Now the only difficulty that I have had at all in this case is owing to the terms of the minute in which the respondents made their original crave. The minute is lodged also in terms of the Act of Sederunt, and runs thus — "Oliver for the defenders respectfully craved the Court to state a case for the decision of the First Division of the Court of Session upon the following question of law, viz., whether the death of the said Robert Euman was the result of an accident arising out of and in the course of his employment within the meaning of the Workmen's Compensation Act 1906." Now, strictly speaking, I think that question is wrongly put, because that is not a question for us. That would be simply asking us to reply to a question of fact upon the merits. The question is, as I have said, whether the evidence as led before the Sheriff could support the finding that he made. But although that is so, and although I think it should be made clear that the proper form of the question is as I have said, I think it would be treating the respondents too harshly if we refused to allow a case to be stated upon the ground that they phrased their question in that form, in view of the fact that there are many cases in the books where we have gone into the question of whether the evidence did support the findings in a reasonable sense upon a question phrased exactly as this question is phrased. As recently as the case of *Robson, Eckford, & Company* (23rd December 1911) the question was phrased in that way. I think the proper form of the question is the form that is given in the *Refuge Insurance Company* v. *Millar*, 1912 S.C. 37—"Whether there was evidence upon which it could be competently found that the said James Millar sustained an accident arising out of and in the course of his employment on 9th May 1910?"

I think that is the form in which the question ought to be put. To refuse this note because it is put in a different form would, I think, be treating the respondents too hardly. I think, therefore, the case should go back to the Sheriff in order that he may state the facts proved before him upon which he found that the death was the result of an accident arising out of and in the course of the employment.

LORD JOHNSTON—I think that in the minute presented to the Sheriff, and equally in the draft special case laid before him, the question put to him was one on which he was not bound to prepare a special case, and I cannot say he did wrong in refusing to do so. But now that the parties desiring to appeal have learned what the question ought to have been, I agree that it would be too stringent to refuse to let them have a case in proper form. I do so, however, with reluctance. For I think in the interest of the Sheriff as arbitrator it is imperative that he should know precisely what the question is to which he has got to apply his mind, to meet which he has got to prepare a case. I think that if the proper form of question were more consistently adopted, we should not have so much difficulty in determining whether cases coming here really present the *species facti* which the Sheriff ought to have stated, and doubtless would have stated, had his mind been properly directed to the precise question which the case was intended to raise. And further, the competency or incompetency of such cases would be much more easily determined. While therefore allowing in the circumstances a case to be stated, I should be inclined to mark this case in some such way as to indicate that as originally prepared it was incompetent.

LORD SKERRINGTON—I agree.

LORD KINNEAR and LORD MACKENZIE were sitting in the Extra Division.

The Court pronounced this interlocutor—

"Remit to the Sheriff Substitute as arbitrator to state a case upon the following question of law, viz., whether there was evidence upon which it could competently be found that the death of Robert Euman was the result of an accident arising out of and in the course of his employment: Find the pursuer and respondent entitled to expenses since 12th January 1912, and remit the account thereof," &c.

Counsel for Appellants—W. J. Robertson. Agents—Steedman, Ramage, & Company, W.S.

Counsel for Respondent—T. G. Robertson. Agents—J. J. Galletly, S.S.C.

Tuesday, May 28.

SECOND DIVISION.

[Sheriff Court at Dumbarton.

JOHN BROWN & COMPANY, LIMITED *v.* HUNTER.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (3)—*Arbitration—Competency—"Question" Arising in Proceedings under Act.*

An application by a workman for the registration of a memorandum of agreement under the Workmen's Compensation Act 1906 was objected to by the employers on the ground that the workman had signed a receipt which bore that compensation should be paid only while his employers were of opinion that his incapacity continued. The application was abandoned. The workman having then presented an application for arbitration to fix the amount of compensation, the employers objected on the ground that there was no "question" arising in any proceedings under the Act. *Held* that there was a "question" in the sense of the Act, and that the workman was entitled to have the amount of his compensation determined.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) enacts:—Section 1 (3)—"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. . . ."

