to do with the judgment of all your Lordships, he stands entirely acquitted of the charges brought against him, either against his business capacity or his integrity. I think him entitled to be absolved from the conclusions of the action.

LORD CHANCELLOR—I entirely agree that this appeal should be allowed.

Their Lordships reversed the order appealed from, with expenses.

Counsel for the Appellant (Defender)—Lawrence, K.C.—Christie. Agents—R. & R. Denholm & Kerr, W.S., Edinburgh—Wilde, Moore, Wigston, & Company, London.

Counsel for the Respondents (Pursuers)—Munro, K.C.—Mair. Agents—James Ayton, S.S.C., Edinburgh—John Kennedy, W.S., Westminster.

COURT OF SESSION.

Thursday, February 10, 1910.

FIRST DIVISION.

[Sheriff Court at Hamilton.

WILSONS & CLYDE COAL COMPANY LIMITED *v.* CAIRNDUFF.

CADZOW COAL COMPANY LIMITED *v.* M'ALEER.

ROBERT ADDIE & SONS' COLLIERIES LIMITED *v.* COAKLEY.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *First Schedule* (16)—*Suspension of Charge—Competency of Suspension Pending Decision of Application for Review.*

Opinion (*per* the Lord President) that the only proper way to get rid of a recorded memorandum of agreement under the Workmen's Compensation Act 1906 is by an application to the Sheriff for review, and that an employer who has applied for review of an agreement is not entitled, pending the disposal of the application, to obtain a suspension of a charge made by the workman in virtue of an extract of the memorandum.

Sheriff — Suspension — "Competency" — Sheriff Courts (Scotland) Act 1907 (7 *Edw. VII, cap.* 51), *First Schedule, Rule* 125.

The Sheriff Courts (Scotland) Act 1907, First Schedule, Rule 125, enacts—"If objections be taken to the competency or regularity of suspension proceedings, the judgment of the Sheriff-Substitute on such objections may be appealed to the Sheriff, but his judgment shall be final."

Opinion (*per* the Lord President) that an objection to the "competency" of a suspension meant an objection to it as a form of process, and not an objection that there was no good ground for suspension, and that accordingly the question whether an employer who had applied for review of an agreement to pay compensation was entitled to obtain a suspension of a charge by the workman pending the disposal of the application, was not a question of competency within the meaning of the rule.

The Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51), enacts, section 8—"... In a summary cause, if the Sheriff, on appeal, is of opinion that important questions of law are involved, he shall state the same in his interlocutor, and he may then or within seven days from the date of his interlocutor grant leave to appeal to a Division of the Court of Session on such questions of law, but otherwise the judgment of the Sheriff shall be final." Section 28—"Subject to the provisions of this Act it shall be competent to appeal to the Court of Session against a judgment of a Sheriff-Substitute or of a Sheriff, but that only if the value of the cause exceeds fifty pounds ...." The First Schedule, Rule 125, is quoted in the rubric, *supra*.

Three appeals raising the same question were heard together.

I. The Wilsons and Clyde Coal Company, Limited, *pursuers*, raised an action of suspension in the Sheriff Court at Hamilton against William Cairnduff, miner, Shotts, *defender*. The complaint, as set forth in the initial writ, was as follows—"That they have been charged at defender's instance by virtue of an extract registered memorandum of agreement between defender and pursuers, recorded in the special register kept under the Workmen's Compensation Act 1906 in the Sheriff Court of the County of Lanark, at Hamilton, on the 2nd day of March 1909, to make payment to the defender of £6 sterling, being eight weeks' compensation from the 18th day of June to the 13th day of August, both in the year 1909, at the rate of 15s. per week, in respect of alleged total incapacity through injuries received in the pursuers' employment, whereas the defender was on 21st February 1909 certified by the medical referee, Dr B. C. M'Vail, M.B., to whom the case was referred by parties, as fit for light work. It is explained that the referee expressed his opinion that in about three months from the last-mentioned date the defender would be able to resume his former employment, and that on the said referee's report being issued the parties agreed that the rate of partial compensation should be 8s. 5d. per week. It is further explained, that there is presently pending before the Court an application at the instance of the pursuers to have the defender's right to compensation reviewed, the first deliverance in which application is dated 26th June 1909, and the proof in which is to be taken on 6th October. It is further explained, that the defender has already charged the pursuers for payment of four weeks' compensation, from 21st May to 18th June 1909, at the above rate of 15s., and that an application to have that charge suspended is presently pending before the Court, and proof has been fixed

for the above date, namely, 6th October 1909. The present charge is needless and oppressive. The pursuers are willing to pay compensation at said rate of 8s. 5d. for the period from 19th June to 26th June 1909."

