ten weeks from the date of his ceasing work, whereas, as matters have turned out, parts of his fingers have had to be amputated, and he is permanently incapacitated for work. It appears that in making the settlement of his claims the pursuer had the assistance of a law agent, that no undue representations were made to him by or on behalf of the defenders, and that they as well as he believed that the injuries were slight."

The pursuer averred, *inter alia*—"(Cond. 3) On 20th October 1909 the pursuer consulted a law agent, who on the same day intimated a claim for compensation to the defenders. Thereafter on 9th November 1909 the pursuer and his agent had a meeting with a representative of the insurance company with which the defenders are insured, and on that date the pursuer received from the said representative of the insurance company the sum of £6, and granted therefor a receipt. . . . (Cond. 4) In so far as the said receipt bears to be a discharge of all claims competent to the pursuer, it was granted by him without any consideration. The sum of £6 paid to the pursuer represented compensation at the rate of 12s. 9d. per week for ten weeks, and no consideration whatever was paid to the

pursuer in respect of a discharge by him of claims that might be competent to him after the expiry of that time. Further, at the time when the said receipt was granted both the pursuer and his agent and also the insurance company's representative were in total ignorance of the true nature of the pursuer's injuries. All of them thought that the injuries were only superficial, and that the pursuer would not require to be off work for more than ten weeks altogether. In point of fact, at the date when the said receipt was signed the pursuer was suffering from septic poisoning of the hand. The entries in the infirmary books show that such was the fact, though the pursuer had not been so informed by the doctor and was unaware of it. After the said date the pursuer continued to attend the infirmary regularly until 30th December 1909, when he entered the hospital of Govan Poorhouse to undergo an operation. The thumb, forefinger, and part of the second finger of the pursuer's right hand have since been removed, and he is now totally and permanently incapacitated for work. The said incapacity arises from the accident condescended upon. (Cond. 6) Following upon the granting of the said receipt by the pursuer, the memorandum of agreement of which reduction is now sought was drawn up, and on the application of the defenders it was recorded in the register on 19th November 1909. No such agreement was arrived at between the pursuer and the defenders. In accepting the said sum of £6 the pursuer understood that the defenders' liability was admitted, and that, as the representative of the insurance company stated, he was getting ten weeks' compensation, whereas the insurance company's representative did not admit the defenders' liability to compensate the pursuer, and looked upon the £6 as an *ex gratia* payment. There was accordingly no *consensus in idem placitum* between the parties. Further, at the date of the said alleged agreement the parties were in error as to the nature of the pursuer's injuries, and it was not till after the said memorandum of agreement had been recorded that the fact that the pursuer's hand was poisoned came to the knowledge of the parties. . . . (Cond. 7) The sum of £6, which according to the said recorded memorandum the pursuer is said to have accepted in full settlement of all claims in respect of the said accident, was quite inadequate compensation for the injuries sustained by him. No sufficient information was laid before the registrar, or asked for by him, to enable him to judge of the adequacy of the said sum as consideration for a discharge of all the pursuer's claims in respect of the said accident. Had the registrar been in possession of such information he would have refused to record the said memorandum, as he was entitled to do under section 9 (*d*) of the Second Schedule to the Workmen's Compensation Act 1906.

The memorandum of agreement was as follows—"At Glasgow, the 19th day of November 1909, the memorandum of agreement after inserted is recorded in terms of the Workmen's Compensation Act 1906, and is as follows—Workmen's Compensation Act 1906.—Bernard M'Guire, labourer 32 South Wellington Street, Glasgow, *claimant*, v. G. Paterson & Company, plasterers, 73 Farmeloan Road, Rutherglen, *respondents*. The claimant claimed compensation from the respondents in respect of injury to right hand through being burned by lime caused by accident in the employment of the said G. Paterson & Company, 73 Farmeloan Road, Rutherglen, at job Hillfoot Terrace, Rutherglen, on or about the 4th day of October 1909. The question in dispute was as to the amount of compensation payable to claimant for final settlement, and was determined by agreement. The agreement was made on the 9th day of November 1909, and was as follows—that respondents agreed to pay, and the claimant agreed to accept, the sum of six pounds sterling in full settlement of all claim in respect of said accident. It is requested that this memo. be recorded in the Special Register of the Sheriff-Court of Lanarkshire, at Glasgow.—ALEX. BLACKWOOD, *Law Agent for Bernard M'Guire. 9th November* 1909. — To the Sheriff-Clerk, Court-House, Glasgow. Lodged 11th November 1909. *Eo die.* — Intimated to respondents to reply by 18th November 1909."