This was an appeal by way of Stated Case from a decision of the Sheriff-Substitute (BLAIR) at Dumbarton in an arbitration under the Workmen's Compensation Act 1906 between John Brown & Company, Limited, engineers and shipbuilders, Clydebank, *appellants*, and Archibald Callan Hunter, labourer, Garscube Road, Glasgow, *respondent.*

The Case stated—"The respondent was a labourer in the employment of the appellants. His average weekly wages were 25s. He was injured on the 24th of March 1911 by an accident arising out of and in the course of his employment.

"The injury consisted of the loss of the third, fourth, and fifth fingers of the respondent's left hand, and the disablement of the thumb and forefinger of the same hand. It was caused by the wheels of an overhead electric crane running over said hand.

"Compensation at the rate of 12s. 6d. a week has been regularly paid since the date of the accident, and is still being paid to the respondent in consequence of said injury. These facts are admitted by both appellants and respondent.

"On 7th December 1911 the respondent lodged a petition in the Sheriff Court of Dumbarton narrating the said facts, and stating the question which had arisen between the parties is, what is the amount of compensation due to the respondent, and craving an award for the compensation due to the respondent under the Workmen's Compensation Act 1906. This petition, which was by way of initial writ, and contained only a bare statement of claim, was called in Court at Dumbarton on 19th December following, when the appellants lodged a written note of defence maintaining that the application was incompetent and premature in respect that there were no question in dispute between the parties in terms of section 1 (3) of the Workmen's Compensation Act 1906, so as to entitle the workman to present a petition for arbitration. In the note of defence it was admitted that the respondent was injured in the appellants' employment on 24th March 1911, that he was still incapacited as the result of that accident, that the appellants were paying the respondent compensation at the rate of 12s. 6d. per week, being one-half of his average weekly wage of 25s., and that the respondent had accepted, and was still accepting, this compensation. The appellants therefore craved that the application should be dismissed as incompetent and premature, with expenses.

"Nothing was said in the note of defence by the appellants about the respondent having signed the form of receipt now objected to and hereinafter set forth.

"I heard parties' procurators on these pleadings on 19th December 1911, when the respondent's agent submitted, for the first time in these proceedings, and in answer to the note of defence, a copy of receipt which he alleged the respondent had signed on receiving his first payment of compensation, in the following terms:—'Received from Messrs John Brown & Company, Limited, engineers and shipbuilders, the sum of 12s. 6d., being compensation due to me in terms of the Workmen's Compensation Act 1906 in respect of injuries which I received through an accident while in their employment; and I acknowledge that my employers and I have agreed that compensation shall be paid to me under this agreement only while the said John Brown & Company, Limited, are of opinion that my incapacity continues, and when they are of opinion that my incapacity has ceased, this agreement shall end. Reserving to me my rights otherwise to recover further compensation should I claim to be entitled to it. ARCHD. C. HUNTER.'

"A copy receipt was lodged in this process, but the original was not. It was and still is in the possession of the appellants, and it has never been produced by them. The appellants requested me to dismiss the petition on the ground stated in their note of defence. Respondent craved a proof.

"I refused the appellants' motion, and fixed a diet of proof, which took place on 11th January 1912. The respondent led evidence. The appellants refused to cross-examine the respondent's witnesses, and led no evidence on their own behalf.

"On 15th January 1912 I issued an interlocutor finding proved, *inter alia*, the facts admitted on both sides. I further found proved the following facts—(1) that the respondent on 15th May 1911 attended at the shipyard to receive his first payment of compensation; (2) that he was one of a long line of men also waiting to receive compensation; (3) that when he was opposite the pay window the appellants' clerk handed him a sum of money amounting to £4, 9s. 3d., stating that it was compensation for seven weeks and two days, and placed the printed form of receipt already mentioned before him, and asked him to sign it, which he did; (4) that its terms were not read over or explained to him in any way, nor was his attention directed to the fact that its terms made the appellants the sole judges of whether and when the respondent had recovered from his injuries; (5) that the respondent signed the receipt under essential error, in the belief that he was acknowledging only the sum handed to him by the appellants' clerk; (6) that on the 7th of June 1911 the respondent lodged in this Sheriff Court a memorandum of agreement, to be recorded in the Special Register, to the following effect—'That on the 7th of April 1911 the appellants agreed to pay to the respondent compensation under the Workmen's Compensation Act

