including an engine-house where the workmen's tools were sharpened on a grindstone driven by a gas engine, were held to be a factory. Other similar cases were cited These decisions afford authority for the proposition that where one business is carried on in a building all the rooms are part of the factory premises although mechanical power is used in only one of the rooms. They do not appear to me to necessitate the same conclusion where separate businesses are carried on in separate parts of the same building occupied by the same individual. If the appellant's contention were sound, the whole of a large retail shop of several storeys and many rooms would fall to be treated as a factory because in one room—it might be at the very top of the building—mechanical power was used. Many of the provisions of the Factory Acts, *e.g.*, hours of employment, time allowed for meals, notices, etc., are not necessarily appropriate to a retail business, and if insisted in might hamper a trader in a way not intended by the Legislature. I do not think the language employed in the section precludes the Sheriff from holding that the premises of a factory are one or more floors of a building of several floors in which one occupier carries on several businesses. If that is a sound view of the statute it does not appear to me in the present case that the Sheriff necessarily drew a wrong conclusion from the facts, and I therefore think that we ought to find that the Sheriff was entitled to reach the conclusion which he did.

LORD JUSTICE-GENERAL—I agree with your Lordships. There being no definition of the expression "premises" in the statute I find it very difficult to discover a question of law in this case. It appears to me rather to be a question of fact and of good sense; and, on the facts before him, I have no doubt the Sheriff-Substitute was entitled to reach the conclusion—which in effect he did—that the millinery room here was a workshop or part of a workshop and not part of a non-textile factory. And accordingly I doubt for my part whether we have any power to disturb this finding, and I am certain we ought not to do so.

I propose, therefore, in conformity with your Lordships' opinion, that we should answer the question put to us in the affirmative.

The Court answered the question in the case in the affirmative.

Counsel for Appellant—Solicitor-General (Morison, K.C.) Agent—Sir William S. Haldane, W.S., Crown Agent.

Counsel for Respondent—King Murray. Agent—D. Maclean, Solicitor.

COURT OF SESSION.

Thursday, October 29.

FIRST DIVISION.

[Sheriff Court at Dumfries.

IRVING AND ANOTHER *v.* INTERNATIONAL CORRESPONDENCE SCHOOLS, LIMITED.

Contract — Construction — Termination — Breach of Contract—Remedy—Implement or Damages—Tuition by Correspondence.

A company which conducted a system of education by correspondence contracted with a pupil to give him a certain course of instruction in return for the payment of a sum of money, to be paid a small sum at once and the rest by monthly instalments. After a time, but before the whole sum had been paid, the pupil declined further instruction and refused to continue the payments. In an action by the company for payment of the remaining instalments, *held* (1) that by the terms of the contract the pupil was under an obligation to pay the whole instalments; and (2) that the appropriate remedy of the company was an action for payment of the remaining instalments, not an action of damages.

In the Sheriff Court at Dumfries the International Correspondence Schools, Limited, London, W.C., *pursuers and respondents*, raised a small debt action against Samuel Roxburgh Irving, Ecclefechan, and John Irving, father of the said Samuel Roxburgh Irving, Ecclefechan, *defenders and appellants*, concluding for payment of the sum of £5, 7s. This sum was alleged by the pursuers to be due to them by the defenders, jointly and severally, in terms of a contract between the pursuers and the said Samuel Roxburgh Irving, and of an obligation of guarantee by the said John Irving to the pursuers thereto annexed.

The pursuers were a company whose business consisted in supplying courses of instruction by correspondence in a variety of subjects. By the said contract the pursuers undertook, in return for certain payments, to supply the said Samuel Roxburgh Irving with a course of instruction by correspondence in a certain branch of engineering science. The contract was contained in an application by the said defender, dated 17th September 1910, which was accepted by the pursuers and was, *inter alia*, in the following terms:—

"It is agreed as follows—

"*First*—That the fee hereinafter agreed to be paid for the course shall include—(*a*) All charge for instruction in all subjects of the course for which the said course calls until I am qualified to receive a diploma or certificate of proficiency, provided I complete the course within five years from the date hereof. . . .

"*Fifth*—That this application, when accepted by you, shall not be subject to cancellation, and that you shall not be required

to refund any part of the money paid for said course.

"I promise to pay for the above course the sum of *Twelve* pounds *Seventeen* shillings (£12 17 0)
less One pound discount 1 0 0
in the following manner, viz.—
One pound (£ 1 0 0)
at the time of signing this application, and *Ten shillings* (£ 0 10 0)
each and every month hereafter until the fee is paid in full." . . .