The defenders pleaded that the action was irrelevant.

On 18th January 1912 the Lord Ordinary (ORMIDALE) sustained the defenders' plea to the relevancy, and dismissed the action.

Opinion.—"The memorandum of agreement which it is sought to reduce in this action was recorded 'in terms of the Workmen's Compensation Act 1906,' and bears to be under that Act.

"It narrates that the claim was in respect of an injury caused to the pursuer by accident in the employment of the defenders, that the question in dispute was as to the amount of compensation payable to the claimant for final settlement, and was determined by agreement, the agreement being that the defenders agreed to pay, and the pursuer agreed to accept, £6 in full settlement of all claims in respect of said accident.

"The request to record that agreement was signed by the law agent of the claimant—the pursuer in the present action.

"In addition to the conclusion for reduction of the memorandum there is a conclusion for declarator that no agreement as to compensation to be paid to the pursuer under the Workmen's Compensation Act 1906, in respect of the injuries received by him while in the defenders' employment, has been concluded between the pursuer and the defenders.

"It is not now suggested that the agreement was obtained by any improper means. That matter was made the subject of an application, in terms of the Workmen's Compensation Act, in the Sheriff Court, in which the Court was asked to grant warrant to remove the memorandum from

the register, 'in respect that the same was obtained by improper means, the pursuer having granted the discharge under essential error as to the nature and effect of the injury from which he was suffering,' induced by the defenders.

"The Sheriff, proceeding on a joint minute of admissions, refused the application by award dated 22nd July 1910. The pursuer did not bring the award under review of the Court of Session. The facts as to the application and the award are not in dispute, and both parties founded on the joint minute of admissions to which I have referred.

"The pursuer maintained that the parties in concluding the alleged agreement were in mutual error as to an essential fact, viz.—The nature of the pursuer's injuries, and further, that there was no *consensus in idem placitum*, in respect that while the pursuer understood that his claim to compensation under the Act was admitted by the defenders, the defenders did not regard his claim as a competent claim under the Act at all, but agreed to make the payment of £6 *ex gratia*, and without admitting liability, that the agreement therefore was in fact not an agreement to settle an admitted claim under the Act, but an agreement that no claim should be made under the Act.

The pursuer's averments, on which the pleas of no *consensus in idem placitum* and of mutual error are founded, are contained in condescendence 6.

"I am of opinion that these averments are not relevant to infer the conclusions of the summons.

"The pursuer's averments as to *consensus in idem placitum* come to no more than this, that while agreeing to settle the pursuer's claim as a claim under the Act, the defenders did not admit that the claim was a competent claim under the Act. But both parties were none the less at one as to what the agreement was intended to effect. There was no difference of view as to either the subject-matter, the terms, or the consideration. The defenders were under no mistake as to what the pursuer's claim was, and for the purpose of settling it they agreed to pay a certain amount of compensation. In so doing they assumed that it was, and treated it as, a claim properly arising under the Act, and it seems to me a matter of no relevancy whatever what mental reservation they made as to its competency. There was no expressed reservation of any kind. For the purposes of the claim they admitted liability, and so entitled the workman to take all the steps competent to him under the Act, including the recording of a memorandum of the agreement. That they were bound by the memorandum was assumed and admitted by both parties in the proceedings in the Sheriff Court.

"In the face of its express terms it seems to me impossible to pronounce a decree of declarator in the terms concluded for, solely on the ground that the defenders, though consenting to be parties to the agreement, declined to admit the validity of the pursuer's claim.

