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,

and maintained that the present proceedings were rendered necessary by the respondents' letter of 17th May aftermentioned, and that the appellant was still disabled as the result of the accident. The respondents contended that the appellant had recovered, and that the admission contained in their letter of 15th March rendered it unnecessary for the appellant to obtain a declaration of liability against the respondents, since he could record the same as an agreement under the Act. The letter of 15th March from the respondents to the appellant bore—'We are in receipt of your letter of 11th inst., and have to inform you that 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. We may state that your client has already received three weekly payments.' The letter of 17th May from the respondents to the appellant bore—'Referring to your call upon me on Wednesday last, this case had the further consideration of my directors at a meeting here yesterday, and I have to advise you that they positively decline to make any advance on the offer already made by me to you, viz., £10, and £1, 1s. of expenses. If this is not accepted within three days from date I will be compelled, in accordance with their decision, to stop payments at once, and leave you to take whatever course you think desirable.' After a proof I pronounced the following interlocutor:—*Greenock, 28th June* 1901.—The Sheriff-Substitute having heard parties' procurators and considered the whole cause; Finds it admitted (1) that the pursuer lost his right eye as the result of an accident received while employed as a holder-on by the defenders; (2) that the pursuer suffered no other injury than the loss of his right eye, his left eye having remained until now unaffected by the accident; (3) that the letters of 15th March 1901 and 17th May 1901, passed between the parties therein named on the dates they bear; (4) that defenders made to pursuer, from the fortnight after the accident down to 3rd June last, weekly payments of half his average wages: Further finds it proved (1) that the pursuer had on 3rd June last recovered from the wound caused by the injury to and the removal of his eye, that the pursuer did not seek to return to his employment or to obtain any other employment; (2) that the loss of an eye does not prevent a holder-on from being able to earn as large wages as he did previous to its loss: Finds in law (1) that the letter dated 15th March 1901 was a settlement by agreement upon which a memorandum of agreement could be expede and recorded in the Special Register kept under the Act; (2) that the pursuer should have proceeded by way of recording a memorandum, but that in the present case no prejudice has been suffered by the defenders in consequence of the form of proceedings taken; (3) that the defenders have paid to the pursuer all sums which have hitherto become due to him in respect of the said injury; (4) that in respect of said admission of liability, no declaration of liability requires to be pronounced in this action, and therefore assoilzies the defenders: Finds them entitled to expenses," &c.

The following questions of law were, *inter alia*, submitted for the opinion of the Court—"(1) Whether the letter of 15th March 1901 was an agreement in terms of the Workmen's Compensation Act 1897, of which a memorandum could be recorded conform to said Act? (2) Whether said letter has not now been superseded by the decree in above cause? (3) Whether it is still competent to proceed by way of recording a memorandum on said letter in case of future incapacity?"

The Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), sec. 1 (3), enacts — "If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act, . . . or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall . . . be settled by arbitration in accordance with the Second Schedule to this Act."

The Second Schedule, sec. 8, provides—"Where the amount of compensation under this Act shall he ascertained . . . under this Act . . . by agreement, a memorandum thereof shall be sent, in manner prescribed by rules of Court . . . by any party interested to the registrar of the county court for the district in which any person entitled to such compensation resides, who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the said memorandum shall for all purposes be enforceable as a county court judgment."

By section 14, in the application of the Act to Scotland, "'sheriff' is to be substituted for 'county court judge,' 'sheriff-clerk' for 'registrar of the county court,' and 'Act of Sederunt' for 'rules of court.'"

Argued for the appellant—Although the appellant had in the meantime recovered from the effects of his injuries, he was entitled to have a declaration of the respondents' liability to pay compensation in the event of subsequent incapacity supervening. He could not now register a memorandum of agreement in terms of the respondents' letter of 15th March, having regard to the repudiation of liability contained in their letter of 17th May, and the decree of absolvitor pronounced by the Sheriff.

Counsel for the respondent were not called upon.

At advising—

LORD JUSTICE-CLERK—I have no doubt in holding that in this case the letter founded on did constitute an agreement such as the injured party was entitled to have registered under the Act, and therefore I am prepared to answer the first question in the affirmative. I have had more doubt about the question whether, as the case is stated, the Court is in a position to answer the second and third questions, these being questions for which it is difficult to

find any deliverance of the Sheriff to which they can be held to apply as queries put on appeal in the stated case. But while entertaining this technical doubt I do not feel called on, if your Lordships think they should be answered, to express my view upon them. I think that the answer to be given to them should be an affirmative answer, viz., that the letter has not been superseded, and that it is still competent to proceed by registration of the memorandum.