From September 1910 to May 1911 the said defender received instructions from the pursuers and made payments to them in terms of the said contract, amounting to £6, 10s. On or about 30th July 1911 the said defender wrote to the pursuers intimating that he found it impossible to continue his studies. Thereafter he refused to make further payments to the pursuers.

The cause having been remitted of consent to the ordinary roll, the parties made up a record. In a statement of facts lodged for the defenders it was averred that the said Samuel Roxburgh Irving had been compelled to give up his occupation as an engineer, that he had therefore ceased to have an interest in the engineering business, and that for lack of time it was impossible for him to proceed further with the said course of instruction.

The defenders pleaded—"(1) The action as laid is incompetent in respect that specific implement of the alleged agreement founded on cannot be enforced. (2) The pursuers' averments are irrelevant and insufficient in law to support the conclusions of the action. . . ."

The Sheriff-Substitute (CAMPION), by interlocutor dated 25th June 1914, repelled the pleas-in-law stated for the defenders, and granted decree against them jointly and severally for the said sum of £5, 7s.

The defenders appealed, and argued—On a true construction the agreement between the parties was terminable at will. The obligation upon the student to pay the whole instalments was conditional upon his accepting the whole course of instruction—*Krell* v. *Henry*, [1903] 2 K.B. 740. The agreement contained no express obligation on the student to take the whole course. In any event the pursuers' appropriate remedy was an action of damages, not an action for specific implement. Although an action for specific implement was a legal remedy for breach of contract, it was not necessarily the appropriate one—*Moore and Others* v. *Paterson*, December 16, 1881, 9 R. 337, the Lord President at p. 348, Lord Shand at p. 351, 19 S.L.R. 236; *Winans* v. *Mackenzie*, June 8, 1883, 10 R. 941, 20 S.L.R. 640; *M'Arthur* v. *Lawson*, July 19, 1877, 4 R. 1134, the Lord President at p. 1136, Lord Shand at p. 1138, 14 S.L.R., p. 668. The agreement here was analogous to a contract of service, for breach of which the appropriate remedy was an action of damages—*Cameron* v. *Fletcher*, January 9, 1872, 10 Macph. 301, 9 S.L.R., 202. This contract would not be specifically enforced against the pursuers. By English law if a contract from its nature could not be specifically enforced against one party, it could not be enforced against the other—Fry on Specific Performance (5th ed.), p. 231; *Blackett* v. *Bates*, (1865) L.R., 1 Ch. Ap. 117, *per* Lord Cranworth, L.C., at p. 124.

Argued for the respondents—By this agreement the defender acquired a right to the whole course, and the pursuers to the whole price. The instalments of the price were not payments *de die in diem*. They were to be completed some years before the pursuers' obligation expired. In regard to remedy, the analogy of a contract of service where wages ran *de die in diem* was inapplicable. What the defender acquired was a right to a complete course of instruction, and he had received that right. The pursuers therefore had fulfilled their contract. An English court had decided the same question as had arisen here in favour of the pursuers—*The International Correspondence Schools, Limited* v. *Ayres*, [1912] 28 T.L.R. 408. On the difference between Scots and English law in regard to the enforcement of specific performance counsel cited *Stewart* v. *Kennedy*, March 10, 1890, 17 R. (H.L.) 1, Lord Watson at pp. 9 and 10, 27 S.L.R. 469.

LORD PRESIDENT—We were invited to consider this as a test case brought to secure a judgment of this Court upon the question whether a breach of contract had been committed, and if so, what was the remedy. In the Sheriff Court the latter question alone was submitted to consideration, because we see from the note appended to the Sheriff-Substitute's interlocutor that he speaks of "an admitted breach of contract." And I think not unnaturally, for in September 1910 it appears that the defender applied to the pursuers' company to supply him with a course of correspondence in a certain department of applied science, and they agreed to give him that course of correspondence. It was to continue until he was qualified to receive a certain diploma provided his qualification was completed within five years. And the price which he was to pay for the course of correspondence which would qualify for this diploma in this department of applied science was £12, 17s., less discount of £1.

Now I have not the slightest doubt that by that contract the defender secured a right to a course of correspondence instruction, and the pursuers secured a right to receive the sum I have mentioned in return for the instruction. He received the instruction down to June 1911, and he then proposed to cease the instruction and pay no more money. Up to that time he had paid £6, 10s., and there was a balance of £5, 7s. which he declined to pay. The company had given instruction down to that date, and intimated their willingness to continue to give the instruction. And if they fulfilled their contract, which I hold they have done, by giving a certain amount of instruction and offering to give the remainder, it appears to me that the defender must fulfil his part of the contract and pay the balance of the £11, 17s. It does not appear to me to be relevant to consider that the payment as a matter of convenience was to be made by instalments.