"The other ground on which the pursuer founded was that there was mutual error as to a material fact which existed at the date of the agreement, namely, that whereas the parties thought that the workman was merely suffering from superficial injuries done to his hand by lime burning, he was in fact suffering from septic hand—that the true nature of the injury was therefore unknown. It seems to me that at the best for the pursuer the ignorance of the parties was only as to the extent of the injuries he was suffering from, but the pursuer is not entitled to go back upon an agreement to accept a certain sum as in full settlement of his claim merely because he now finds that the injury has proved more serious than he anticipated, and that he under-estimated the compensation which he might have demanded. It is not said that the defenders were acting in *mala fide* in coming to terms with the pursuer.

"It seems to me a hard case for the pursuer, but I cannot give him the relief which he seeks in this action. The fact that a man has made a bad bargain is no reason for holding that he has made no bargain at all.

"In dismissing the action on the ground that the pursuer's averments are irrelevant I have assumed that it is competent, but I do not decide that it is."

The pursuer reclaimed, and argued—The memorandum should be reduced at common law, because both parties were in error at the time the agreement was concluded as to the extent of the appellant's injuries, which had proved much more serious than was then anticipated. Moreover, there was no *consensus in idem placitum* between the parties in respect that whilst the appellant regarded the payment as a payment under the Act, the respondents regarded it as *ex gratia*. The reduction was not barred by the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), because the agreement was not an agreement concluded under that Act, since the respondents had not admitted that they were liable under the Act. Therefore there was nothing in the Act to prevent a reduction—*Robertson* v. *S. Henderson & Sons, Limited*, June 2, 1904, 6 F. 770, *per* Lord Kinnear at p. 774, 41 S.L.R. 597, at p. 600; *Hughes* v. *Thistle Chemical Company*, 1907 S.C. 607, *per* Lord President at p. 614, 44 S.L.R. 476, at p. 481; *Rendall* v. *Hill's Dry Docks and Engineering Company*, [1900] 2 Q.B. 245. Moreover, the memorandum ought never to have been registered. By section 9 (*d*) of the Second Schedule of the Act the sheriff-clerk ought to have refused to register the memorandum on account of the inadequacy of the payment and referred the matter to the Sheriff—*Mortimer* v. *Secretan*, [1909] 2 K.B. 77, *per* M.R. at p. 79. The Sheriff would then have delayed registration until the matter had been inquired into—*M'Ewan* v. *Wm. Baird & Company, Limited*, 1910 S.C. 436, 47 S.L.R. 430. In England, by rule 49 of the English Work-

men's Compensation Rules (1907-1909) the registrar was bound to apply his mind to the question of the adequacy of the payment. The relative inquiry form 36 (*a*) made it quite clear that the registrar had to consider the question. If he failed to do so the workman was entitled to have the memorandum set aside—"*Segura*" (*Owners of Ship*) v. *Blamfield*, February 24, 1911, 4 B.W.C.C. 192, *per* M.R. The same duty was incumbent on the sheriff-clerk in Scotland, for by failing to consider the question of the adequacy of the payment the sheriff-clerk in this case deprived the appellant of the security provided by the Act. In the case of *Robert Forester & Company, Limited* v. *Fleming*, June 20, 1908, 16 S.L.T. 139, employers were held to be barred from reducing a memorandum, but that was because they had already founded on it in previous proceedings. The appellant had no other remedy than this action of reduction, because the provisions of sub-section (*e*) of section 9 only applied to cases where the agreement had been "obtained by fraud or undue influence or other improper means," and that was not the case which the appellant made here.