1906, at the rate of 12s. 6d. per week, beginning the first payment as at 31st March 1911, and to continue the payment thereof until the same is ended, diminished, redeemed, or suspended in terms of the said Act,' and the appellants lodged a minute in answer, objecting to the genuineness of that memorandum of agreement; (7) that on the 17th day of June 1911 the respondent lodged another memorandum of agreement made on the 15th of May 1911, to be recorded in said register, whereby the appellants agreed to pay compensation under the Workmen's Compensation Act 1906 at the rate of 12s. 6d. per week, beginning the first payment as at 31st March 1911, and to continue the payments thereof until the same is ended, diminished, redeemed, or suspended, in terms of the said Act; and the appellants lodged a further minute objecting to the genuineness of that second memorandum of agreement; and (8) both petitions to record presented by the respondent were thereupon abandoned, because of the terms of the receipt granted to the appellants, and set up by them as their objection to the genuineness of the memorandum sought to be recorded. The appellants at the diet of proof intimated that they had no intention of binding the respondent down to the terms of the said receipt. I asked them to put in a minute to that effect. They declined.

"It was further proved that the respondent thereafter continued to receive his compensation without interruption. Accordingly I issued an award, and found that the receipt in question was a form of contracting out not authorised by the said Act; that it was signed by the respondent under essential error; that the only agreement entered into by the respondent was to receive compensation in terms of the Act; that the only way in which the respondent could protect himself against the appellants constituting themselves the sole judges as to when his compensation should terminate was by an award, especially in face of the fact that the appellants declined to put in a minute superseding all or any effect which the said receipt might have, and also in face of the fact that when the respondent had lodged a simple memorandum to record, the appellants disputed the genuineness thereof, and set up the afore-mentioned receipt as the real agreement between the parties; that the respondent had not recovered from the effects of his injury, and that he was entitled to compensation at the rate of 12s. 6d. per week from the date of said accident, so far as not already paid, and to continue until further orders of the Court; and I further found the appellants liable in five guineas of modified expenses.

"The validity of this form of receipt under the Workmen's Compensation Act is a constant source of discussion between the appellants and their workmen in compensation cases in the Sheriff Court, and it is earnestly desired by both parties that this question should be definitely settled by the judgment of the Court of Session."

The *questions of law* were—"(1) Was the receipt in question, as a receipt, a proper and competent form of receipt within the meaning of the Workmen's Compensation Act 1906? (2) Was the said receipt, so far as it purports to be an agreement, a competent and proper agreement in terms of the Workmen's Compensation Act? (3) In the circumstances, and in respect that the appellants paid and have continued to pay half wages to the respondent, was the procedure adopted by the respondent in asking for an award, and the award following thereon, competent?"

Argued for the appellants—The condition-precedent to arbitration was a dispute which must arise in proceedings under the Act as to liability to pay compensation. There was here no dispute, as the employers were paying compensation—*Caledon Shipbuilding and Engineering Company, Limited* v. *Kennedy*, June 26, 1906, 8 F. 960, 43 S.L.R. 687; *Gourlay Brothers & Company (Dundee), Limited* v. *Sweeney*, June 26, 1906, 8 F. 965, 43 S.L.R. 690. The dispute as to the memorandum of agreement was not a question in the sense of section 3 (1) of the Workmen's Compensation Act 1906 (6 Edw. VII, c. 58). Reference was also made to the case of *John Brown & Company, Limited* v. *Orr*, 1910 S.C. 526, 47 S.L.R. 437.

Argued for the respondent—The workman was entitled to have his right to compensation determined. There were only two ways of doing this, viz., (1) by recording a memorandum of agreement, (2) by arbitration. The former had been tried and failed, and the latter was therefore the only method left. There was here a dispute as to the duration of payment, or as to the way in which compensation should be ended—*Rendall* v. *Hill's Dry Docks and Engineering Company, Limited*, [1900] 2 Q.B. 245. The mere payment by the employer did not satisfy the condition under the Act that the man must make a claim within a certain time. In *Gourlay Brothers & Company (Dundee), Limited* v. *Sweeney* (*cit. sup.*), and in *Caledon Shipbuilding and Engineering Company, Limited* v. *Kennedy* (*cit. sup.*), there had been no attempt to record a memorandum of agreement, but here the fact that the recording of a memorandum had been objected to by the employers showed that there was a dispute—*Field* v. *Longden & Sons*, [1902] 1 K.B. 47, *per* Collins, M.R., at p. 54.