It was a payment of £11, 17s. for a certain amount of instruction—enough to enable the lad to obtain a diploma—and it was for his convenience that the payment was made over a certain time. The fact that the payment was spread over a certain period does not appear to me to preclude the company from recovering the balance of the price. It was a slump sum to be paid for instruction to be given. The instruction has been given for a certain period, and it has been tendered for the period during which it was not given. It appears to me that a breach of contract has been committed, and that the appropriate remedy is simply implement of the contract. I have never yet heard of a case where implement in the form of payment of money being the appropriate implement it could not be given.

Our attention was called to the case decided in the English Court of King's Bench, where the very question now before us was decided in the way in which I propose to your Lordships we should decide this case. That decision is not binding upon us, but I agree in the reasoning with which Mr Justice Bray supported the judgment in that case. I therefore move your Lordships to refuse the appeal and to affirm the interlocutor of the Sheriff-Substitute.

LORD JOHNSTON — I concur with your Lordship. I think that this contract is of an exceptional nature and that it is one to which the law to which we were referred, of specific implement as against damages, does not apply. The question raised can be decided on this short ground, viz., that what is to be given on the one side, and what is to be paid on the other, namely, the course of instruction on the one side, and the fee for such course on the other, are each a *unum quid;* that the pursuers have given the course as far as they have been allowed to give it, and have offered and been anxious to give the remainder of the course, and that is implement on their part, whereas the defender has paid only certain instalments of the fee and declines to pay the rest.

It is corroborative of this that the instalments and the payments have no relation whatever to the progress of the course of instruction. They are not periodic payments for instruction during any particular period; they are, for the convenience of the pupil, merely a means to enable him to pay concurrently the one definite fee of £12, 17s. for the course. And, accordingly, I think that there is no question either of specific implement or of damages in this case, but only a well-founded claim for the balance of the fee.

LORD MACKENZIE concurred.

LORD SKERRINGTON—Though we are not called upon to decide the question, I am disposed to think that this contract was conditional on the continued life of the pupil, and upon his health being such as to enable him to receive the course of instruction. But I decline to read into the contract a further condition entitling the pupil at his own hand to say that he declined to let the course of instruction go on. Accordingly I have no doubt that a breach of contract was committed.

As regards the appropriate remedy I have more difficulty, but I agree with the judgment which your Lordships have proposed. I proceed solely upon the very peculiar terms of this contract.

The Court adhered.

Counsel for the Pursuers (Respondents)—Solicitor-General (Morison, K.C.)—Aitchison. Agents—Dove, Lockhart, & Smart, S.S.C.

Counsel for the Defenders (Appellants)—A. O. M. Mackenzie, K.C.—C. H. Brown. Agents—W. & W. Finlay, W.S.

Saturday, November 7.

SECOND DIVISION.

[Sheriff Court at Edinburgh.

M'LAUGHLIN *v.* PUMPHERSTON OIL COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *Second Schedule* (9)—*Recording of Memorandum of Agreement—Genuineness.*

A workman objected to the genuineness of a memorandum of agreement for the settlement of compensation under the Workmen's Compensation Act 1906, sought to be recorded by the employer, on the ground that while the memorandum bore that the claim was to be settled for £15, the agent had stipulated in writing for a payment to himself, in addition, of £5, 5s. of expenses. *Held* that the memorandum was genuine, though it omitted to mention the payment of expenses.

Agent and Client—Expenses—Settlement of Action—Agent's Duty to Disclose to Client that Terms of Settlement Included Payment of Expenses.

Where a law agent was authorised by his client to settle a claim under the Workmen's Compensation Act 1906 by payment of a lump sum, and stipulated, unknown to his client, for payment of an additional sum to himself in name of expenses, *held*, in the absence of averment that the sum paid for expenses was excessive, that the client was bound by the settlement.

On 10th February 1912 the Pumpherston Oil Company, Limited, Glasgow, *respondents*, having applied for warrant to record a memorandum of agreement, under paragraph 9 of the Second Schedule to the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), between them and Thomas M'Laughlin, labourer, Mid-Calder, *appellant*, the Sheriff-Substitute (ORR) ordered the memorandum to be recorded, and at the request of the workman stated a Case for appeal.

The Case stated—"The said memorandum of agreement lodged by the respon-