Argued for the respondents—The memorandum should not be reduced. Even if a reduction were competent at common law the memorandum ought not to be reduced, because the agreement was binding on both parties, and the payment made under the memorandum bore to be "in full settlement of all claims in respect of said accident." The only question was, did the parties understand what the memorandum meant? They both understood it, and it was not suggested that the appellant's law agent, who signed it, had not been authorised to do so—*North British Railway Company* v. *Wood*, July 2, 1891, 18 R. (H.L.) 27, 28 S.L.R. 130; *Dornan* v. *Allan & Son*, November 22, 1900, 3 F. 112, 38 S.L.R. 70. But a reduction at common law was not competent, because the agreement was concluded under the Workmen's Compensation Act 1906. The appellant's own argument to the effect that the memorandum should not have been registered, because the sheriff-clerk had failed to inquire as to the adequacy of the payment, inferred that it was an agreement under the Act. This was also shown by the fact that the payment had been calculated on the basis of what the respondents were liable for under the Act, redemption of past-due as well as future compensation being competent thereunder. With regard to the appellant's argument that the sheriff-clerk ought to have made inquiries as to the adequacy of the payment, even if he had done so, he could not have obtained any more information on the point than he already possessed in the minute. But the sheriff-clerk was not bound to make such inquiries. By sub-sec. 9 (*d*) of the Second Schedule of the Act a duty was put on the workman, where the payment was considered inadequate, to place information on the point before the sheriff-clerk. Sub-sec. 9 (*d*) did not direct the sheriff-clerk *ex proprio motu* to institute an inquiry. Rule 49 of the English Workmen's Compensation Rules (1907-1909) only directed the registrar to send certain notices to the parties. It did not require him to make an inquiry, but whatever might be the duty imposed on registrars in England by the English rules, these rules did not apply to sheriff-clerks in Scotland, who were governed by the Act of Sederunt, 26th June 1907, and sec. 11 of the Act of Sederunt did no more than direct the sheriff-clerk, if the genuineness of the memorandum was disputed, to send a notification of the fact to the opposite party—*Mortimer* v. *Secretan* (*cit. sup.*); and "*Segura*" (*Owners of Ship*) v. *Blamfield* (*cit. sup.*) were English cases, and the English rules did not apply to Scotch cases.

At advising—

LORD SALVESEN—[*After narrating the facts*]—I agree with the Lord Ordinary in holding that these averments disclose no relevant ground at common law for setting aside the agreement. The decision of the House of Lords in the *North British Railway* v. *Wood* (18 R. (H.L.) 27) appears to be conclusive on this point. The facts there were very much more favourable to the pursuer, for he had not had the benefit of an agent to consult with, and was suffering from the effects of the accident at the time when the settlement was made, whereas in a minute of admissions which was produced in certain other proceedings at the pursuer's instance it is expressly stated that both the pursuer's agent and the representative of the insurance company who carried through the settlement acted in good faith. As the Lord Ordinary points out, the fact that a man has made a bad bargain is no reason for holding that he has made no bargain at all. In making the bargain he took his chance that he might not recover within the period of ten weeks for which he was allowed compensation.

A second ground upon which the agreement was challenged was that it was not an agreement which could be properly registered under the Workmen's Compensation Act. It was said that at the time when it was made the defenders did not admit liability under that Act, having taken up the position to which they still adhere that the pursuer had not met with an accident. According to the pursuer the transaction was a compromise of a disputed claim, and not a redemption by way of a lump sum of a weekly payment due under the Workmen's Compensation Act. There would have been force in this argument if the pursuer had averred that he accepted less than he would otherwise have considered himself entitled to under the Workmen's Compensation Act, being apprehensive that if he prosecuted his claim he might recover nothing. There is no such averment on record. On the contrary, the pursuer says—"(Cond. 6) In accepting the said sum of £6 the pursuer understood that the defenders' liability

was admitted, and that, as the representative of the insurance company stated, he was getting ten weeks' compensation." He cannot therefore maintain that the compensation agreed on was, so far as he and his agent were concerned, fixed with reference to the possibility that he had no legal claim at all. In short, the attitude of the defenders on the question of liability had no bearing on the transaction. Although not admitting liability, they were prepared to settle with him on the footing that he had a good claim for compensation under the Act, and the only matter to which the parties applied their minds was the probable duration of his continued incapacity for work. Both parties were honestly of opinion that recovery might be looked for within ten weeks of incapacity emerging, and the sum of £6 is said by the pursuer himself to have represented compensation at the rate of 12s. 9d. per week for that period. This sum is not an exact multiple of 12s. 9d., which would have amounted to 7s. 6d. more for the agreed-on probable duration of the incapacity, but it was explained that some 12s. 6d. more was in fact paid at the time, part of which apparently the pursuer authorised his agent to retain. I am unable to hold that the mere fact that the employer disputes liability will prevent a settlement of a workman's claim under the 1906 Act, if, in fact, he is willing that the compensation should be fixed exactly on the same footing as if liability were admitted.