The pursuers craved the Court "to suspend the said charge first herein-mentioned decree and warrants thereof, and on caution being found, meantime to sist diligence and to find the defender liable in expenses and to decern therefor."

On 20th August 1909 the Sheriff-Substitute (A. S. D. THOMSON) pronounced this interlocutor—"Caution having been found, grants warrant to cite the defender by serving a copy of the writ and warrant upon an *inducice* of seven days, and appoints him to answer within the Sheriff Court-House at Hamilton on Tuesday the 21st day of September 1909 at 10 o'clock forenoon, under certification of being held as confessed: Having heard parties' procurators upon the caveat for the defender, refuses in *hoc statu* to sist diligence, on pursuers' motion grants leave to appeal."

The pursuers appealed to the Sheriff (MILLAR), who on 11th November 1909 adhered to the Sheriff-Substitute's interlocutor and remitted to him to proceed.

Note.—"By paragraph 9 of Schedule II of the Workmen's Compensation Act of 1906, where the amount of compensation under this Act has been ascertained a memorandum thereof must be sent to the sheriff-clerk, who shall record such memorandum in the Special Register without fee, and thereupon the memorandum shall for all purposes be enforceable as a County Court judgment. By paragraph 17 it is provided that in the application of this schedule to Scotland 'County Court judgment,' as used in paragraph 9 of this schedule, means a recorded decree-arbitral. By paragraph 19 of Schedule I it is provided that a weekly payment or a sum paid by way of redemption thereof shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same. The object of this paragraph is that the injured workman shall have for his subsistence the sum awarded to him, and therefore it may be taken as in the strictest sense an alimentary debt. The question that has been raised in this case is due to the recent decision in the Supreme Court in *Donaldson Brothers* v. *Cowan*, 1909 S.C. 1292, 46 S.L.R. 920, where it was decided that when an application is made for review, and the Sheriff finds that as a matter of fact the injured workman has completely recovered from his incapacity at the date when the application for review is made to the Court, he may on the review end the compensation payable to the workman as at that date. The pursuers in this case say that they believe the defender has recovered from his injuries, and that they have made an application to the Court for review, and that until that application is considered it is impossible to say whether compensation is due to the respondent or not, and that therefore they should not be compelled to pay under the charge.

"The question was argued on the ground of hardship on each side, but the case of *Donaldson* seems to lay down that such a question should be determined from the point of view of the rules of procedure in the Court, not with reference to the hardship in any particular case.

"Taking the question apart from the procedure in the statute, the first consideration is what would the effect be of a recorded decree-arbitral. If a party came to the Court on a statement that he had entered into arbitration proceedings which were regularly carried out, and that the arbiter had pronounced against him a decree whereby he was bound to make termly payments to another person of a strictly alimentary character, and averring in connection with the decree that it was *ex facie* perfectly regular and binding, could he come to the Court and say that the arbiter had power under the submission to revise or end the payments, and that he had made application to the arbiter to do so, and he wanted the charge for the termly payments which were being exacted suspended until the arbiter should decide his fresh application? I think he could not, because the parties had by their own act committed the whole consideration of the question to the decision of the arbiter. The Court therefore could have no jurisdiction to say that an admittedly valid decree of the arbiter should not be enforced, and in my view therefore a suspension would be refused. Now it may be said that the analogy of a decree-arbitral may be carried too far, as it is only as to its effect that the recording of the memorandum is declared to be that of a decree-arbitral. But it is to be observed that the applications under this statute are brought as nearly as possible into conformity with proceedings in arbitrations, and it may be inferred that the right of the Court to interfere with recorded memoranda under the Act is no greater than its jurisdiction over decrees-arbitral.

"On the statute itself it is apparent that the procedure is strictly laid down. Application for review is not said to have the effect of sisting or suspending the payments to be made under a memorandum, nor is any power given to the Sheriff to deal with recorded memoranda in any other way than as set down in the Act. As the pursuers do not say that the memorandum was improperly recorded, or that there is any defect in it in any way, but only that there is a possibility of the compensation under it being ended, I do not think that is a sufficient ground on which to ask for suspension.