LORD DUNDAS—[*After a narrative of the facts of the case*]—Three questions are put to us in this case. As I have said, in my view (in which I understand your Lordships concur) I do not think we ought to answer either the first or the second. They are—(1) "Was the receipt in question, as a receipt, a proper and competent form of receipt within the meaning of the Workmen's Compensation Act 1906?" and (2) "Was the said receipt, so far as it purports to be an agreement, a competent and proper agreement in terms of the Workmen's Compensation Act?" It seems

to me that the terms of the receipt and its effect, whether as a receipt or as an agreement, are not and cannot be before us, looking to the fourth and fifth findings of the Sheriff-Substitute. Therefore for my part I do not desire to express any opinion upon the first and second questions put to us. I can see that there may be a question of very considerable importance that might very legitimately be put before the Court in other circumstances; but I repeat that the expression of opinion by the Sheriff-Substitute seems to me to have been quite unnecessary, and, that as regards myself, I express no opinion upon this question.

To the third question I think we must give an answer, although it does not seem to me that there is very much substance or importance in it. Indeed I think it was almost admitted that this case was really brought here in the hope, which I am sorry should be frustrated, of receiving an answer to the questions to which an answer is not going to be given. The third question is—"In the circumstances, and in respect that the appellants paid and have continued to pay half-wages to the respondent, was the procedure adopted by the respondent in asking for an award, and the award following thereon, competent?" As I have said, we have not got before us the actual terms or even the gist of the petition upon which all this matter depends; but all that I can say is that, having listened carefully to the argument, it does seem to me that the petition did raise or involve a disputed point as to the duration of the compensation, when one considers the way in which the appellants had twice, a few months before this application was made, strenuously founded upon the "receipt" as binding the respondent, and barring his claim to record a memorandum of agreement. On that ground I am prepared to say that the application in December 1911 was competent. That being so, I think the Sheriff was quite entitled to entertain it and to go on with it, especially when one looks at the manner in which the procedure was conducted, and that he competently pronounced his award. Therefore my view is that we should answer the third question in the affirmative, and I think it is unnecessary to say anything more upon the whole matter.

Lord Salvesen—I agree with the result at which your Lordship has arrived. I am quite clear that we cannot answer the first and second questions of law that are presented for our opinion.

As regards the third question, I am inclined to think that it raises a question of some general importance. In the ordinary case when an accident happens it is quite usual for the injured workman to apply verbally for compensation, and payments may thereafter be made to him. He is not, however, bound to let the matter remain upon an entirely indefinite footing, but is entitled under the Act to have his position legally formulated, and there being no written agreement between the parties that he shall receive compensation under the Workmen's Compensation Act, he is entitled to present a memorandum to have the agreement, as he understands it, recorded. If objection is taken to that, and if it appears that he cannot get his memorandum recorded because the employers maintain that they have paid under some conditions to which the workman maintains that he has not assented, or because they say that their payments are to be understood, not as inferring liability but simply as charitable donations, or for any other reasons, then I think he is entitled to have his position formulated in another way, namely, by an application to the Court to fix the amount of compensation. I think that is the effect of the opinion of Collins, M.R., in the case of *Field* ([1902] 1 K.B. 47, at p. 54), to which we were referred. He says—"If the workman gave notice that he proposed to send in for registration a memorandum of an agreement for payment of these amounts weekly as compensation during incapacity, and the employers were to say that there was no such agreement, then it appears to me that at once there would be a dispute, and a question would have arisen under section 1, sub-section 3"; and as the learned Judge was dealing with the former Act, this can only mean that the workman was entitled then to apply to the Court to fix the compensation. If, as in this case, the workman has tried to record a memorandum of agreement, and has been baulked by the employers producing a writing under his hand which purports that he had agreed not to take compensation under the Act but upon some other footing, then I do not see what other remedy he has than to present an application to the Sheriff to fix the compensation in an arbitration. That does not appear to me to trench in any way on the decisions in *Gourlay* (8 F. 965) and *Caledon Shipbuilding Company* (8 F. 960), to which we were referred. The ground of decision there was that the Court would not encourage workmen to rush to an arbiter with claims of compensation before they had tried to come to terms with the employers, and indeed before the employers had an opportunity of admitting their liability. But that is a totally different kind of case from that with which we are dealing here, where an agreement has been tabled by the employer—as to the validity of which I say nothing—to which the workman maintains that he was not a party.

