

have done by saying that in consequence of this general reduction in wages the return which he as an injured man received was diminished and the loss attributable to his accident had been increased. That might have been a relevant ground, but without such an averment a mere statement of a general result which has occurred, viz., a general reduction of the amount of wages, to my mind is not relevant. Accordingly I agree in the conclusion at which the arbitrator arrived, and I propose that we should answer the second question in the affirmative.

LORD DUNDAS—I agree. I think the second question should be answered in the affirmative. [*His Lordship dealt with the first question and found it unnecessary to answer it*].

LORD SALVESEN—I agree with your Lordship in the chair that the appellant has not set forth relevant grounds for asking for an increase of compensation. He comes into Court saying in effect “When wages were high my compensation was fixed on the basis of these ruling high wages,” and then he says “There has been a general reduction in wages since,” and the conclusion that he asks the Court to draw from these facts is, “therefore I am entitled to get more compensation.” I should have thought that it would have been just exactly the other way, as was in truth decided in *Bevan's* case ([1912] 1 K.B. 63), because the workman was trying to have himself placed upon a higher level than his fellow-workman instead of sharing in the reduction of wages which was common to the trade. Although I cannot conceive of such a case, if there were special averments showing how, notwithstanding that his compensation was fixed when wages were high, when wages fell his relative loss was greater, he might have been entitled to a proof. But here there is nothing but the statement that the wages had fallen since his compensation was fixed. *Prima facie* such an averment, so far from leading to the conclusion that his compensation should be increased, as he claims, seems to me to lead to exactly the opposite result. Accordingly I agree that here there is no relevant case set forth for inquiry, and that we ought to answer the second question in the affirmative.

LORD ORMIDALE—I agree in thinking that the application set out no relevant ground for inquiry.

The Court answered the question in the affirmative and dismissed the appeal.

Counsel for the Appellant—Morton, K.C.—Maclaren. Agent—R. D. C. M'Kechnie, Solicitor.

Counsel for the Respondents—Sandeman, K.C.—Marshall. Agents—W. & J. Burness, W.S.

Tuesday, July 19.

FIRST DIVISION.

DUNOON PICTURE HOUSE COMPANY LIMITED v. BURGH OF DUNOON.

Process—Interdict—Breach—Petition and Complaint—Vacation.

A petition and complaint for breach of interdict having been presented during session, *circumstances* in which the Court granted authority to the Lord Ordinary officiating on the Bills in vacation to proceed therein, if moved, as he would have proceeded if the petition and complaint had been presented during vacation.

On 15th July 1921 the Dunoon Picture House Company, Limited, incorporated under the Companies (Consolidation) Act 1908, and having their registered office at 227 St Vincent Street, Glasgow, with concurrence of the Right Honourable Thomas Brash Morrison, K.C., His Majesty's Advocate, brought a petition and complaint against the Provost, Magistrates, and Councillors of the Burgh of Dunoon.

The petitioners were incorporated for the purpose of carrying on the business of entertainers and exhibitors of cinema films, and had built and were conducting a picture house known as “The Picture House” in Argyll Street, Dunoon. The respondents were the owners of a building known as “The Pavilion” in Pier Road, Dunoon, which contained a large hall used for entertainments.

The petitioners had previously presented a note of suspension and interdict to have the respondents restrained from carrying on the business of exhibitors of pictures by means of a cinematograph in “The Pavilion.” The prayer of the note was in these terms—“... To suspend the proceedings complained of, and to interdict, prohibit, and discharge the respondents, their servants, and all others acting under their authority (1) from conducting or carrying on in the hall known as ‘The Pavilion,’ Pier Road, Dunoon, the business of exhibitors of pictures or other optical effects by means of a cinematograph or other similar apparatus either gratuitously or for a charge, and (2) from employing any part of the rates and charges levied or collected by the respondents from the ratepayers of the burgh of Dunoon, or any public moneys under their administration and control, for or in connection with any of the foresaid purposes. . . .”

Answers to the note were lodged, and on 29th June 1921 the Lord Ordinary (BLACKBURN), after hearing counsel in the procedure roll, granted interdict in terms of the prayer.