"The pursuers maintained that if suspension were refused that would do away with the effect of the judgment in *Donaldson's* case, as if payment were made to the workman it must be on the ground that he was indigent, and therefore in the event of the compensation being ended at the date of the application it would be impossible to recover the payments that had been

made between that period and the date of review. I can see no ground for assuming that the workman is indigent. The Act does not go on the ground of poverty on the workman's part, but merely that he is a workman and has been injured in the course of his employment. The effect of *Donaldson's* case therefore seems to me to be that in the event of the Sheriff on a review ending the compensation at the date of the application, and no compensation having been paid between the date of the application and the date of the review, then the workman would cease to have a right to demand it, and in the event of compensation having been paid the master would have a good action against the workman for repetition of the amount which he had wrongfully received. So far as the law is concerned it will not presume that a citizen, because he is a workman, would not pay any sum so decerned for. The pursuers, however, maintain that common experience would show that in a large number of cases the amount could not be recovered, and that therefore the masters would suffer, but that is just returning to the question of hardship which is irrelevant to the decision in the case.

"On the whole matter I am of opinion that the interlocutor of the learned Sheriff-Substitute should be affirmed."

The pursuers moved for leave to appeal, and on 16th November 1909 the Sheriff, under reference to the note, granted leave to appeal.

Note.—"I am more than doubtful, looking to section 28 and rule 125 of the Sheriff Courts Act 1907, whether there is any appeal from the Sheriff Court to the Court of Session in this case, but as the question seems to me to be of importance upon which it is highly expedient to have the ruling of the Supreme Court, I have granted leave to appeal, so that if it is decided that an appeal is competent with consent of the Sheriff it should not be barred by the want of that consent."

The pursuers appealed to the Court of Session.

II. The Cadzow Coal Company, Limited, *pursuers*, raised an action of suspension in the Sheriff Court at Hamilton against John M'Aleer, miner, Hamilton, *defender*.

The ground of suspension was the same as in I, viz., that the pursuers had applied for review of the compensation. The sum for which pursuers had been charged was £1, 0s. 2d., being two weeks' compensation at the rate of 10s. 1d.

On 1st September the Sheriff-Substitute (A. S. D. THOMSON) pronounced this interlocutor:—"Caution having been found, grants warrant to cite the defender by serving a copy of the writ and warrant upon an *inducice* of seven days, and appoints him to answer within the Sheriff Court-House, Hamilton, on Tuesday, the 21st day of September 1909, at 10 o'clock forenoon, under certification of being held as confessed, and having heard parties' procurators on the caveat lodged sists diligence."

The defender appealed to the Sheriff (MILLAR), who on 11th November recalled the sist of diligence and remitted to the Sheriff-Substitute.

Note.—"Reference is made to the note to the interlocutor of this date in *Wilsons & Clyde Coal Company* v. *Cairnduff*."

The pursuers moved for leave to appeal, and on 16th November 1909 the Sheriff pronounced the same interlocutor with the same note as in the preceding case.

The pursuers appealed to the Court of Session.

III. Robert Addie & Sons' Collieries, Limited, Coatbridge, *pursuers*, raised an action of suspension in the Sheriff Court at Airdrie against Patrick Coakley, Coatbridge, *defender*.

The ground of suspension was the same as in the preceding cases. The sum for which pursuers had been charged was 15s. 9d., being one week's compensation.

On 6th September 1909 the Sheriff-Substitute (GLEGG) pronounced this interlocutor —"On the pursuers finding caution acted in the Books of Court at Airdrie to the extent of £25 sterling, sists execution against the pursuers of the diligence at question until the future orders of Court, and grants warrant to cite the defender by serving a copy of the writ and warrant upon an *inducice* of three days, and appoints him to answer within the Sheriff Court-House at Airdrie on Friday the 10th day of September 1909 at 11 o'clock forenoon, with certification of being held as confessed—and grants leave to appeal."

On 14th September 1909 he pronounced this further interlocutor — "Finds that sufficient grounds for suspension are not stated by the pursuers; therefore recals the sist of diligence granted on 6th September curt.; dismisses the petition."

On 10th November 1909 the Sheriff (MILLAR) adhered. His note was the same as that quoted in I.

The pursuers asked for leave to appeal, and on 16th November the Sheriff granted leave under reference to his note. The note appended was the same as in I.

The pursuers appealed to the Court of Session.

Argued for the defender and respondent —Assuming this action involved less than £50, as the pursuers must maintain otherwise it would have been incompetently raised in the Sheriff Court, then under sections 7 and 28 of the Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51) the appeal was incompetent. The pursuers could not bring the case under section 8 even if it were regarded as coming within the definition of "summary cause," for no question of law was stated in the interlocutor, and even had a question been stated it would have been as to whether a suspension was in the circumstances a competent method of review, and on this the Sheriff was final — rule 125. But further, an appeal was not given under section 8, for the reason that this was not a "summary cause" within the meaning of the Act, but was a summary application, as appeared from the definition of summary

application in section 3 (*p*), and also from the use of the word "apply" in rule 123. Section 8 did not give a right of appeal under any conditions in a summary application.