The most serious argument in the case, and the only one which makes it of general interest, was maintained on the terms of section 9 of the Second Schedule of the Workmen's Compensation Act 1906, which prescribes the procedure for obtaining a memorandum of agreement recorded. The facts averred are that the memorandum was signed by the pursuer's own law agent and transmitted by him to the sheriff-clerk in Glasgow, that intimation was made to the employers of the presentation of the memorandum, and that, no objection having been taken by them, it was placed upon the register. It is not said that the pursuer's agent in so acting acted outwith his authority, and indeed I think it may fairly be taken to have been part of the arrangement that he should present the memorandum to the sheriff-clerk and be paid for doing so by the employers. So far as the sheriff-clerk was concerned the procedure specifically prescribed by the Act was apparently complied with.

Sub-section (*d*) of section 9, however, introduced a new provision for the purpose of protecting an injured workman against a settlement of his claims for an inadequate sum. It is in these terms—". . . [*quotes, v. sup. in second rubric*] . . . ;" and sub-section (*e*) provides that the judge, may, within six months after a memorandum of agreement as to the redemption of a weekly payment by a lump sum, order that the record be removed from the register on proof that the agreement was obtained by fraud or undue influence or other improper means. The pursuer has already taken advantage of this latter sub-section, but failed to convince the Sheriff-Substitute that there were any grounds upon which the register should be corrected. It is noteworthy that while one of the grounds on which the registrar may refuse to allow a memorandum to be recorded is the inadequacy of the sum accepted, no machinery is provided to have the register rectified on this ground after the memorandum has entered it.

The only averment on this head is contained in cond. 7, where, after narrating that the sum of £6 was quite inadequate compensation for the injury sustained, the pursuer goes on to say—". . . [*quotes, v. sup.*] . . ." An Act of Sederunt was passed in 1906 to regulate the procedure under, *inter alia*, this section, but it makes no provision for the sheriff-clerk in the performance of his statutory duty doing anything more than to notify all parties interested other than the party on whose behalf the application is presented. It leaves it, however, open to him to exercise the power conferred by sub-section (*d*) of refusing to register the memorandum if he has any information which he considers sufficient that it ought not to be registered by reason of the inadequacy of the sum accepted by the workman. It appears that by the rules framed by the English judges the registrar must make certain inquiries of the parties before proceeding to register, but no such duty is laid on sheriff-clerks by the Act of Sederunt. It was argued, however, that he must apply his mind to the question, and that his failure to do so in any given case entitles the workman to disregard the agreement which he had himself made. I am unable to reach this result. I think what the statute primarily contemplates is that there is something on the face of the agreement which the sheriff-clerk thinks calls for explanation, in which case he is entitled to make inquiries, not necessarily limited to the parties themselves, as under the rules of court in England, as to whether the workman had not really been taken advantage of, and if he is of that opinion he is to refer the matter to the judge. If it were otherwise we should have to hold that in every case where a lump sum accepted as compensation proved to be inadequate the injured workman was entitled to have the agreement set aside if he could show that the sheriff-clerk had in fact made no inquiry. No duty of inquiry is laid upon the sheriff-clerk, and it would involve a very large extension of his duties in a town like Glasgow if it were to be held that in every case of the kind he was bound to ascertain the facts connected with an accident and the probable duration of the injuries resulting therefrom. Where the workman and employer, both acting under legal advice, are agreed as to the amount of compensation payable, it may in the ordinary case be presumed that it fairly represents the amount to which the workman is entitled, and I cannot find that the sheriff-clerk has any duty of refusing, in

the possible future interests of the workman, to record such an agreement. Here there was nothing on the face of the memorandum to show that the parties' estimate of the extent of the injuries was erroneous. The injury is described as "an injury to right hand through being burned by lime caused by accident in the employment of" the defenders. The memorandum further sets out that the question in dispute was as to the amount of compensation payable to the claimant for final settlement, and that it was determined by agreement. All this is an accurate account of what had taken place, and there was nothing to suggest to the mind of the sheriff-clerk that he ought to suspend the operation of the agreement until he had made inquiry into the facts. At all events it is certain that he had no duty imposed upon him by statute or by the Act of Sederunt to make inquiry, and his failure to do so cannot be described as a departure from the statutory procedure. On these grounds I think this branch of the pursuer's case also fails, and that we ought to affirm the interlocutor appealed from.