The petition and complaint, after narrating the proceedings in the note of suspension and interdict, proceeded—“That the business carried on by the respondents as exhibitors of pictures was so carried on by them in the said Pavilion, which is the property of the burgh of Dunoon, and by means

of cinematograph machines which were purchased by the respondents out of public funds. The said business was managed for the respondents by Mr H. G. Hartley, to whom the Magistrates of the Burgh of Dunoon granted a licence in terms of the Cinematograph Act 1909 to conduct the said exhibitions. . . . That it has now come to the knowledge of the complainers that at a meeting of the Town Council of the Burgh of Dunoon, held at Dunoon on the 10th day of May 1921, in contemplation of the possibility of an interdict being pronounced against them in said note of suspension and interdict, the respondents made an arrangement with the said H. G. Hartley . . . , which arrangement is thus expressed in the minute of said meeting—'Judge Dobie submitted the conditions as agreed to by Mr Hartley upon which it was proposed the Council should let the Pavilion to Mr H. G. Hartley for cinema entertainments in the event of the pursuers in the action against the Council being successful in obtaining interdict against them, viz.—The Pavilion to be let to Mr Hartley until 1st October 1921 at a rental of £10 per week, including lighting, &c., any surplus profit over £120 to be paid to the Council, the lessee to keep accounts and submit same to Council for audit . . . the lessee to take over and be responsible for all contracts entered into by Council in connection with cinema entertainments, including attendants, &c. The suggested conditions were approved of, and the Clerk was instructed to have the same embodied in formal contract. . . . That five days after the said interdict had been granted the respondents at a meeting of the Town Council of the Burgh of Dunoon, held at Dunoon on the 4th day of July 1921, entered into a formal contract pretending to give effect to the said arrangement with the said H. G. Hartley, and the minute of that meeting bears—'The Clerk submitted for signature engrossment of agreement of let of Pavilion between the Town Council and Mr H. G. Hartley for period from 29th June to 1st October 1921. The meeting authorised, and hereby authorises the said agreement to be executed on their behalf by the Provost and Town Clerk, and the same was accordingly sealed and signed by the Provost and Town Clerk in presence of the meeting. . . . That the powers of the respondents to deal with the said Pavilion are regulated by section 44 of the Burgh Police (Scotland) Act 1903, which provides that they may 'give the use of the same to the public, or to givers of entertainments, at such charges as they may fix.' By the terms of the said section the respondents have no power to grant a lease of the said Pavilion to Mr Hartley, nor is the said agreement as disclosed in the said minute a genuine lease of the said Pavilion. The subjects pretended to be let include not only the said Pavilion, but also the cinematograph apparatus, and the furniture, fittings, and furnishings of and in the said building, all belonging to the respondents, and the alleged rent of £10 per week includes lighting, heating, and power. This rent is less than the market value of the subjects, and the contract between the

respondents and Mr Hartley is one of partnership, in terms of which the subjects are let at an inadequate rent in order that the respondents may evade the terms of the said interdict and make a profit out of the business of exhibiting cinema films. The sum of so-called profits to which Mr Hartley is entitled under the said agreement (£120 for thirteen weeks) is no more after he pays tenant's taxes than his salary was as manager. Further, it is believed and averred that the hirers of films to the respondents have not accepted Mr Hartley as debtor in lieu of the respondents, who remain liable under the said hiring contracts. That in the circumstances now detailed it is obviously necessary for the protection of the complainers that your Lordships' authority should be vindicated, and that the respondents should be compelled to give obedience to the orders of the Court. The respondents have been guilty of a breach of interdict and of contempt of Court."

The prayer of the petition and complaint was in these terms—" . . . To find that the said parties, respondents, or one or more of them, by their actings and proceedings above complained of, have acted illegally and been guilty of breach of the interdict granted by this Court above set forth and recited, and of a contempt of the authority of this Court; and in respect thereof to inflict such punishment by imprisonment, fine, or otherwise on the said respondents or one or more of them as may be considered by your Lordships to be necessary. . . ."

On 19th July 1921, in the Single Bills, counsel for the petitioners and complainers moved the Court to remit the petition and complaint to the Lord Ordinary on the Bills in vacation to proceed as might be necessary.

Argued for the petitioners and complainers—If power was not given to the Lord Ordinary on the Bills to deal with the petition and complaint during vacation the petitioners would probably suffer loss during the whole of what was their most profitable season by the respondents carrying on in breach of interdict an opposition picture house. In the circumstances the Lord Ordinary should have the power which he would have had if the petition and complaint had been presented in vacation—*Glasgow International Exhibition v. Sosnowski*, 1901, 39 S.L.R. 28.

The Court, without delivering opinions, pronounced this interlocutor:—

" . . . Grant authority to the Lord Ordinary officiating on the Bills in vacation to proceed therein, if moved, as he would have proceeded if the petition and complaint had been presented in vacation."

Counsel for the Petitioners and Complainers—Maconochie. Agents—Norman Macpherson & Dunlop, S.S.C.