Lord Guthrie—I agree with your Lordships. The question arises under section 1, sub-section 3, of the Act of 1906, and if it be the fact that there was a question as at 7th December 1911 between the parties under the Act, whether as to liability, amount, or duration, and if it be also the fact that the question had not been settled by agreement, then the respondent here was entitled to take the course he did in bringing a peti-

tion at that date. It seems to me quite clear that there was a double question as at that date, namely, first as to the existence of an obligation, depending on the receipt, and, second, if the obligation did exist legally, was it one that could be enforced?

It is said, however, that supposing there was a question at that date the defence put in by the appellants disposed of it. I find no such defence stated by the Sheriff-Substitute, because there was no admission that the compensation could only be ended in terms of the Act. It is further suggested that at all events now, after what happened later, the whole dispute between the parties has disappeared, because the appellants at the date of the proof intimated that they had no intention of binding the respondent down to the terms of the receipt. They declined, however, to put in a minute putting themselves under any obligation to that effect, and therefore it seems to me as at 7th December and also at the present moment, there was and is a dispute between the parties which the respondent is entitled to have settled in the way that he has taken.

I think, therefore, that the third question must be answered as your Lordships propose. It is a pity that the only question of great general importance—and it is of great general importance—and may be of great difficulty, raised in the case in the first and second questions, could not be answered; but that is the position.

Lord Justice-Clerk—I agree with your Lordships in holding that the first and second questions ought not to be answered by us. The questions are not really based on anything before us and cannot be dealt with by this Court. As regards the third question I have had some difficulty, but in the circumstances of the case I have come to agree that, as there was a receipt by the workman in such terms as to imply that the employers were to pay compensation only for so long as they chose to do so, that was sufficient to justify the workman in making an application to have the question settled.

The Court answered the third question therein stated in the affirmative.

Counsel for the Appellants—Macmillan, K.C.—J. Stevenson. Agents—Auld & Macdonald, W.S.

Counsel for the Respondent — Morison, K.C.—T. G. Robertson. Agents—Gardiner & Macfie, S.S.C.

VALUATION APPEAL COURT.

Thursday, April 18.

(Before Lord Johnston, Lord Salvesen, and Lord Cullen.)

HERBERT'S TRUSTEES *v.* INLAND REVENUE.

Revenue — Duties — Land Values — Increment Value Duty — Valuation — Assessable Site Value — Minus Value — Finance (1909-10) *Act* 1910 (10 *Edw. VII, cap.* 8), *sec.* 25.

The Finance (1909-10) Act 1910 provides that in certain events duty shall be payable on the increment value of any land, and that such increment value shall be deemed to be the amount (if any) by which the site value of the land, at the time of the collection of the duty, exceeds the assessable site value of the land as ascertained originally in accordance with the general provisions of the Act as to valuation.

Held that the assessable site value of land within the meaning of the Act could not be a *minus* quantity.

The Finance (1909-10) Act 1910 (10 Edw. VII, cap. 8) enacts:—Section 25—"(1) For the purposes of this part of this Act the gross value of land means the amount which the fee-simple of the land, if sold at the time in the open market by a willing seller in its then condition, free from incumbrances, and from any burden, charge, or restriction (other than rates or taxes), might be expected to realise. (2) The full site value of land means the amount which remains after deducting from the gross value of the land the difference (if any) between that value and the value which the fee-simple of the land, if sold at the time in the open market by a willing seller, might be expected to realise if the land were divested of any buildings and of any other structures (including fixed or attached machinery) on, in, or under the surface, which are appurtenant to or used in connection with any such buildings, and of all growing timber, fruit trees, fruit bushes, and other things growing thereon. (3) The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to any fixed charges and to any public rights-of-way or any public rights of user, and to any right of common and to any easements affecting the land, and to any covenant or agreement restricting the use of the land entered into, or made before the 30th day of April 1909, and to any covenant or agreement restricting the use of the land entered into or made on or after that date, if in the opinion of the Commissioners the restraint imposed by the covenant or agreement so entered into or made on or after that date was when imposed desirable in the interests of the public, or in