Argued for the pursuers and appellants —The case was a summary cause. The definition of summary cause in 3 (*i*) was not exhaustive. It was an action, and an action must be a cause of some sort. It was difficult to imagine what sort of cause it was if not a summary cause. An appeal was given under section 8, the conditions of which were fulfilled. Sections 7 and 28 did not take away the right of appeal given under section 8, for they were expressly qualified by the words "subject to the provisions of this Act." The question of importance referred to by the Sheriff, and decided by him in the negative, was, Is an employer who has applied for review of an agreement to pay compensation entitled to obtain a suspension of a charge until the application has been disposed of? That was not a question of competency within the meaning of rule 125.

At advising—

LORD PRESIDENT—This case and the cases of *Cadzow Coal Company* v. *M'Aleer* and *Addie & Sons' Collieries, Limited* v. *Coakley* raise a question as to suspensions in the Sheriff Court. The state of facts on which the suspensions have been brought is this. A workman having registered a memorandum of agreement has proceeded to charge his employer upon that memorandum. The employer then presents an application for review, and at the same time brings a suspension in the Sheriff Court in order to have the charge suspended until the application for review shall be disposed of. The ground upon which he does so is that unless the charge is suspended he will not get the full benefit of the decision in *Cowan* v. *Donaldson Brothers*, 1909 S.C. 1222, 46 S.L.R. 920, namely, that upon an application for review the Sheriff may review the weekly payments as from the date of the application. The learned Sheriff-Substitute and, on appeal, the learned Sheriff have held that there was no ground for suspension, in respect that as the memorandum was duly registered, and was so to speak current, it could not be assumed *ab ante* that the application for review would be successful; and that no absolute injustice was done to the employer by refusing the suspension, because if eventually it was found that the compensation under the original agreement was to be ended or varied as from the date of the application, there would be a possibility of the employer's recovering the payments made subsequent to that date—a possibility in law at least, for no doubt there might be practical difficulties in the way of his recovering them. An appeal is taken from that judgment, and the first question which is raised and which we must decide is that of competency. The learned Sheriff says in his note that he is more than doubtful, looking to section 28 and rule 125 of the Sheriff Courts (Scotland) Act 1907, whether there is an appeal from the Sheriff Court to the Court of Session in this case, but he grants leave to appeal in case it should be held that an appeal is competent, and because he thinks it an important question.

I have come to the conclusion that the Sheriff's doubts are well founded and that here there is no appeal; but I think it right to say that I found my opinion entirely upon section 28 and not upon rule 125. Rule 125 is that "if objections be taken to the competency or regularity of suspension proceedings, the judgment of the Sheriff-Substitute on such objections may be appealed to the Sheriff, but his judgment thereon shall be final."

Now no doubt it may be said that this suspension is not competent, using that term in a loose sense as meaning that on the merits there is no good ground for suspension. That, however, is not the strict sense of "competent," and that is not the sense in which "competency" is used in rule 125. "Competency" is there used with reference to a suspension as a form of process. Now that a suspension could be used in certain circumstances is perfectly clear. To take the very simplest case: Suppose a workman charged for a sum under a registered memorandum, and the defence was that the sum had been paid already, it cannot be doubted that in that case a suspension would be competent. Therefore as a form of process a suspension seems competent enough. But to say this is very different from saying that suspension should be granted on the merits.

It is clear, therefore, that the question in this case is not really as to the competency of the suspension, and that accordingly rule 125 does not apply. But then we have to consider section 28, and it seems to me to end the matter. That section lays down that, subject to the provisions of the Act, it shall be competent to appeal to the Court of Session against the judgment of the Sheriff-Substitute or the Sheriff, but that only if the value of the cause exceeds £50. Now I do not think that in any conceivable circumstances the value of this cause could be said to exceed £50, and on this ground I think that there can be no appeal in this suspension.

That is enough for the decision of this case. On the merits—and this is one of those rare cases in which, although our decision on a preliminary point decides the case, we should express some opinion on the merits—it is enough to refer to our decision in *M'Ewan* v. *Wm. Baird & Company, Limited*, [1910] S.C. 436, 47 S.L.R. 430. The workman having at once recorded his memorandum, and that memorandum being so to speak current, the only proper way to get rid of it is by an application to vary it; and if I were called on to express an opinion on the merits, I may say that I should have come to the same conclusion as the Sheriff-Substitute has reached.