LORD HUNTER—I also think that this reclaiming note ought to be refused. The only question of difficulty appears to me to be whether or not any agreement under the Workmen's Compensation Act 1906 was entered into between the parties, a memorandum of which could be registered. Had the payment of £6 by the defenders to the pursuer been a payment of a lump sum without any reference to the amount of the weekly payment to which the pursuer was entitled under the Act, and made with a view to prevent any claim either under the Act or at common law, I do not think that the memorandum could have been registrable under the Act. Such an arrangement would not be an agreement relative either to the amount of compensation payable under the Act during incapacity, or to the redemption of a weekly payment by a lump sum payment, but an agreement to exclude the workman from the benefit of the provisions of the Act, and for the registration of a memorandum of such an agreement I do not find any statutory sanction. The defenders have, by the statements they have made in defence, allowed this point to be taken against them. But the pursuer's case must be judged by his own averments. He says that the payment of £6 represented compensation at the rate of 12s. 6d. for ten weeks, both parties contemplating that his incapacity for work would not be of longer duration. Such a payment is a typical redemption payment under the Act, as to which parties may, in terms of section 17 of the First Schedule of the Act, come to an agreement without having recourse to the machinery of the statute. The agreement is not invalidated by the defenders not admitting liability if they have agreed to the amount being fixed as though they were liable, and that is how the pursuer presents the case against them.

The pursuer founded upon the terms of section (9) (*d*) of the Second Schedule of the Act, which provides that ". . . [*quotes, v. sup. in second rubric.*] . . ." In Scotland the sheriff-clerk takes the place of the registrar, and the Sheriff-Substitute is the judge. It is plain that the Legislature intended this provision to be some protection to the workman. In the case of *Mortimer* v. *Secretan* ([1909] 2 K.B. 77) the Master of Rolls at p. 79 says—"He [*i.e.* the employer] may also make an agreement with the injured workman, but not an agreement in the sense in which a master and servant would under ordinary circumstances make an agreement, for the Act comtemplates that an agreement made between an injured workman and his employer under which the workman is to receive a lump sum, ought to be carefully investigated, and it provides, in order to terminate the liability of the employer to continue the weekly payments, that the memorandum of agreement shall be recorded. The parties first have to go before the registrar, who acts, not on evidence, but on information, and if he thinks the amount is inadequate then he has to report it to the judge, and has to give notice to the parties."

Under the Rules of Court in England (Rule 49, and Form 36 (*a*) relative thereto) provision is made for the registrar getting information from the parties which will enable him to consider as to the adequacy of the lump sum payment. In Scotland there are no similar provisions imposing any duty of inquiry upon the sheriff-clerk. But sections 11 and 12 of the Act of Sederunt, dated 26th June 1907, passed to regulate the procedure under the Workmen's Compensation Act, contemplate, that the sheriff-clerk may exercise the discretion entrusted to him by refusing to register. To enable him to exercise this discretion I think it would be preferable if the memorandum of agreement were expressed in other language than that adopted in the present case, and bore upon its face to be an agreement for the redemption of a specified weekly payment. There is, however, nothing in the present case to lead one to suppose that if the sheriff-clerk had received the information from the parties which the registrar in England obtains, he would have formed a different opinion as to the nature and extent of the pursuer's incapacity from that formed by the pursuer himself and his agent. It is unfortunate for the pursuer that his injuries have turned out to be more serious than parties contemplated when he received payment of the lump sum, but that is no sufficient ground for reduction of the recorded memorandum of agreement.

The LORD JUSTICE-CLERK concurred.

LORD DUNDAS and LORD GUTHRIE were absent, Lord Dundas being engaged in the Extra Division.

The Court adhered.

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