LORD TRAYNER concurred.

LORD MONCREIFF—Under the Act, section 1 (3) where a question as to the amount or duration of compensation has been settled by agreement there is no room for arbitration; it is excluded. The workman's proper course is to get a memorandum of agreement recorded (Second Schedule (8)).

Here the compensation was settled by agreement, and therefore the Sheriff-Substitute held rightly that arbitration was excluded.

I would therefore answer questions one, two, and three in the affirmative.

LORD YOUNG was absent.

The Court answered the questions of law in the affirmative, recalled the interlocutor of the Sheriff-Substitute, and remitted to him to dismiss the application.

Counsel for the Appellant — Salvesen, K.C.—Munro. Agents—Gardiner & Macfie, S.S.C.

Counsel for the Respondents—Campbell, K.C.—Younger. Agents—Morton, Smart & Macdonald, W.S.

Thursday, November 28.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

MASON *v.* ORR.

Reparation — Assault — Police Constable — Regulation of Traffic.

To make a relevant case of assault against a police officer on duty it is necessary to aver either that the order which the officer was seeking to enforce was outside the scope of his duty; or that the pursuer was willing to comply with the officer's order and that consequently force was unnecessary; or that the force used was manifestly in excess of the requirements of the case.

Averments of assault against a police officer engaged in the regulation of traffic which *held* irrelevant as not fulfilling any of the above requirements.

David Mason, manufacturer, 123 Argyle Street, Glasgow, raised an action against John Orr, superintendent of police, Glasgow, concluding for payment of £500 as damages for assault.

The pursuer's firm were tenants of premises at 123 Argyle Street and 8 and 12 Maxwell Street, Glasgow. Their landlords were the Glasgow and South Western Railway Company, and their premises on the south and west were situated on the North Drive, forming part of the entry into St Enoch's Station, and had a back entrance thereon.

During the visit of the Duke and Duchess of Fife to open the Glasgow Exhibition in May 1901 they had occasion several times to enter or leave the city by St Enoch's Station.

The pursuer in the present action averred that a foot-pavement extending along the North Drive to the extent of 15 yards or thereby was part of the property leased by his firm from the railway company.

He further averred—"Cond. 7. In the course of said 3rd May it became known that the Duke and Duchess of Fife would again arrive at St Enoch Station at about four o'clock in the afternoon on their way to Renfrew, and on the approach of that hour the pursuer's work-girls, to the number of thirty or forty, again left his premises and lined the pavement forming part of the premises tenanted by him as aforesaid. The pursuer gave permission for them to do so, and about the time when the Royal party were expected to arrive he himself left the factory and stood on the pavement beside the work-girls. Observing a Glasgow and South-Western Railway inspector in charge of the arrangements at the station, the pursuer as a matter of courtesy asked him if he had any objections to the work-girls occupying the pavement. Said inspector said 'Certainly not.' The pursuer thereupon returned to the girls, who were standing quietly on the pavement beside the wall of the pursuer's premises. Thereupon an inspector of police began to molest the pursuer's workers, ordering them into the pursuer's factory. The pursuer told him that the pavement formed part of his premises, and that he had given his workers permission to stand where they did. (Cond. 8). The inspector thereupon went to get instructions from the defender, who was standing a short distance away. In the meantime the pursuer entered his premises and remained inside for a little. He was recalled to the North Drive by the noise caused by the defender and two or three policemen pushing his work-girls down the steps into the warehouse. The pursuer on coming into view observed the defender catching hold of the girls by the arms and pushing them with needless violence down the steps and towards the door of the warehouse. One of the workers was thrown down the stairs, and her foot was severely sprained by the fall. Another worker also fell and had her dress torn. The pursuer went outside the factory and on to the pavement forming part of his premises, and informed the defender that he must cease abusing the girls in the way he was doing. The defender thereupon got into a temper and caught hold of the pursuer by the arm, and pushed and dragged him with unnecessary violence down the steps, saying 'I will