LORD KINNEAR and LORD DUNDAS concurred.

LORD M'LAREN and LORD JOHNSTON were absent.

In each case the Court sustained the respondent's objection to the competency of the appeal, dismissed the appeal and decerned, and remitted the cause to the Sheriff to proceed.

Counsel for the Pursuers and Appellants —Horne, K.C.—Carmont. Agents—W. & J. Burness, W.S.

In I. and II. Counsel for the Defender and Respondent — Constable, K.C. — Moncrieff. Agents—Simpson & Marwick, W.S.

In III. Counsel for the Defender and Respondent — Anderson, K.C. — Christie. Agents—St Clair Swanson & Manson, W.S.

Wednesday, January 18.

SECOND DIVISION.

[Lord Skerrington, Ordinary.

WILKINSON v. CITY OF GLASGOW FRIENDLY SOCIETY & OTHERS.

Friendly Society—Conversion into Limited Company—Friendly Societies Act 1896 (59 *and* 60 *Vict. c.* 25), *secs.* 71 (1), 74, *and* 106 *—Resolution Passed by Delegates—Ultra vires.*

The Friendly Societies Act 1896 enacts, sec. 71 (1)—"A registered society may, by special resolution, determine to convert itself into a company under the Companies Acts 1862 to 1890, or to amalgamate with or transfer its engagements to any such company." Sec. 74—"For the purposes of this Act a special resolution shall mean a resolution which is (*a*) passed by a majority of not less than three-fourths of such members of a registered society, entitled under the rules to vote, as may be present in person or by proxy (where the rules allow proxies) at any general meeting of which notice specifying the intention to propose that resolution has been duly given according to the rules; and (*b*) confirmed by a majority of such members entitled under the rules to vote as may be present in person, or by proxy (where the rules allow proxies) at a subsequent general meeting of which notice has been duly given, held not less than fourteen days nor more than one month from the date of the meeting at which such resolution was first passed." Sec. 106—"The expression 'meeting' shall include (where the rules of a society or branch so allow) a meeting of delegates appointed by members."

The rules of a friendly society which purposed conversion into a company made no special provision for procedure in such conversion, but provided, Rule IV (1)—"To enable members to arrange for the management of the society, they shall be represented by delegates, and annual general meetings and special meetings of the society for that purpose shall consist of meetings of delegates elected as hereafter provided."

Held that a special resolution for conversion of the society into a limited company must be submitted under secs. 71 (1) and 74 of the Friendly Societies Act 1896 to a meeting of members, not delegates, and must be passed by the majorities therein set forth.

Friendly Society—Conversion into Limited Company—Friendly Societies Act 1896 (59 *and* 60 *Vict. c.* 25), *sec.* 71 (1)—*Alteration of Objects—Ultra vires.*

A friendly society resolved by special resolution to convert itself into a limited company under sec. 71 (1) of the Friendly Societies Act 1896. Under the rules of the society the surplus of assets over liabilities might be allotted by way of bonus amongst members whose membership exceeded five years' standing and who were over 16 years of age. The bonus had to be given in the form of addition to the benefits, and no bonus was to be allotted except to whole life or endowment assurances. Under the memorandum of association of the proposed company the surplus assets might be divided as dividends among the whole shareholders. It was further provided that every member should be entitled to receive either one or two fully paid-up shares, according as he was or was not qualified to receive a bonus in terms of the rules of the society as above set forth at the date of registration of the company. These shares were to be called "A" shares. The remaining shares ("B" shares) were to be offered to those members of the society who were 16 years of age at the date of registration and had paid premiums amounting to at least 5s. to the society, or partly to the society and partly to the company. The memorandum further provided for the immediate division among the officials and employees of the society (including the delegates) of substantially one-third of the whole subscribed capital of the proposed new company.

Held that the scheme was invalid in respect that (1) part of the capital might be distributed among persons who under the existing rules of the society had no right to participate therein, and (2) that a large part of the society's assets would fall to be applied to entirely alien purposes.

Opinion per curiam that it was competent for a friendly society to convert itself into a limited company only on condition that the objects remained identical and unchanged.

William T. Wilkinson, residing at 119 Plantation Street, Accrington, *complainer*, presented a note of suspension and interdict against the City of Glasgow Friendly Society, which was registered under the Friendly Societies Acts and had its regis-